



November 15, 2010

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
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Re: Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 Fed. Reg. 63,732 (Oct. 18, 2010); RIN Number 3038-AD01

Dear Mr. Stawick:

The Commodity Futures Trading Commission (the "CFTC" or "Commission") has requested public comment on its proposed rules with respect to the mitigation of conflicts of interest for derivatives clearing organizations ("DCOs"), designated contract markets ("DCMs") and swap execution facilities ("SEFs"). *See* Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 Fed. Reg. 63,732 (Oct. 18, 2010). MarketAxess Holdings Inc. ("MarketAxess") operates a multi-dealer Request For Quote ("RFQ") trading system and plans to register as a SEF as soon as practicable after the CFTC adopts rules on SEF registration. As a market participant with a substantial interest in this rulemaking, we are pleased to offer our comments in support of the Commission's proposed conflict of interest rules.

MarketAxess' trading platform increases the efficiency of the corporate bond market.

MarketAxess operates a leading electronic trading platform for corporate bonds, emerging market bonds and other types of fixed-income instruments, including credit default swaps ("CDS"). We are a public company, and our principal U.S. subsidiary is regulated as a broker-dealer and alternative trading system operator by the Securities and Exchange Commission ("SEC") and the Financial Industry Regulatory Authority ("FINRA"). Our clients include more than 800 active institutional investors and 77 broker-dealers located in the United States and Europe.

MarketAxess' trading platform promotes transparency, price discovery, and liquidity in the corporate bond and other fixed income markets. Traditionally, corporate bonds have traded through a manual process, with product and price discovery conducted over the telephone between two or more parties. As a result, this market has been characterized by a lack of transparency, limited liquidity, high transaction costs, and difficulty in simultaneously executing numerous trades. Our RFQ platform addresses these problems by allowing our institutional investor clients to request simultaneously competing, executable bids or offers from our broker-dealer clients and to execute trades with the broker-dealer of their choosing from among those that respond. *See* MarketAxess, Annual Report at 2 (Form 10-K) (Feb. 26, 2010). During the



first nine months of 2010, approximately 8.1% of the volume in the U.S. high-grade corporate bond market transacted through MarketAxess. *See id.* (based on FINRA's Trade Reporting and Compliance Engine ("TRACE") reported trade volumes).¹

Once an institutional investor and a broker-dealer agree to enter into a trade on our platform, the counterparties may settle the trade with the assistance of our automated post-trade messaging capabilities, which facilitate the communication of trade acknowledgment and allocation information between the counterparties. Moreover, as a result of our electronic connectivity to the trade processing operations of our participating dealers, the vast majority of the trades done on the MarketAxess RFQ platform are reported to TRACE within one-to-two minutes following execution, further enhancing transparency and price discovery in the markets we serve.

MarketAxess supports the proposed conflict of interest rules for SEFs.

MarketAxess has carefully reviewed the Commission's proposed rules for the mitigation of conflicts of interest for SEFs. We support the Commission's proposal. We believe the proposed rules, which would impose structural and governance requirements, as well as ownership and voting limitations, would allow SEFs to balance appropriately their commercial goals and self-regulatory obligations. Moreover, the Commission's proposed rules would provide sufficient market protections without unreasonably burdening SEFs and other registered entities.

Structural and Governance Requirements

The CFTC seeks to reduce or eliminate conflicts of interest in SEF governance by ensuring that a SEF's Board of Directors ("Board") benefits from the independent perspective of public directors. A "public director" would be any person who does not have a relationship with the SEF that could affect the person's independent judgment or decision-making abilities. *See* Proposed Rule 1.3(ccc), 75 Fed. Reg. at 63,747.² To ensure that public directors have a meaningful voice, the CFTC proposes that public directors hold at least 35% of the seats on a SEF's Board, and, in any event, no less than two Board seats. *See* Proposed Rule 40.9(b), 75 Fed. Reg. at 63,751.³

The CFTC proposal would govern other important aspects of SEF Board composition. Proposed Rule 40.9(c)(1)(iii), 75 Fed. Reg. at 63,752, would require a SEF's Board members to be nominated by a Nominating Committee, which would consist of a majority of public directors and would be chaired by a public director. A SEF would also need to have a Membership or Participation Committee, comprised of at least 35% public directors and charged with setting participation eligibility requirements and standards for SEF membership. *See* Proposed Rule

¹ This figure excludes convertible bonds.

² Although some distinctions would exist, "public directors" would be analogous to "independent directors" in the securities laws.

³ Any company that operates a SEF would be subject to the public director requirements of Proposed Rule 40.9(b).



37.19(c), 75 Fed. Reg. at 63,748. In addition, SEFs would be required to have a Regulatory Oversight Committee ("ROC") formed entirely of public directors.⁴ See Proposed Rule 37.19(b), 75 Fed. Reg. at 63,747.

MarketAxess finds great merit in the Commission's proposed structural and governance rules. Our experience with a majority-independent Board suggests that the judgment and perspective of independent directors make a company stronger.⁵ See MarketAxess, Corporate Governance Highlights, <http://phx.corporate-ir.net/phoenix.zhtml?c=176475&p=irol-govhighlights>. We applaud the Commission for recognizing the importance of diverse views in the boardroom and believe that requiring representation of independent directors on key Board committees will mitigate conflicts of interest without harming SEFs. We note that although the MarketAxess Board does not currently have all of the required committees, if the proposed rules are adopted, compliance would not be difficult. We also share the Commission's belief that impartial and effective disciplinary panels are essential to the smooth operation of a self-regulatory organization. We believe the Commission's proposal would ensure that each SEF has at least one such panel.

Ownership and Voting Limits

The Commission would limit to 20% the voting equity that any single member (and related persons) may own in a SEF. In a parallel provision, the Commission would require that no SEF member be permitted to vote more than 20% of any class of equity interest. See Proposed Rule 37.19(d)(2), 75 Fed. Reg. at 69,748.

The Commission designed its ownership and voting limits with the understanding that SEF members are the most likely source of funding for new SEFs and that overly stringent ownership limits could stunt the development of a robust system of SEFs to meet the trade execution needs of swap market participants. See 75 Fed. Reg. at 69,745 (citing Rick McVey, Chief Executive Officer of MarketAxess). MarketAxess shares this concern with the Commission and believes the 20% ownership and voting thresholds will achieve the Commission's goal of preventing a single member "from dominating the decision-making process" of the SEF while still enhancing competition in this area. See *id.*

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In sum, MarketAxess believes that the Commission's proposed rules will mitigate appropriately conflicts of interest in SEFs without stifling the fundamental commercial interests

⁴ The CFTC queries whether the ROC is necessary in light of Dodd-Frank's mandate that a SEF's chief compliance officer (who reports directly to the Board or the senior officer of the SEF) monitor the SEF's adherence to statutory, regulatory, and self-regulatory requirements. See 75 Fed. Reg. at 63,741-42. MarketAxess does not believe a ROC is necessary when a SEF has a chief compliance officer. We also ask the CFTC to consider whether a ROC is necessary if a SEF may delegate its self-regulatory functions to a third party.

⁵ Nine of the 12 directors on our Board meet the SEC's definition of "independent director," and we anticipate that most, if not all, of these directors will also qualify as "public directors."



that lie at the heart of these new registered entities. MarketAxess looks forward to working with the Commission on future rulemakings and, ultimately, to operating a SEF. Please do not hesitate to contact me if you have any questions or desire additional information.

Respectfully,

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