

RECOMMENDATIONS REGARDING THE “MADE AVAILABLE TO TRADE” (MAT) PROCESS

Report of the Market Structure Subcommittee,
Market Risk Advisory Committee of the
U.S. Commodity Futures Trading Commission

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Background & Introduction

The scope of the “trade execution requirement” – the obligation to trade certain cleared swaps on swap execution facilities or designated contract markets (hereinafter referred to collectively as “SEFs”) – is currently set through the “made available to trade” (“MAT”) process.

At present, under Commission rules § 37.10 and 38.12 (*see Appendix A*), SEFs themselves and alone are provided with the authority to make a MAT determination, and by extension, determine the scope of swaps subject to the trade execution requirement (*see Appendix B*).

The overall appropriateness, efficacy, and sustainability of the current MAT process has been examined at length since its initial adoption, and myriad proposals to revise the framework have been advanced, including at/via:

- The CFTC Division of Market Oversight’s Public Roundtable Regarding the Made Available to Trade Process held on July 15, 2015 (*see Appendix C*);
- The U.S. Department of the Treasury’s “Capital Markets” Report, published in October 2017 (*see Appendix D*); and
- The CFTC’s Proposed Rule on SEFs and the Trade Execution Requirement (published on November 30, 2018 though largely withdrawn on December 8, 2020) and in over 25 comment letters submitted in response to the proposal received on or about March 15, 2019 (*see Appendix E*).

Notwithstanding these past in-depth discussions of revisions to the MAT process, a consensus blueprint among market participants has not been put forward. Through these proposed recommendations, the Market Structure Subcommittee aims to provide such a blueprint. In particular, the Subcommittee’s proposed recommendations would:

1. Provide the Commission with the authority through its rulemaking process to determine that a swap is made available to trade;
2. Enhance the criteria used when either the Commission or SEFs make a MAT determination;
3. Modify the length of time between when a MAT determination is made and when the trade execution requirement becomes effective; and
4. Create additional avenues for certain existing MAT swaps to no longer be subject to the trade execution requirement, when and where appropriate.

The Subcommittee believes that these proposed recommendations will help address a range of concerns that have been expressed since the current MAT framework was adopted, including:

- That all SEFs have refrained from making any new MAT determinations since late 2013, which has raised questions about the suitability and future viability of the current MAT process;
- The potential conflict of interest that exists when SEFs have the sole authority to determine the scope of swaps that must trade exclusively on SEFs, particularly when the potential exists for a given SEF to direct all trading onto its own platform if it is the only SEF to list a swap that is then covered by a MAT determination;
- The inconsistency between the US regime, where SEFs set the scope of the trade execution requirement, and relevant international regimes, where regulators set the scope of the trading obligation – and by extension, the question of how the alignment of the scope of the trading obligation can best be maintained going forward; and
- How will the current scope of swaps subject to the trade execution requirement be efficiently updated and revised given that all the existing MAT determinations reference LIBOR swaps (and other IBOR swaps).

Recommendations

1. Provide The Commission With The Authority to Determine That A Swap Is “Available To Trade”

The current MAT process, which relies on SEFs to make a MAT determination and submit it to the Commission for approval or self-certification under the Commission’s Part 40 rules, should be complemented by a Commission-initiated process that equally establishes that a swap is considered “available to trade”, and by extension, is subject to the trade execution requirement under Section 2(h)(8) of the Commodity Exchange Act (“CEA”).

Such a Commission-initiated process would consider the same factors that are outlined in current Commission rule § 37.10 (as modified by our second recommendation below), and would allow for a standard public notice and comment period. Notably, this process for setting the scope of swaps subject to the trade execution requirement would also more logically parallel the process the Commission uses for setting the scope of swaps subject to the clearing obligation.

2. Enhance the MAT Criteria

The criteria laid out in Commission rule § 37.10 which are used to determine whether or not a swap is “available to trade” should be enhanced such that:

- The “shall consider, as appropriate” standard for consideration is strengthened to “must consider”;
- Clarify that all factors must be evaluated, rather than just one or a subset;
- The number of SEFs that list the swap is added as a factor, and at least two SEFs list the swap; and
- A minimum amount of trading history is required (e.g., that a swap has been listed for at least 90 days).

3. Effective Date

The length of time between when a MAT determination is made through a SEF rule filing or a Commission rulemaking and when the trade execution requirement becomes effective should be lengthened from 30 days (currently) to 90 days.

If a swap is removed from MAT scope (pursuant to our fourth recommendation or otherwise), the effective date of the trade execution requirement no longer applying to it should be immediate.

4. De-MAT Process

A process should be developed to remove a swap from the MAT scope (beyond simply a swap no longer being listed on any SEF). The process for doing so should generally be symmetric with the process for making a MAT determination in the first instance – both in terms of procedural pathways (SEF rule certification and/or Commission-initiated process) as well as an assessment against the relevant factors in Commission rule § 37.10 – though could follow a more expedited timeline.

Areas for Future Consideration

5. Creation of an Industry Advisory Body

The Commission should consider whether an industry advisory body should be created to provide recommendations to both the Commission as well as SEFs on swaps that should be added to or removed from the list of swaps that are deemed to be “available to trade” and thus subject to the trade execution requirement. The advisory body should have appropriate expertise and balanced representation, including from the buy-side, the sell-side, and other stakeholders.

6. Application of MAT Determinations to Outright Transactions vs. Package Transactions

The Commission should further consider whether a determination that a swap is “available to trade” means that only “outright” transactions in that swap are subject to the trade execution requirement or that any and all “package” transactions that include that swaps are subject to the trade execution requirement. The current approach, which does not delineate between “outright” and “package” transactions, has necessitated a series of no action relief letters to tailor the application of trade execution requirement for different types of “package” transactions. An alternative approach would be make MAT determinations specific to different transaction types (e.g., outright, curves, butterflies, spread-over-Treasuries, etc.).

7. Temporary Suspension of the Trade Execution Requirement

The Commission should consider the implications that a temporary outage at one or more SEFs or a major market disruption would have for swaps subject to the trade execution requirement.

Appendix A: CFTC Final Rule: Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade

- Adopting Release:
<https://www.cftc.gov/sites/default/files/idc/groups/public/@Irfederalregister/documents/file/2013-12250a.pdf>

- Full text of § 37.10:

§ 37.10 Process for a swap execution facility to make a swap available to trade.

(a)(1) *Required submission.* A swap execution facility that makes a swap available to trade in accordance with paragraph (b) of this section, shall submit to the Commission its determination with respect to such swap as a rule, as that term is defined by § 40.1 of this chapter, pursuant to the procedures under part 40 of this chapter.

(2) *Listing requirement.* A swap execution facility that makes a swap available to trade must demonstrate that it lists or offers that swap for trading on its trading system or platform.

(b) *Factors to consider.* To make a swap available to trade, for purposes of section 2(h)(8) of the Act, a swap execution facility shall consider, as appropriate, the following factors with respect to such swap:

- (1) Whether there are ready and willing buyers and sellers;
- (2) The frequency or size of transactions;
- (3) The trading volume;
- (4) The number and types of market participants;
- (5) The bid/ask spread; or
- (6) The usual number of resting firm or indicative bids and offers.

(c) *Applicability.* Upon a determination that a swap is available to trade on any swap execution facility or designated contract market pursuant to part 40 of this chapter, all other swap execution facilities and designated contract markets shall comply with the requirements of section 2(h)(8)(A) of the Act in listing or offering such swap for trading.

(d) *Removal—*(1) *Determination.* The Commission may issue a determination that a swap is no longer available to trade upon determining that no swap execution facility or designated contract market lists such swap for trading.

(2) *Delegation of Authority.* (i) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority to issue a determination that a swap is no longer available to trade.

(ii) The Director may submit to the Commission for its consideration any matter that has been delegated in this section. Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

Appendix B: Current “Made Available to Trade” Determinations

- Summary Chart:
<https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/file/swapsmadeavailablechart.pdf>
- “Made Available to Trade” Submissions:

SEF	Filings
trueEX	https://sirt.cftc.gov/sirt/sirt.aspx?Topic=%20SwapsMadeAvailableToTradeDeterminationAD&Key=26597
TradeWeb	https://sirt.cftc.gov/sirt/sirt.aspx?Topic=%20SwapsMadeAvailableToTradeDeterminationAD&Key=26597
Javelin	https://sirt.cftc.gov/sirt/sirt.aspx?Topic=%20SwapsMadeAvailableToTradeDeterminationAD&Key=26422
MarketAxess	https://sirt.cftc.gov/sirt/sirt.aspx?Topic=%20SwapsMadeAvailableToTradeDeterminationAD&Key=26601
Bloomberg	https://sirt.cftc.gov/sirt/sirt.aspx?Topic=ProductTermsandConditionsAD&Key=28230

Appendix C: CFTC Division of Market Oversight Public Roundtable Regarding the Made Available to Trade Process (July 15, 2015)

- Meeting Website: https://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff071515
- Meeting Transcript: <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/transcript071515.pdf>
- SIFMA Meeting Summary: <https://www.sifma.org/resources/general/cftc-roundtable-on-mat-determinations/>
- SIFMA AMG Comment Letter: <https://www.sifma.org/wp-content/uploads/2017/05/sifma-amg-submits-comments-to-the-cftc-on-made-available-to-trade-determinations.pdf>
- Greenwich Associates Commentary – “Putting the CFTC in charge of the MAT process”: <https://www.greenwich.com/blog/putting-cftc-charge-mat-process>
- Clarus Financial Technology – “How to Fix the Broken MAT Process”: <https://www.clarusft.com/how-to-fix-the-broken-mat-process/>

Appendix D: Treasury Capital Markets Report (October 2017)

- Full report: <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>
- Relevant excerpt from pages 144-45:

“CFTC rules permit a SEF to make a MAT determination on consideration of six specified factors, which triggers the trade execution requirement for a class of swaps. Many market participants have commented that the six factors that SEFs must consider before making a MAT determination are not robust enough to demonstrate sufficient liquidity for mandatory trading. CFTC Chairman Giancarlo has stated that, “Since the MAT process is platform-controlled, a nascent SEF attempting to gain a first-mover advantage in trading liquidity may force certain swaps to trade exclusively through the SEF’s restrictive methods of execution (i.e., order book or RFQ-3 system), potentially before sufficient liquidity is available to support such trading.” Commenters have recommended giving the CFTC greater control over the MAT determination process by empowering the CFTC, rather than SEFs, to trigger the trade execution requirement.”

Appendix E: Relevant Comments on the CFTC Proposed Rule on SEFs and the Trade Execution Requirement

- Full comment file: <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2936>
- 26 commenters addressed the proposed revisions to the MAT process:

Trade Associations

- MFA
- SIFMA AMG
- ACLI
- AIMA
- ICI
- ISDA
- SIFMA
- CMC
- FIA
- GFXD

Market Participants

- Vanguard
- Wellington
- Citadel
- T. Rowe Price
- FHLBs
- Chatham
- Blackrock
- Farmer MAC

SEFs

- Bloomberg
- Tradeweb
- 360T
- Refinitiv

Others

- Better Markets
- IHS Markit
- Capitalab
- Derivative Path

Members of the MRAC Market Structure Subcommittee

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2.	Lisa Shemie (Co-Chair)	Cboe Global Markets	Associate General Counsel, Chief Legal Officer – Cboe FX Markets and Cboe SEF
3.	B. Salman Banaei	IHS Markit	Executive Director, Global Head of Clearance and Settlement
4.	Lee Betsill	CME Group	Managing Director and Chief Risk Officer
5.	Peter Borish	Quad Group	Chief Strategist
6.	Biswarup Chatterjee	Citigroup	Managing Director, Global Head of Innovation, Markets & Securities Services
7.	Shelly Goodwin	BP IST Global Americas	Compliance Director, Refining & Products Trading Americas and Global Crude
8.	Graham Harper	Futures Industry Association – Principal Traders Group	Head of Public Policy and Market Structure at DRW
9.	Frank Hayden	Calpine Corporation	Vice President, Trading Compliance
10.	Annette Hunter	Federal Home Loan Bank of Atlanta	Senior Vice President and Director of Accounting Operations
11.	Eileen Kiely	BlackRock	Managing Director, Deputy Head of Counterparty Risk
12.	Derek Kleinbauer	Bloomberg SEF LLC	Global Head of Fixed Income & Equities Electronic Trading, Bloomberg LP and Vice President, Bloomberg SEF LLC
13.	Laura Klimpel	The Depository Trust & Clearing Corporation	Managing Director
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15.	Robert Mangrelli	Chatham Financial	Director
16.	Dr. Sam Priyadarshi	Vanguard	Principal, Global Head of Portfolio Risk Management and Derivatives

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22.	Scott Zucker	Tradeweb	Chief Administrative Officer

¹ Ms. Tramontana, in representing the Federal Reserve Bank of New York, is a non-voting member. In this capacity, she did not provide advice and recommendations on this report.

² Ms. Zakir, as the Chair of the MRAC, is a non-voting member.