Going to the MAT with the CFTC

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On January 30th, The CFTC held a public roundtable meeting on the subject of the "available to trade" provision for swap execution facilities (SEFs) and designated contract markets (DCMs), otherwise known as the MAT rule. The meeting featured three panels, with representatives from the buy side, the sell side, SEFs, and academics, covering the following:

- **Panel 1:** The Procedure to Make a Swap Available to Trade
- **Panel 2:** The Factors to Consider to Make a Swap Available to Trade
- **Panel 3:** Economically Equivalent Swaps (EES)

Panel 1 was asked whether they thought that the timeframes in the proposed process were adequate, how to coordinate between competing SEFs, and how to coordinate the trading and clearing requirements. Almost immediately, there appeared to be some confusion between the status of MAT and required to trade on a SEF. In particular, there was considerable discussion about the status of available to trade, but not required to trade. For those of us who read the Dodd-Frank Act as requiring standardized swaps to be listed and cleared, this development was a bit confusing.

Panel members were almost unanimous in suggesting that a comment/review period of 60 or 90 days (as opposed to the proposed 10) was essential to avoid logjams and precipitous approvals. Some members speculated that it would be difficult to determine how much liquidity there was in those instruments proposed by a SEF, but other panelists suggested using volume data from swap data repositories (SDRs) to make that determination.

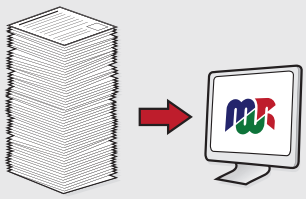
The CFTC staff asked whether they should combine the trading and clearing decisions, and the members came down on both sides of that question. Some members believed that there would be a large universe of MAT swaps and a much smaller universe of mandated (clearing and listing) swaps, which the CFTC appeared to agree with. In a later panel, the understanding was that MAT status required clearing and listing, and the CFTC appeared to agree with this as well. Go figure.

Panel 2 expanded on the MAT process by tackling the factors to be considered, and the most important factor in the minds of most panelists was liquidity. Whether that would be measured by trading volume or bid/ask spreads was mentioned but not discussed in detail. Buy side panelists thought that SEFs should have to demonstrate liquidity as part of their application, but not much attention was paid to whether the CFTC would be justified in rejecting a SEF application if the SEF argued that listing the swap would generate increased liquidity, although one panelist suggested that listing an illiquid instrument could actually serve to reduce its liquidity.

One additional factor this panel discussed was the SEF's technology infrastructure, along the lines of not allowing a SEF to list a contract (and thus force market participants to trade on it) if it didn't have adequate connectivity to allow all market participants seamless access. This panel also broached the dual subjects of delisting and notification to market participants of changes in the MAT list.

Panel 3 addressed the definition of economically equivalent swaps (EESs), in conjunction with the rule that making any swap MAT means making any EES MAT as well. Panelists were quick to point out that determinig what makes swaps economically equivalent is as much an art as a science, and one panelist suggested dropping the whole concept entirely. The panelists all agreed that identifying EESs would be extremely hard, and seemed relieved that it would be up to the CFTC and not them to do it.

In general, the meeting highlighted the risks and complexities inherent in determining that one swap (with or without its EESs) is listable and clearable, and another is not. It also served to highlight that, while other markets (equities, fixed income, options) have gone from one mandated trading venue to many available venues, the Dodd-Frank Act is trying to push swaps in exactly the opposite direction. Aside from whether that is a good idea, it is becoming apparent that, in this area, the devil is in the details. And it looks like this devil is going to the MAT with the CFTC.



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