

Bloomberg SEF LLC  
ICE Swap Trade, LLC  
INFX SEF, Inc.  
MarketAxess SEF Corporation  
SwapEx, LLC  
TeraExchange, LLC  
360T Trading Networks Inc.  
Thomson Reuters (SEF) LLC  
Global FX Division of the Global Financial Markets Association (GFMA)

March 7, 2014

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

**Re: Request for Time-Limited No-Action Relief Relating to Confirmations for Swaps Not Required or Intended to Clear**

Dear Mr. McGonagle,

On behalf of Bloomberg SEF LLC; ICE Swap Trade, LLC; INFX SEF, Inc.; MarketAxess SEF Corporation; SwapEx, LLC; TeraExchange, LLC; 360T Trading Networks Inc.; Thomson Reuters (SEF) LLC; and the Global FX Division of the Global Financial Markets Association (GFMA),<sup>1</sup> we are writing to request that the Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”) confirm that it will not recommend that the Commission commence an enforcement action against a swap execution facility (“SEF”) that has failed prior to January 1, 2015 to comply with the requirements of Commission regulation 37.6(b)<sup>2</sup> or 45.3(a)<sup>3</sup> in connection with swap transactions executed on the SEF that are not required or intended to be submitted for clearing (“Non-Cleared Swaps”), provided that the SEF has complied with the conditions applicable to it under this letter.

**Background**

Uncertainties regarding the application of Commission regulations 37.6(b) and 45.3 to transactions in Non-Cleared Swaps conducted on a SEF have impeded the migration of such transactions to SEF venues. These uncertainties primarily relate to two subjects. The first involves the scope and content of the confirmation and reporting requirements applicable to transactions in Non-Cleared Swaps conducted on a SEF. The second involves the interplay of the requirement that the SEF confirmation govern SEF-executed transactions in, and supersede all previous agreements relating to, Non-Cleared Swaps, on the one hand, and the Commission requirement that counterparties to such transactions have bilateral swap trading relationship documentation applicable to such transactions, on the other hand.<sup>4</sup> In this regard, we encourage the Commission’s newly established regulatory reporting Interdivisional Working Group to consider such issues as the definition of “confirmation,” the definition of “confirmation data,” the relationship between those definitions, the relationship between the “confirmation” definition and swap trading relationship documentation requirements, and footnote 195 of the Final SEF Rules.

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<sup>1</sup> The members of the Global FX Division (GFXD) of the Global Financial Market Association (GFMA) comprise 23 global FX dealers, collectively representing more than 90% of the FX market. *See* Euromoney FX Survey 2013: Global Market Share.

<sup>2</sup> See Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33,476 (June 4, 2013) (“Final SEF Rules”).

<sup>3</sup> See Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (January 13, 2012).

<sup>4</sup> See Final SEF Rules, 78 Fed. Reg. 33,476 at footnote 195.

The relief requested herein is intended to establish a transitional confirmation and reporting protocol and to establish a relationship between specific economic transaction terms and non-transaction specific relationship terms that is consistent with conventional documentation architecture used throughout the financial markets, while ensuring that these arrangements support the Commission's public and regulatory transparency requirements and do not facilitate the circumvention of Commission regulatory reporting requirements or SEF rules through bilaterally negotiated documentation terms. We believe that, if granted, the relief requested herein would largely mitigate the legal uncertainties that have contributed to the continued reluctance on the part of market participants to trade Non-Cleared Swaps on SEFs, and would help foster an orderly transition to the SEF marketplace for Non-Cleared Swaps as the Interdivisional Working Group completes its work.

### **Request for Relief**

For the foregoing reasons, we respectfully request that the Division confirm that it will not recommend that the Commission commence an enforcement action against a SEF for a failure, prior to 12:01 a.m. eastern time on January 1, 2015, to satisfy Commission regulation 37.6(b) or 45.3(a) if the SEF satisfies the following conditions for each Non-Cleared Swap executed on the SEF:

1. the SEF satisfies all real-time reporting requirements applicable to the Non-Cleared Swap under Part 43 of Commission regulations based on those primary economic terms and other terms of the swap known to the SEF as of the swap's execution on the SEF (and applicable terms of the relevant contract listed by the SEF in accordance with the rules of the Commission);
2. the SEF reports swap creation data for the Non-Cleared Swap pursuant to Commission regulation 45.3(a) consisting solely of those primary economic terms and other terms of the swap known to the SEF as of the swap's execution on the SEF (and applicable terms of the relevant contract listed by the SEF in accordance with the rules of the Commission);
3. the SEF issues a confirmation for the Non-Cleared Swap for purposes of Commission regulation 37.6(b) that specifies, at a minimum, the economic terms of the transaction that were negotiated and agreed by the parties on the SEF; and
4. SEF rules provide that bilateral agreements between the counterparties to Non-Cleared Swaps that are by their terms applicable to such transactions, whether or not submitted to the SEF,<sup>5</sup> are incorporated by reference into the SEF confirmation, subject to the limitations that (a) in the event of any conflict between the terms of such documentation and the transaction specific economic terms of the SEF confirmation, the SEF confirmation governs and supersedes such conflicting terms and (b) any terms of such bilateral documentation that violate SEF rules or Commission regulations will not be so incorporated.

In addition, any swap dealer or major swap participant counterparty to a Non-Cleared Swap covered by this relief shall execute a confirmation for the Non-Cleared Swap in a manner consistent with Commission regulation 23.501 without regard to clause (a)(4)(i) of that regulation.<sup>6</sup>

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<sup>5</sup> We note that registrants and SEF members are subject to comprehensive documentation retention requirements under Commission regulations and SEF rules and that the Commission and SEFs (exercising their responsibilities as self-regulatory organizations) have broad authority to obtain books and records relevant to transactions executed on SEFs.

<sup>6</sup> Because this confirmation would be executed solely in order to comply with this relief, and not pursuant to an obligation under Commission regulation 23.501, it would not trigger a confirmation data reporting obligation under Commission regulation 45.3 for either party. In addition, this requirement would not apply to a counterparty to a Non-Cleared Swap covered by this relief if that counterparty was not a swap dealer or major swap participant.

For the reasons stated above, we respectfully request that the Division provide the relief described in this letter. We thank you for your consideration of these issues. We would be happy to discuss these issues or the conditions described above further if it would be helpful. If you have questions, please contact Mandy Lam (212-313-1229; [mlam@gfma.org](mailto:mlam@gfma.org)) or Bryan Woodard (617-664-2160; [rbwoodard@statestreet.com](mailto:rbwoodard@statestreet.com)).

Yours sincerely,

Bloomberg SEF LLC  
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INFX SEF, Inc.  
MarketAxess SEF Corporation  
SwapEx, LLC  
TeraExchange, LLC  
360T Trading Networks Inc.  
Thomson Reuters (SEF) LLC  
GFMA Global FX Division

cc     The Honorable Mark Wetjen, Acting Chairman  
          The Honorable Scott O'Malia, Commissioner  
          The Honorable Bart Chilton, Commissioner  
          Ms. Nancy Markowitz, Deputy Director, Division of Market Oversight  
          Mr. David Van Wagner, Chief Counsel, Division of Market Oversight  
          Ms. Laurie Gussow, Special Counsel, Division of Market Oversight  
          Mr. Frank Fisanich, Chief Counsel, Division of Swap Dealer and Intermediary Oversight