

October 3, 2022

Vincent McGonagle
Director
Division of Market Oversight
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Request for Relief from the Requirement to Execute Certain Package Transactions on a Swap Execution Facility Pursuant to CEA Section 2(h)(8), CEA Section 5(d)(9), and CFTC Rules 37.9 and 37.3(a)(2)

Dear Mr. McGonagle:

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ is writing to request that the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) provide relief for certain package transactions currently subject to the no-action relief provided in CFTC Letter No. 20-31². Specifically, ISDA is requesting no-action relief from compliance with Commodity Exchange Act (“CEA”) Section 2(h)(8) (the “trade execution requirement”),³ CEA Section 5(d)(9),⁴ and CFTC Rule

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1000 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.

² See CFTC Letter No. 20-31 (October, 2020), available at <https://www.cftc.gov/PressRoom/PressReleases/8284-20> (defining a package transaction as “a transaction involving two or more instruments: (1) that is executed between two or more counterparties; (2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (3) that has at least one component that is a swap that is made available to trade and therefore is subject to the CEA [S]ection 2(h)(8) trade execution requirement; and (4) where the execution of each component is contingent upon the execution of all other components”).

³ 7 U.S.C. § 2(h)(8).

⁴ 7 U.S.C. § 7(d)(9).

37.9(a) for certain interest rate and credit default swaps that have been made available to trade (“**MAT**”) and are executed as part of the specific package transaction where the other component is a futures transaction (“**MAT/futures package transactions**”).⁵

I. Background

On November 1, 2016, the Division of Market Oversight (“**DMO**”) staff issued time-limited no-action relief from compliance with certain Commission regulations for the following categories of package transactions:

1. MAT/New Issuance Bond (relief from compliance with CEA Section 2(h)(8), CEA Section 5(d)(9), and CFTC Rules 37.9 and 37.3(a)(2))⁶;
2. MAT/Futures (relief from compliance with CEA Section 2(h)(8), CEA Section 5(d)(9), and CFTC Rules 37.9 and 37.3(a)(2));
3. MAT/Non-MAT (Uncleared) (relief from compliance with CEA Section 5(d)(9) and CFTC Rules 37.9 and 37.3(a)(2));
4. MAT/Non-Swap Instruments (relief from compliance with CEA Section 5(d)(9) and CFTC Rules 37.9 and 37.3(a)(2)); and
5. MAT/Non-CFTC Swap (relief from compliance with CEA Section 5(d)(9) and CFTC Rules 37.9 and 37.3(a)(2)).

Subsequent to this, the CFTC extended the relief through a series of No-Action Letters, the most recent being CFTC Letter No. 20-31. CFTC Letter No. 20-31 is set to expire on November 15, 2022.

In addition, on December 18, 2020, the CFTC codified the aforementioned relief for package transactions, with the exception of MAT/futures package transactions (“**2020 SEF Rulemaking**”).⁷ In its release, the Commission did not explain its reasoning behind declining to extend relief to MAT/futures package transactions. The Commission merely noted that “[t]he Commission did not propose any regulations related to the MAT/Futures package transactions in the Proposal. As such, the Commission continues to evaluate MAT/Futures package transactions and their regulatory treatment.”⁸

⁵ CFTC Rule 37.9 and CEA Section 5(d)(9) prescribe the methods of execution that market participants must use on a Swap Execution Facility (“**SEF**”) or a Designated Contract Market (“**DCM**”), respectively, for swaps that must be executed on a SEF or DCM pursuant to the trade execution requirement.

⁶ Section 37.3(a)(2) requires SEFs to provide a minimum trading functionality (*i.e.*, an order book).

⁷ 85 Fed. Reg. 82313 (Dec. 18, 2020), <https://www.federalregister.gov/documents/2020/12/18/2020-26555/swap-execution-facility-requirements>.

⁸ *Id.* At 82314 n. 13.

II. Discussion

As we have noted in our prior submissions to the Commission and DMO staff,⁹ the MAT analysis should not apply to the individual components of a package transaction, but to a package transaction in its entirety.

This view is consistent with CFTC Rule 37.9(a), which implements the trade execution requirement. Specifically, Section 37.9(a) defines a “Required Transaction” as “any transaction involving a swap that is subject to the trade execution requirement. . . .” We believe that the phrase “subject to the trade execution requirement” refers to the “transaction” rather than to the “swap.” This view is also supported by CEA Section 2(h)(8), which requires that the relevant transaction be executed on a SEF or DCM.

While we appreciate that the Commission has provided permanent relief for other package transactions in the 2020 SEF Rulemaking, as we indicated in our comment letter,¹⁰ we continue to maintain that such relief should also extend to MAT/futures package transactions. MAT/futures packages are generally comprised of interest rate swaps and U.S. Treasury futures that are heavily traded in today’s markets, and the challenges surrounding the execution of MAT/futures package transactions on a SEF are still unresolved.

Currently, market participants execute the swap components off-SEF pursuant to the requirements provided in the aforementioned CFTC relief and execute the futures component through an Exchange for Related Position (“EFRP”). Under the CFTC’s rules the futures leg must be traded on a DCM unless the package qualifies for Exchange for Related Positions (“EFRP”) status on the relevant futures exchange. Following the adoption of Chicago Mercantile Exchange (“CME”) Rule 538,¹¹ a swap vs. futures package cannot qualify for EFRP status on CME if the swap leg is executed on or pursuant to the rules of a SEF or DCM. Thus, the only viable way to execute a MAT swap and futures contract as a package transaction, the swap leg must be done off-SEF.

In other words, requiring SEF execution of the swap leg of a swap vs. futures package would mean that it cannot be executed as a package. We therefore request Commission staff to extend the existing relief from CEA Section 2(h)(8), CEA Section 5(d)(9), and CFTC Rules 37.9 and 37.3(a)(2) until a viable resolution of this issue is reached.

⁹ See e.g., ISDA Petition for Rulemaking to Amend Parts 1, 37 and 43 of the CFTC Regulations (June 15, 2015); ISDA Letter to CFTC, Request for Relief from the Requirement to Execute Certain Package Transactions on a Swap Execution Facility Pursuant to Section 37.9(a) of the Commission’s Regulations (Sept. 20, 2016).

¹⁰ A copy of our letter is available in the CFTC’s registry of public comments, specifically at: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62618&SearchText=>

¹¹ See CME Rule 538. The market regulation advisory notice for the amendment to the rule, including any FAQ, may be found at: <http://cmegroup.com/rulebook/files/ra1311-5r.pdf>; see also ICE Rule 4.06. The text of the rule, as amended July 9, 2014, may be found at: https://www.theice.com/publicdocs/rulebooks/futures/us/4_Trading.pdf.

III. Request for Relief

ISDA respectfully requests that DMO staff provide relief from CEA Section 2(h)(8), CEA Section 5(d)(9), and CFTC Rules 37.9 and 37.3(a)(2) for MAT/futures package transactions as described in this letter. Requiring these package transactions to be executed on SEFs pursuant to the required methods of execution will decrease liquidity and make it virtually impossible to trade these instruments.

Please feel free to contact me or Nicolette Cone, Associate General Counsel (202-569-5782), should you have any questions or would like to discuss.

A handwritten signature in blue ink, reading "Bella Rozenberg". The signature is fluid and cursive, with the first name "Bella" and the last name "Rozenberg" clearly distinguishable.

Bella Rozenberg
Head of Regulatory and Legal Practice Group
(646)-515-0567
ISDA

Certification Pursuant to Commission Regulation 140.99(c)(3)

As required by Commission Regulation 140.99(c)(3), I hereby (i) certify that the material facts set forth in the attached letter dated October 3, 2022 are true and complete to the best of my knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bella Kreny". The signature is written in a cursive style with a long, sweeping tail on the last letter.