



| asset management group

July 18, 2016

Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: *Comment Letter on the Proposed Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps (RIN 3038–AE20)*

Dear Mr. Kirkpatrick:

The Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**” or “**AMG**”)¹ appreciates the opportunity to provide the Commodity Futures Trading Commission (the “**Commission**”) with comments and recommendations regarding the Commission’s Notice of Proposed Rulemaking to mandate the clearing of certain interest rate swaps (the “**Proposed Determination**”).²

AMG supports the Commission’s proposal to expand its clearing mandate through the Proposed Determination. Clearing provides many benefits to the swaps market, including improved market liquidity and market integrity. Clearing mandates satisfying the requirements of Commodity Exchange Act Section 2(h) foster those benefits. The Commission’s efforts to harmonize its clearing requirements with those in non-U.S. jurisdictions will improve the functioning of swaps markets and reduce operational complexity. To this end, we recommend that harmonization be achieved in line with the implementation timing of those non-U.S. mandates and make other timing adjustments to make the transition less disruptive.

The Proposed Determination, however, must not be considered in a vacuum in light of a clearing mandate’s status as a condition precedent for a Made Available to Trade (“**MAT**”) determination. MAT submissions are currently made via a process that the Commission and market participants agree is flawed and that the Commission is working to adjust. In order to avoid negative consequences for trade execution during this interim period, the Commission should temporarily suspend acceptance of MAT submissions that could flow from the Proposed Determination until changes to the MAT process have been finalized.

¹ AMG’s members represent U.S. asset management firms whose combined global assets under management exceed \$34 trillion. The clients of AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

² Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps, 81 Fed. Reg. 39,506 (June 16, 2016).

AMG, therefore, recommends that the Commission (1) defer the compliance date for any final clearing mandate until 180 days after a regulator in a non-U.S. jurisdiction has adopted an analogous mandate and do so with a phased-in approach by counterparty type; and (2) temporarily suspend acceptance of MAT submissions that could follow the Commission's issuance of the clearing mandates set forth in the Proposed Determination until the Commission finalizes adjustments to the MAT process.

I. The Commission should not require compliance with the Proposed Determination before an analogous clearing mandate is implemented and becomes effective in a non-U.S. jurisdiction.

We support the Commission's objective of harmonizing U.S. clearing requirements with those abroad but believe that the Commission should do so in a manner consistent with the implementation timing of those non-U.S. jurisdictions. Several of the non-U.S. clearing mandates referenced by the Proposed Determination are not yet final, and some are relatively early in the proposal stage. For example, the Commission has proposed a clearing mandate on interest rate swaps denominated in Australian dollar (AUD), Canadian dollar (CAD), Hong Kong dollar (HKD), Mexican peso (MXN), Norwegian krone (NOK), Polish zloty (PLN), Singapore dollar (SGD), Swedish krona (SEK) and Swiss franc (CHF). Yet, according to the Proposed Determination, the clearing mandates for seven of those nine currencies are not yet effective, and the expected effective date for five of those seven currencies is unknown at this time, as illustrated in the table below.³

Currency	Effective Date (or Expected Effective Date)
AUD	April 2016
CAD	<i>Sometime in 2016</i>
CHF	<i>Not known</i>
HKD	<i>September 2016</i>
MXN	April 2016
NOK	<i>Not known</i>
PLN	<i>Not known</i>
SEK	<i>Not known</i>
SGD	<i>Not known</i>

If the Commission were to finalize the Proposed Determination without synchronizing the phase-in timing, it is entirely possible that interest rate swaps denominated in some of the above currencies would be subject to mandatory clearing in the U.S., but not in the local jurisdiction with

³ See, e.g., Proposed Determination, 81 Fed. Reg. at 39,527 (“the clearing requirements have become effective for the (i) AUD-denominated fixed-to-floating, basis, FRA, and OIS swaps, and (ii) MXN-denominated fixed-to-floating swaps. . . . For the other categories of swaps, effective dates have been proposed in some but not all cases, and the proposed effective dates could change. . . . Thus, for each other category, it is possible that a Commission rule could take effect before or after the effective date in the specified jurisdiction.”).

which the Commission seeks to achieve harmony. Therefore, AMG believes that the Commission should defer compliance with any clearing mandate until an analogous mandate is effective in the non-U.S. jurisdiction (*i.e.*, by adopting the Commission's second proposed implementation schedule as set forth in footnote 4 below).⁴

We further recommend that the Commission proceed by: (1) expanding the implementation schedule to 180 days after the effective date of an analogous clearing mandate adopted by a regulator in a non-U.S. jurisdiction in order to give U.S. market participants time to comply; (2) utilize phased-in compliance by entity type pursuant to Commission Regulation 50.25; and (3) remove the proviso in the second proposed implementation schedule that would cause an automatic effective date after two years even if no regulator in a non-U.S. jurisdiction adopts an analogous clearing mandate. This automatic effective date proviso could result in clearing mandates being imposed on U.S. market participants in the name of harmonization when there is ultimately no foreign clearing mandate with which to harmonize.

We believe that implementing an expanded clearing mandate pursuant to the approach described above would be consistent with the Commission's intent to "harmonize [the Commission's] swap clearing requirement with clearing requirements promulgated in other jurisdictions."⁵

II. The Commission should suspend acceptance of MAT submissions flowing from the proposed clearing mandates until the Commission's adjustments to the MAT process are final.

The Commission has publicly acknowledged that the swap execution facility ("SEF") regulations should be adjusted and is considering a number of rule changes to enhance trading and participation on SEFs, including changes to the MAT process.⁶ AMG previously provided recommendations to improve the SEF regulations as part of the Commission's review of its

⁴ The Commission requested comment on two proposed implementation schedules, whereby the expanded clearing mandate would become effective either: (1) 60 days after the Commission's final rule is published in the Federal Register or (2) on the earlier of (a) 60 days after the effective date of an analogous clearing mandate adopted by a regulator in a non-US jurisdiction (provided that such requirement would not be effective until at least 60 days after the Commission's final rule is published in the Federal Register) or (b) two years after the Commission's final rule is published in the Federal Register. *See* Proposed Determination, 81 Fed. Reg. at 39,527.

⁵ *Id.* at 39,507.

⁶ *See, e.g.*, Remarks of Chairman Timothy Massad before the 41st Annual FIA International Futures Industry Conference, Boca Raton, Florida (March 16, 2016) ("I will ask the Commission to consider a number of rule changes to enhance trading and participation on swap execution facilities (SEFs). This will include formalizing a number of the "no-action" positions the staff has taken, and considering additional issues, such as whether the Commission should play a greater role in the 'made available to trade' determination process."); J. Christopher Giancarlo, Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank (Jan. 29, 2015), *available at* <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf>.

requirements, most recently following the Commission's public roundtable to review the MAT process.⁷

AMG is concerned that issuing the clearing mandates set forth in the Proposed Determination will lead to a wave of related MAT submissions prior to the adjustments to the SEF rules becoming final. A new clearing mandate would satisfy a key condition precedent for MAT submissions under current Commission Regulations and, as a result, would bring in scope new contracts. AMG continues to support the transition of swap trading to SEFs but, as stated in prior submissions, believes that amendments to the Commission's existing regulations are required to reduce disruptions in liquidity and to counter increased operational risks, both of which our members have experienced as swaps have been mandated for SEF trading. In particular, AMG believes that: (i) Commission Regulation 37.10 should be amended to require that all Six MAT Factors (as defined in SIFMA AMG's August 17, 2015 Comment on the Division of Market Oversight's Public Roundtable Regarding the Made Available to Trade) must be satisfied as part of any MAT submission; (ii) the Commission should consider certain additional factors in assessing any MAT applications; (iii) any new MAT application should be treated as novel and complex and accordingly, should be subject to a full 90-day review period by the Commission, a concurrent 30-day public comment period and feedback from a SEF advisory committee comprised of market participants; (iv) MAT determinations should have phased-in compliance; and (v) package transactions should be reviewed for MAT consideration as a single, integrated unit rather than solely based on its swap component(s).⁸ For these and other reasons expressed in AMG's prior comments, we strongly oppose imposing a trading mandate on any additional swaps before the Commission adopts amendments to its rules to strengthen the MAT criteria and process. We therefore urge that, if the Commission finalizes the Proposed Determination, it suspend acceptance of MAT submissions related to the resulting clearing mandates.

⁷ See, e.g., SIFMA AMG Comment on the Division of Market Oversight's Public Roundtable Regarding the Made Available to Trade (Aug. 17, 2015), available at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60469&SearchText=>.

⁸ See *id.*

III. Conclusion

For the reasons set forth above, AMG recommends that the Commission: (1) defer the compliance date for any final clearing mandate until 180 days after a regulator in a non-U.S. jurisdiction has adopted an analogous mandate and do so with a phased-in approach by counterparty type; and (2) temporarily suspend acceptance of MAT submissions that could follow the Commission's approval of the clearing mandates set forth in the Proposed Determination until the Commission finalizes adjustments to the MAT process.

We stand ready to provide any additional information or assistance that the Commission might find useful. Should you have any questions, please do not hesitate to contact Tim Cameron at 202-962-7447 or tcameron@sifma.org, Laura Martin at 212-313-1176 or lmartin@sifma.org, or Terry Arbit at Norton Rose Fulbright at 202-662-0223 or terry.arbit@nortonrosefulbright.com.

Respectfully submitted,



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