



July 18, 2016

Via Electronic Submission: <http://www.regulations.gov/>

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps (RIN Number 3038–AE20)

Dear Mr. Kirkpatrick:

Managed Funds Association (“**MFA**”)¹ welcomes the opportunity to comment on the Commodity Futures Trading Commission’s (“**Commission**”) notice of proposed rulemaking on “Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps” (“**Proposed Rules**”).² MFA strongly supports the Commission’s goals and efforts to reduce systemic risk in the derivatives market by continuing to transition sufficiently liquid, standardized swaps from the over-the-counter (“**OTC**”) derivatives market to greater central clearing. MFA supports the Commission’s thoughtful approach to central clearing that ensures that only appropriate products are subject to the clearing obligation.

In addition, MFA has consistently expressed support for expanding mandatory clearing to additional interest rate swap (“**IRS**”) classes.³ Thus, we broadly support the scope of the proposed

¹ Managed Funds Association represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policymakers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

² 81 Fed. Reg. 39505 (June 16, 2016), available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-06-16/pdf/2016-14035.pdf> (“**Proposed Rule Release**”).

³ See MFA response to the European Securities and Markets Authority (“**ESMA**”) consultation paper on “Clearing Obligation under EMIR (no.1)”, dated August 18, 2014, available at: <https://www.managedfunds.org/wp-content/uploads/2014/08/ESMA-Consultation-on-EMIR-Clearing-Obligation-of-IRS-Final-MFA-Response.pdf>; MFA response to ESMA consultation paper on “Clearing Obligation under EMIR (no.4)”, dated July 15, 2015, available at: <https://www.managedfunds.org/wp-content/uploads/2015/07/ESMA-Consultation-Paper-on-Clearing-Additional-IRS-Classes-MFA-Final-Response-7-15-20151.pdf>; and Written Statement of Stephen Berger, Director, Government & Regulatory Policy, Citadel LLC, on behalf of MFA, before the U.S. House Committee on Agriculture,

IRS clearing requirement as set forth in the Proposed Rules. We also applaud the Commission's efforts to ensure international convergence of the various mandatory clearing regimes by aligning the scope of IRS subject to its clearing requirement with the requirements of other jurisdictions.⁴ We believe that such an approach to mandatory clearing will increase transparency of the derivatives market and enhance market integrity and oversight. We also believe that the Commission's expansion of the IRS clearing requirement will increase competition among potential trading counterparties and liquidity providers in the swaps market by reducing counterparty credit and operational risk and by allowing market participants to trade with a wider range of execution counterparties.

I. MFA Support for Mandatory Clearing of the Proposed IRS Classes

MFA strongly supports the Commission's Proposed Rules and the expansion of the clearing requirement to include IRS denominated in the proposed nine additional currencies, which include Australian dollar ("AUD"), Canadian dollar ("CAD"), Hong Kong dollar ("HKD"), Mexican peso ("MXN"), Norwegian krone ("NOK"), Polish zloty ("PLN"), Singapore dollar ("SGD"), Swedish krona ("SEK"), and Swiss franc ("CHF").

In the proposed rules, the Commission proposes to subject the following classes of IRS to the clearing requirement:

- (1) Fixed-to-floating IRS denominated in the nine additional currencies;⁵
- (2) AUD-denominated basis swaps;⁶
- (3) AUD-, NOK-, PLN-, and SEK-denominated forward rate agreements;⁷ and
- (4) AUD- and CAD-denominated overnight index swaps ("OIS").⁸

Subcommittee on Commodity Exchanges, Energy & Credit. *Hearing to Review the Impact of G-20 Clearing and Trade Execution Requirements*, June 14, 2016, available at: <https://www.managedfunds.org/wp-content/uploads/2016/06/MFA-Stephen-Berger-Testimony.pdf>.

⁴ See Proposed Rule Release at 39507-8 (discussing the Commission's desire to harmonize its swap clearing requirement with clearing requirements promulgated in other jurisdictions and summarizing actions taken by other jurisdictions to implement clearing requirements for IRS denominated in the nine additional currencies in the Proposed Rules).

⁵ See *id.* at 39516. The Commission requests comment regarding whether there are sufficient outstanding notional exposures and trading liquidity in fixed-to-floating interest rate swaps denominated in any or all of the nine additional currencies, during both stressed and non-stressed market conditions, to support a clearing requirement.

⁶ See *id.* at 39517. The Commission requests comment regarding whether there are sufficient outstanding notional exposures and trading liquidity in AUD-denominated basis swaps, during both stressed and non-stressed market conditions, to support a clearing requirement.

⁷ See *id.* at 39518. The Commission requests comment regarding whether there are sufficient outstanding notional exposures and trading liquidity in AUD-, NOK-, PLN, and SEK-denominated FRAs, during both stressed and non-stressed market conditions, to support a clearing requirement.

⁸ See *id.* at 39520. The Commission requests comment regarding whether there are sufficient outstanding notional exposures and trading liquidity in the OIS covered by this proposed determination, during both stressed and non-stressed market conditions, to support a clearing requirement.

In addition, the Commission proposes to amend its existing clearing requirement that applies to OIS denominated in U.S. dollars, Euros, and British pounds with a stated termination date range of seven days to two years by increasing the maximum stated termination date for these OIS to three years (*i.e.*, instead of two years).⁹

MFA agrees with the Commission that there is sufficient liquidity in these IRS classes to support subjecting them to the clearing requirement. The data in the Proposed Rule Release demonstrates that all of these IRS classes trade in significant volumes on a global basis.¹⁰ As the Commission notes, LCH.Clearnet Ltd. (“LCH”) and the Chicago Mercantile Exchange, Inc. (“CME”) both already have these IRS classes available for clearing, and as a result, market participants already voluntarily clear a significant percentage of trades in these IRS classes.¹¹ In addition, the Commission recognizes that the IRS classes that it is proposing to subject to the clearing requirement already are, or are soon expected to be, subject to the clearing requirement in one or more other jurisdictions.¹² Accordingly, we believe that transitioning the proposed IRS classes to mandatory clearing is appropriate and timely and will contribute towards the further reduction of systemic risk.

MFA also supports mandatory clearing of these IRS classes because, as mentioned, we agree with the Commission that it is important to align the classes of IRS that it subjects to its clearing requirement with the classes of IRS that regulators in other jurisdictions will subject to their clearing rules.¹³ We recognize that not all G-20 jurisdictions have adopted clearing requirements with respect to all the IRS in the Proposed Rules. However, the Commission has been at the forefront of the move to central clearing, and we believe that once the Commission expands the scope of its IRS clearing requirement, other jurisdictions will follow. Therefore, by proceeding with the mandatory clearing of these IRS classes, the Commission will contribute significantly towards achieving international consistency and the smooth implementation of the various clearing requirements on a global basis.

II. Proposed Implementation Scenarios¹⁴

MFA supports the Commission’s decision to implement the clearing requirement for the proposed IRS with respect to all market participants at the same time, and would encourage the Commission

⁹ *See id.* at 39536.

¹⁰ *See id.* at 39513-9. We note that the various tables in the Proposed Rule Release, numbered 2 through 15.2, demonstrate the substantial liquidity in these IRS classes as the volume of voluntarily clearing already taking place with respect to these IRS classes.

¹¹ *See id.*

¹² *See supra* note 4.

¹³ *See id.*

¹⁴ *See id.* at 39527. The Commission requests comment on not using regulation 50.25 to phase in compliance with the proposed clearing requirement. In addition, the Commission requests comment on the two proposed implementation scenarios, the advantages and disadvantages of each of the options discussed above and whether market participants prefer one or the other.

to retain this approach regardless of which implementation scenario it chooses.¹⁵ As explained in more detail below, given the choice between implementation scenario I and implementation scenario II, MFA supports the Commission proceeding with implementation scenario I, but we would not object to the Commission using implementation scenario II (including the proposed maximum two-year phase-in date), if it determines that approach is more advisable and judicious.

In the Proposed Rule Release, the Commission explains that, while it previously implemented the clearing requirement for certain IRS and credit defaults swaps using a phase-in schedule that varied for different categories of markets participants, with respect to the proposed IRS, it is proposing to implement the clearing requirement for all market participants as the same time.¹⁶ As mentioned, many market participants already clear these IRS classes voluntarily.¹⁷ Thus, we agree with the Commission that market participants are already ready, willing and able to clear these IRS such that one aligned implementation date is reasonable and appropriate.¹⁸

In addition, in consideration of the fact that different jurisdictions are implementing their separate clearing requirements on different schedules, in the Proposed Rule Release, the Commission proposes two different implementation scenarios for public comment.¹⁹ Under implementation scenario I, the Commission would proceed with clearing of all of the proposed IRS classes promptly and at the same time, such that the compliance date would be 60 days after publication of the Commission's final rule in the Federal Register.²⁰ Under this scenario, "some [IRS] could be subject to a clearing requirement in the U.S. before there is an analogous clearing requirement in a non-U.S. jurisdiction".²¹

Under implementation scenario II, the Commission could have separate compliance dates for the proposed IRS classes, as it would seek to align its compliance date for each proposed IRS class with the compliance date for such analogous clearing requirements in other non-U.S. jurisdiction.²² Therefore, the Commission's compliance date for the proposed clearing requirement would be the earlier of:

- (i) 60 days after the effective date of an analogous clearing requirement adopted in a non-U.S. jurisdiction, provided that such date is not earlier than the date which is 60 days after the Commission's final rule is published, or

¹⁵ See *id.* at 39526.

¹⁶ See *id.*

¹⁷ See *supra* note 10.

¹⁸ See *id.* at 39526.

¹⁹ See *id.* at 39526-7.

²⁰ See *id.*

²¹ *Id.* at 39256.

²² See *id.* at 39527.

- (ii) The date that is two years after publication of the Commission's final rule in the Federal Register.²³

This matter implicates two different MFA priorities as discussed in this letter: (i) the continued expansion of the clearing requirement to sufficiently standardized and liquid instruments; and (ii) the desire to facilitate international convergence of clearing in a manner that allows for smooth implementation. Because many market participants are already voluntarily clearing the proposed IRS classes, we agree with the Commission that under either implementation scenario, it should phase in the clearing requirement for these IRS for all market participants at the same time. As between implementation scenario I and II, our preference would be for the Commission to adopt implementation scenario I and to move forward promptly with the mandatory clearing of these IRS. However, we understand the market considerations that are causing the Commission to consider the more piecemeal approach in implementation scenario II, and we believe that the addition of a maximum delay of two years for the phase in makes this scenario a reasonable option. As a result, despite MFA's preference for the Commission to proceed with implementation scenario I, we would not object to the Commission adopting implementation scenario II if in the Commission's determination that approach is more advisable and judicious.

* * * * *

MFA thanks the Commission for considering our views on the Proposed Rules. We welcome the opportunity to discuss our views with you in greater detail. Please do not hesitate to contact Carlotta King or the undersigned at (202) 730-2600 with any questions the Commission or its staff might have regarding this letter.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President, Managing Director &
General Counsel
Managed Funds Association

²³ See *id.*