



299 Park Avenue  
10<sup>th</sup> Floor  
New York, NY 10171  
Tel 212.813.6000  
Fax 212.813.6340  
www.marketaxess.com

July 22, 2011

Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: **File No. S7-16-11**

**RIN 3038-AD46 and RIN 3235-AL14 – Further Definition of “Swap,”  
“Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed  
Swaps; Security-Based Swap Agreement Recordkeeping**

Dear Mr. Stawick and Ms. Murphy:

The Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”) have requested comment on their jointly proposed rules further defining swap, security-based swap and security-based swap agreement under the Commodity Exchange Act (the “CEA”) and Securities Exchange Act of 1934 (the “Exchange Act”), as amended by Dodd-Frank. See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 Fed. Reg. 29,818 (May 23, 2011) (the “Proposed Rules”). The CFTC and SEC face an important challenge in appropriately defining the terms that form the basis of Title VII of Dodd-Frank.

MarketAxess Corporation (“MarketAxess”) operates a leading electronic trading platform for investment industry professionals that promotes transparency, price discovery, and liquidity in the corporate bond and other markets, including credit default swaps.<sup>1</sup> MarketAxess<sup>1</sup> intends to register with the CFTC as a swap execution facility (“SEF”) and with the SEC as a security-based swap execution facility (“SB SEF”) and list both swaps and security-based swaps on its platform. Specifically, we intend to list both broad-based index CDS and single-name CDS.

<sup>1</sup> MarketAxess Corporation is the principal operating subsidiary of MarketAxess Holdings Inc., a public company. We are regulated as a broker-dealer and as an alternative trading system operator by the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority. Our principal offices are located in New York City, and we currently employ approximately 236 persons. Although initially a dealer-owned entity, MarketAxess Holdings Inc. is now a public company, with no dealer(s) owning, individually or in the aggregate, more than 20% of MarketAxess’ common stock. In addition, MarketAxess’ ten-person Board of Directors includes eight individuals who meet the requirements for independence under the rules of the Nasdaq Stock Market.



We are ideally suited to achieve Dodd-Frank's objectives for SEFs and SB SEFs and intend to begin operations as a SEF and as a SB SEF as soon as possible. We therefore have a strong interest in, and appreciate the opportunity to comment on, the CFTC's and SEC's proposals that affect SEFs and SB SEFs and on the need for harmonized rules and procedures. In that regard, MarketAxess intends to operate a SEF for broad-based index CDS and a SB SEF for single-issuer CDS that will use the same trading protocols and systems.<sup>2</sup>

### **The Same Regulatory Standards Should Apply For All CDS.**

The Proposed Rules lay out an exceedingly complex process for determining whether an index CDS is broad-based or narrow-based and provide special rules for index CDS that migrate from broad-based to narrow-based, and vice versa. We urge the CFTC and the SEC to simplify this aspect of the product definitions.

We reiterate here our strongly-held belief that the Commissions should adopt registration and regulatory standards for SEFs and SB SEFs that are identical or as close to identical as possible. We believe that this approach is not only faithful to the legislative intent underlying Dodd-Frank but is also essential to the efficient and non-fragmented development of the CDS markets.

To the extent that the CFTC and SEC ultimately adopt divergent approaches to regulating swaps and security-based swaps, as they have proposed, market participants should have as much legal certainty as possible with respect to CDS transactions. Under the approach providing the greatest certainty, if a SEF were to list a broad-based index CDS comprised of ten names and one of the index components were removed following a credit default, the SEF would have the discretion to elect to continue to list that index CDS and avoid changing the jurisdiction applicable to this existing product.<sup>3</sup>

Alternatively, where an index CDS migrates from one regulator's jurisdiction to the other, an entity operating both a SEF and a SB SEF should be permitted to move the index CDS from one system to the other by providing a simple notice to the CFTC and SEC. Moreover, we believe that it would ease any disruption or dislocation associated with such a delisting process if the final rules were to provide a six-month grace period, rather than the three-month period included in the current proposal.

---

<sup>2</sup> We additionally expect that the vast majority of participants in the single-issuer CDS markets will also participate in the index CDS markets.

<sup>3</sup> The SEF may not be able to ensure that the index remains broad-based by adding one or more additional reference names, especially if the index CDS references an index created by a third-party. This approach would avoid requiring the SEF to delist the CDS or, if the entity also operates a SB SEF, to undertake the expense to relist the same CDS as an SEC-regulated product, especially in light of the differences between the SEF and SB SEF rules, as currently proposed.



**Anti-Evasion Rules Should Not Apply to Transactions Executed on a SEF or SB SEF.**

The CFTC's proposed anti-evasion rules would permit the CFTC to treat an instrument as a swap upon finding that the transaction is designed to evade the swap rules. Proposed CFTC Rules 1.3(xxx)(6) and 1.6. The SEC has not proposed anti-evasion rules, but requests comment on the subject. See Proposed Rules at 29,868.

With respect to trading on a regulated SEF or SB SEF platform, we suggest that the Commissions confirm in their final rules release that anti-evasion rules will not apply to any transactions executed on, or pursuant to the rules of, a SEF or SB SEF. Such transactions should not be at issue, but a confirmation nonetheless would be useful for the avoidance of any doubt on the matter.

We note that before a SEF may list a swap or a SB SEF may list a security-based swap, the SEF or SB SEF must self-certify or voluntarily obtain CFTC or SEC approval to list that product. This process should provide the CFTC and SEC with the needed comfort that a swap or security-based swap executed on or pursuant to the rules of a SEF or SB SEF cannot be designed to evade swap or security-based swap rules.

For example, under final rule amendments to Part 40 of the CFTC's regulations that were approved earlier this week, CFTC Rule 40.2 (Listing products for trading by certification), which will apply to SEFs as well as to designated contract markets, provides that a SEF must certify, among other things, that "the product to be listed complies with the Act and Commission regulations thereunder..." Consequently, we believe it is reasonable that participants should have certainty that the CFTC and SEC will not utilize their anti-evasion powers to recharacterize a transaction executed on a SEF or SB SEF as a swap or security-based swap, respectively.

Along those lines, we also support the Commissions' statement in the Proposed Rules that multiple single-name CDS transactions simultaneously executed between two parties and documented with separate confirmations will not be treated as an index CDS. This approach is consistent with current market practice. See Proposed Rules at 29,843.

\* \* \* \* \*

We look forward to working with the CFTC and SEC to achieve the Congressional objective of promoting swap and security-based swap trading on SEFs and SB SEFs. If you have any comments or questions about our comment letter or SEF and SB SEF issues generally, please contact me or our General Counsel, Chuck Hood, at (212) 813-6053.

Respectfully,

Richard M. McVey  
Chairman and Chief Executive Officer  
MarketAxess Holdings Inc.