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Mandatory SEF/DCM Trading Begins for Certain Interest Rate Swaps

As of February 15, 2014, certain types of fixed-for-floating interest rate swaps must be executed on a swap execution facility (SEF) or a designated contract market (DCM), unless an exception applies (e.g., the commercial end-user exception).¹ This SEF/DCM-trading requirement is a result of the Commodity Futures Trading Commission's (CFTC) first "made-available-to-trade" determination (MAT Determination) announced on January 16, 2014.² Since this initial requirement, CFTC staff has announced MAT Determinations for additional interest rate swaps and certain credit default swaps.³ Below is a comprehensive chart showing when mandatory SEF/DCM trading begins for each type of interest rate swap and credit default swap currently subject to a MAT Determination.

CFTC Issues Additional SEF-Related Guidance

Package Trades. In the initial MAT Determination, the CFTC indicated that a swap subject to a MAT Determination was required to be executed on a SEF or DCM, even if part of a "package trade."⁴ However, CFTC staff recently issued time-limited no-action relief from mandatory SEF/DCM trading for package trades.⁵ For purposes of the relief, a "package trade" means "a transaction involving two or more instruments: (1) that is executed between two counterparties; (2) that is priced or quoted as one economic transaction with simultaneous execution of all components; (3) that has at least one component that is a swap [subject to a MAT Determination]; and (4) where the execution of each component is contingent upon the execution of all other components."⁶ The no-action relief expires May 15, 2014. Unless the relief is extended, it is uncertain whether market participants will be able to continue entering into package trades if the CFTC's MAT Determination requires one component of the "package trade" to be executed on a SEF or DCM while another component is not.⁷

EU Multilateral Trading Facilities. On February 12, 2014, the CFTC and European Commission announced "significant progress" towards harmonizing the regulatory frameworks for SEFs and EU-regulated multilateral trading facilities (MTFs), as contemplated in their "Path Forward" statement issued in July 2013.⁸ In furtherance of these efforts, on the same day as this announcement, CFTC staff issued no-action relief from certain rules related to SEF trading for certain MTFs and MTF market participants.⁹ Relief is provided for (1) certain qualifying MTFs from SEF registration, (2) MTF market participants from mandatory SEF/DCM trading, and (3) swap dealers and major swap participants from certain external business conduct rules and documentation requirements for swaps executed on qualifying MTFs. The relief is subject to numerous conditions and, with respect to items (1) and (2), will expire no later than the effective date of any final rule adopted by the CFTC regarding exempt foreign trading facilities that are subject to comparable and comprehensive regulation.¹⁰

Other Guidance. The CFTC has clarified anonymity requirements for transactions executed on a SEF and reported to a swap data repository (SDR).¹¹ Staff also issued an advisory that all market participants that indirectly effect transactions on a SEF are subject to the SEF's jurisdiction.¹²

Mandatory SEF/DCM Trading Effective Dates

The following charts set forth the various swaps currently subject to a MAT Determination and identify the mandatory SEF/DCM trading effective dates as follows:

Plain type = February 15, 2014

Italics = February 21, 2014

Bold = February 26, 2014

Fixed-to-Floating Interest Rate Swaps (USD)			
Floating Rate Indexes	USD Libor	USD Libor	<i>USD Libor</i>
Trade Start	Spot Starting (T+2)	IMM Start Date	<i>IMM Start Date</i>
Optionality	No	No	<i>No</i>
Fixed Leg Payment Frequency	Semi-Annual, Annual	Semi-Annual, Annual	<i>Semi-Annual</i>
Fixed Leg Day Count Convention	30/360, Actual/360	30/360, Actual/360	<i>30/360</i>
Floating Leg Reset Frequency	Quarterly, Semi-Annual	Quarterly, Semi-Annual	<i>Quarterly</i>
Floating Leg Day Count Convention	Actual/360	Actual/360	<i>Actual/360</i>
Dual Currencies	No	No	<i>No</i>
Notional	Fixed	Fixed	<i>Fixed</i>
Fixed Rate	Par	Par	<i>Standard Coupon¹³</i>
Tenors ¹⁴	2 yrs. 3 yrs. 4 yrs. 5 yrs. 6 yrs. 7 yrs. 10 yrs. 12 yrs. 15 yrs. 20 yrs. 30 yrs.	2 yrs. 3 yrs. 4 yrs. 5 yrs. 6 yrs. 7 yrs. 10 yrs. 12 yrs. 15 yrs. 20 yrs. 30 yrs.	<i>1 yr.</i> <i>2 yrs.</i> <i>3 yrs.</i> 4 yrs. <i>5 yrs.</i> <i>7 yrs.</i> <i>10 yrs.</i> --- <i>15 yrs.</i> <i>20 yrs.</i> <i>30 yrs.</i>

Fixed-to-Floating Interest Rate Swaps (Non-USD)		
Currency	Euro (EUR)	Sterling (GBP)
Floating Rate Indexes	EURIBOR	GBP LIBOR
Trade Start Date	Spot Starting (T+2)	Spot Starting (T+0)
Optionality	No	No
Fixed Leg Payment Frequency	Semi-Annual, Annual	Quarterly, Semi-Annual
Fixed Leg Day Count Convention	30/360, Actual/360	Actual/365F
Floating Leg Reset Frequency	Quarterly, Semi-Annual	Quarterly, Semi-Annual

(continued)

Floating Leg Day Count Convention	Actual/360	Actual/365F
Dual Currencies	No	No
Notional	Fixed	Fixed
Fixed Rate	Par	Par
Tenors ¹⁵	2 yrs. 3 yrs. 4 yrs. 5 yrs. 6 yrs. 7 yrs. 10 yrs. 15 yrs. 20 yrs. 30 yrs.	2 yrs. 3 yrs. 4 yrs. 5 yrs. 6 yrs. 7 yrs. 10 yrs. 15 yrs. 20 yrs. 30 yrs.

Untranching Credit Default Swap Indices		
Reference Entities	Corporate	Corporate
Region	North America	Europe
Indices	CDX.NA.IG CDX.NA.HY	iTraxx Europe iTraxx Europe Crossover
Tenor	CDX.NA.IG 5Y CDX.NA.HY 5Y	iTraxx Europe 5Y iTraxx Europe Crossover 5Y
Applicable Series	At any time, the then-current on-the-run series and the preceding series that was replaced by the current one	

ENDNOTES

- February 15, 2014, falls on a Saturday. February 18, 2014, is the first business day in the U.S. after the effective date of the MAT Determination.
- See "The Commodity Futures Trading Commission Staff Announces Trade Execution Mandate for Certain Interest Rate Swaps," available at: <http://www.cftc.gov/PressRoom/PressReleases/pr6831-14>.
- See "The Commodity Futures Trading Commission's Division of Market Oversight Announces Trade Execution Mandate for Additional Interest Rate Swaps," available at: <http://www.cftc.gov/PressRoom/PressReleases/pr6838-14> (additional interest rate swaps); "The Commodity Futures Trading Commission's Division of Market Oversight Announces Trade Execution Mandate for Certain Credit Default Swaps and Additional Interest Rate Swaps," available at: <http://www.cftc.gov/PressRoom/PressReleases/pr6841-14>. (additional interest rate swaps and certain credit default swaps).
- See *supra* note 2 ("the inclusion of a swap subject to the trade execution requirement in a multi-legged transaction would not per se relieve market participants of the obligation to trade such swap through a DCM or SEF").
- See CFTC Letter No. 14-12 (February 10, 2014), available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/letter/14-12.pdf>.
- See *id.* Examples of interest rate package trades include swap curves (two swaps of differing tenors), swap butterflies (three swaps of differing tenors), swap spreads (government securities versus swaps typically within similar tenors), invoice spreads (Treasury-note or Treasury-bond futures versus swaps), cash/futures basis (Eurodollar futures bundles versus swaps), off-sets/unwinds, delta neutral option packages (caps, floors, or swaptions versus swaps), and mortgage-backed security basis trades (to-be-announced swaps (agency MBS) versus swap spreads). Examples of credit default swap package trades include index options versus index, tranches versus index, and index versus single name CDS.

- 7 The CFTC held a public roundtable on February 12, 2014, to discuss policy for package trades going forward. See “CFTC’s Division of Market Oversight to Host Public Roundtable Regarding the Trade Execution Requirement and Package Transactions,” available at: http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff021214.
- 8 See “Statement by the CFTC and the European Commission on progress relating to the implementation of the 2013 Path Forward Statement,” available at: <http://www.cftc.gov/PressRoom/PressReleases/pr6857-14>.
- 9 See CFTC Letter No. 14-15 (February 12, 2014), available at: <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-15.pdf> (relief through March 24, 2014); CFTC Letter No. 14-16 (February 12, 2014), available at: <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-16.pdf> (longer-term conditional relief).
- 10 See *id.* (citing Section 5h(g) of the Commodity Exchange Act). The relief with respect to item (3) for swap dealers and major swap participants is not time-limited.
- 11 The CFTC issued an interim final rule to clarify that data shall remain anonymous within an SDR that is submitted to the SDR for swaps executed anonymously on a SEF or DCM and cleared in accordance with the CFTC’s straight-through-processing requirements. See “Swap Data Repositories – Access to SDR Data by Market Participants” (February 10, 2014), available at: <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-16.pdf>.
- 12 See “Division of Market Oversight Guidance on Swap Execution Facility Jurisdiction” (February 10, 2014), available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmostaffguidance021014.pdf>.
- 13 Standard Coupon refers to the then-current fixed coupon rates for Market Agreed Coupon (MAC) contracts.
- 14 Par coupon swaps with a tenor of four or six years are limited to the 3M USD LIBOR floating rate index; Quarterly Reset Frequency; and the following fixed leg conventions: (1) Semi-Annual and 30/360; or (2) Annual and Actual/360.
- 15 Euro (EUR) denominated, par coupon swaps with a tenor of four or six years are limited to the following fixed leg conventions: Annual and 30/360.