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January 14, 2020

**By CFTC Portal**

Mr. Christopher J. Kirkpatrick  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: tpSEF Inc. – Regulation 40.2 Certification of CDS Index Contracts – CMBX.NA.AAA  
(tpSEF Submission #20-01P)

Dear Mr. Kirkpatrick:

tpSEF Inc. (“tpSEF”) hereby notifies the Commodity Futures Trading Commission (the “Commission”) of its intent to list CDS Index Contracts – CMBX.NA.AAA (the “Contracts”) on tpSEF’s swap execution facility. tpSEF intends to list the Contracts on January 16, 2020.

Pursuant to Commission Regulation 40.2, this submission includes:

- i. The intended listing date – January 16, 2020;
- ii. A certification by tpSEF that: (a) the Contracts comply with the Commodity Exchange Act, as amended, and the Commission regulations thereunder; and (b) concurrent with this submission, tpSEF posted on its website: (i) a notice of pending certification of the Contracts, and (ii) a copy of this submission, attached as Exhibit A;
- iii. The terms and conditions of the Contracts, attached as Exhibit B; and
- iv. An explanation and analysis of the Contracts’ compliance with applicable core principles and Commission regulations, attached as Exhibit C.

tpSEF will be separately updating Appendix B to its Rulebook (tpSEF Inc. Swap Specifications) to reflect this listing.

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Questions regarding this submission should be directed to Brian Donnelly, Chief Compliance Officer, at (201) 984-6956 or by email at [bddonnelly@tullettprebon.com](mailto:bddonnelly@tullettprebon.com).

Very truly yours,

tpSEF Inc.

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'B. Donnelly', written over a horizontal line.

Name: Brian D. Donnelly

Title: Chief Compliance Officer

Date: January 14, 2020

Enclosures

cc: CFTC Division of Market Oversight ([dmosubmissions@cftc.gov](mailto:dmosubmissions@cftc.gov))  
Nancy Markowitz, CFTC ([nmarkowitz@cftc.gov](mailto:nmarkowitz@cftc.gov))

**EXHIBIT A**

CERTIFICATIONS PURSUANT TO SECTION 5c OF THE COMMODITY EXCHANGE ACT,  
7 U.S.C. §7A-2 AND COMMODITY FUTURES TRADING COMMISSION REGULATION 40.2,  
17 C.F.R. §40.2

tpSEF Inc. (“tpSEF”) hereby certifies that: (i) CDS Index Contracts – CMBX.NA.AAA (the “Contracts”) comply with the Commodity Exchange Act, 7 U.S.C. §1 *et seq.* and Commodity Futures Trading Commission (“Commission”) regulations thereunder; and (ii) concurrent with this submission, tpSEF posted on its website: (a) a notice of pending certification of the Contracts with the Commission and (b) a copy of this submission.

tpSEF Inc.

By: \_\_\_\_\_

Name: Brian D. Donnelly

Title: Chief Compliance Officer

Date: January 14, 2020

**EXHIBIT B**

**Terms and Conditions**

Summary:	This covers uncleared credit default swaps on IHS Markit Ltd's "CMBX Indices" ("CDS Index Contracts – CMBX"). The terms under which CDS Index Contracts – CMBX may be traded are shown below.
Contract Overview:	An agreement to buy or sell protection on one of the IHS Markit Ltd CMBX Indices listed under the heading "Index" immediately below. Each such index is composed of twenty-five (25) equally-weighted reference obligations that are tranches of commercial mortgage-backed securities offerings that meet the relevant eligibility criteria published by IHS Markit Ltd from time to time.
Index:	CMBX.NA.AAA: Series 6 to current. CMBX.NA.AS: Series 6 to current. CMBX.NA.AA: Series 6 to current. CMBX.NA.A: Series 6 to current. CMBX.NA.BBB-: Series 6 to current. CMBX.NA.BB: Series 6 to current.
Currency:	USD
Quoting Convention and Minimum Increment:	As agreed by counterparties.
Minimum Size:	As agreed by counterparties.
Trading Conventions:	Buy = Buy Protection, the buyer of protection pays a premium to the seller and receives a payment from the seller of protection in the case of a credit event occurring. Sell = Sell Protection, the seller of protection receives the premium payments from the protection buyer and makes a payment to the buyer of protection in the case of a credit event occurring. The Seller owns the credit risk of the instrument. The indices are traded on spread.
Swap Conventions:	Fixed coupon payments are calculated at the applicable spread specified below: <ul style="list-style-type: none"> <li>• CMBX.NA.AAA: 50 bps</li> <li>• CMBX.NA.AS: 100 bps</li> <li>• CMBX.NA.AA: 150 bps</li> <li>• CMBX.NA.A: 200 bps</li> <li>• CMBX.NA.BBB-: 300 bps</li> <li>• CMBX.NA.BB: 500 bps</li> </ul>

	Fixed coupon payments are exchanged on a monthly basis.
Swap Tenor:	As agreed by counterparties, subject to applicable law.
Effective Date:	The date (to be agreed by the counterparties) on which parties begin calculating accrued obligations such as fixed payments. Also known as the start date of the swap.
Maturity Date:	The final date (to be agreed by the counterparties) on which the obligations no longer accrue and the final payment occurs.
Trade Types:	The following swap types may be executed on tpSEF Inc.: <ul style="list-style-type: none"> <li>• Outrights</li> <li>• Roll Trades</li> </ul>
Settlement:	<p><u>Contingent Payment:</u> Payments related to credit event settlement will be determined pursuant to the 2014 ISDA Credit Derivatives Definitions as published by the International Swaps and Derivatives Association, Inc. Such payments are paid by the protection seller to the protection buyer.</p> <p><u>Fixed Monthly Cash Payments:</u> Reflected in basis points and paid by the protection buyer to the protection seller.</p> <p><u>Upfront Fee Payment:</u> The upfront fee is a portion of the payments, expressed in percentage points of the notional, which is present valued and paid at the inception of the Contract by the protection buyer to the protection seller.</p>

## EXHIBIT C

### EXPLANATION AND ANALYSIS OF THE CONTRACTS' COMPLIANCE WITH APPLICABLE CORE PRINCIPLES AND COMMISSION REGULATIONS

As required by Commodity Futures Trading Commission ("Commission") Regulation 40.2(a), the following analysis, in narrative form, demonstrates that CDS Index Contracts – CMBX (the "Contracts") are consistent with the requirements of the Commodity Exchange Act, as amended (the "Act"), and the Commission regulations and guidance thereunder (in particular, Appendix B to Part 37 and Appendix C to Part 38).

#### Appendix B to Part 37

#### **CORE PRINCIPLE 3 OF SECTION 5H OF THE ACT—SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION; CORE PRINCIPLE 4 OF SECTION 5H OF THE ACT—MONITORING OF TRADING AND TRADE PROCESSING**

**The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.**

##### *(a) Guidance.*

**(1) In general, a swap contract is an agreement to exchange a series of cash flows over a period of time based on some reference price, which could be a single price, such as an absolute level or a differential, or a price index calculated based on multiple observations. Moreover, such a reference price may be reported by the swap execution facility itself or by an independent third party. When listing a swap for trading, a swap execution facility shall ensure a swap's compliance with Core Principle 3, paying special attention to the reference price used to determine the cash flow exchanges. Specifically, Core Principle 3 requires that the reference price used by a swap not be readily susceptible to manipulation. As a result, when identifying a reference price, a swap execution facility should either: Calculate its own reference price using suitable and well-established acceptable methods or carefully select a reliable third-party index.**

**(2) The importance of the reference price's suitability for a given swap is similar to that of the final settlement price for a cash-settled futures contract. If the final settlement price is manipulated, then the futures contract does not serve its intended price discovery and risk management functions. Similarly, inappropriate reference prices cause the cash flows between the buyer and seller to differ from the proper amounts, thus benefitting one party and disadvantaging the other. Thus, careful consideration should be given to the potential for manipulation or distortion of the reference price.**

#### *Reference Index: CMBX Indices*

The reference index used to determine the exchange of cash flows for the Contracts is one of the following IHS Markit Ltd ("IHS Markit") CMBX Indices:

- CMBX.NA.AAA
- CMBX.NA.AS
- CMBX.NA.AA
- CMBX.NA.A

- CMBX.NA.BBB-
- CMBX.NA.BB

Each of these indices is currently composed of twenty-five (25) equally-weighted reference obligations that are tranches of commercial mortgage-backed securities (“CMBS”) offerings that meet the eligibility criteria published by IHS Markit. The CMBX Indices are based on comprehensive, well-established and transparent rules<sup>1</sup> that specify, among other things: (i) the eligibility criteria for index constituents; (ii) the selection of the constituents’ reference obligations; (iii) the polling process in connection with each “Roll Date”; and (iv) the fixing process and calculation rules.

### ***Selection of Index Constituents***

IHS Markit constructs the list of index constituents for each CMBX Index in accordance with methodologies outlined in the IHS Markit Rules. Each reference index is composed of twenty-five (25) reference obligations that are tranches of commercial mortgage-backed securities offerings. Each constituent in the index is equally weighted.<sup>2</sup>

IHS Markit’s process for generating the list of index constituents has several other well-defined, thoroughly-documented steps, including: (a) determining twenty-five (25) CMBS offerings that contain the required tranches and have the greatest “Thickness” (the difference between the detachment and attachment points) in the tranche selected for the CMBX.NA.BBB- index; (b) making applicable adjustments in the event that two or more CMBS offering have the same Thickness and would result in more than twenty-five (25) index constituents; (c) soliciting a vote from each “Eligible CMBX Member” as to which CMBS offerings and tranches thereof, if any, on the proposed list should be removed from the list; (d) if any CMBS offerings have been eliminated from the list, determining the additional CMBS offerings to add to the list and repeating the voting process until twenty-five (25) CMBS offerings that meet the eligibility criteria have been selected; and (e) publishing the composition of each new CMBX Index no later than four days prior to the Roll Date.<sup>3</sup>

### ***Reference Index is Not Readily Susceptible to Manipulation***

The CMBX Indices are not readily susceptible to manipulation. First, each is a broad index comprised of twenty-five (25) reference obligations that are tranches of commercial mortgage-backed securities offerings. Second they are balanced—all constituents have equal weightings.<sup>4</sup> And finally, the CMBX Indices are based on clear, widely-available, comprehensive and transparent rules. IHS Markit clearly outlines, in the IHS Markit Rules, among other things, how CMBS offerings are selected and the procedures surrounding the Roll Dates. These clearly-defined, well-accepted procedures, make it difficult for individuals or entities to change index practices for purposes of manipulation.

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<sup>1</sup> See IHS Markit CMBX Index Rules (July 2019), available at <https://www.markit.com/Company/Files/DownloadFiles?CMSID=616a216b644c43ec921d333847c2d06f> (the “IHS Markit Rules”).

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.* at 21-22.

<sup>4</sup> *Id.* at 3.

**(3) For swaps that are settled by physical delivery or by cash settlement refer to the guidance in Appendix C to Part 38 of this chapter—Demonstration of Compliance that a Contract is not Readily Susceptible to Manipulation, section b(2) and section c(4), respectively.**

Please see below.

**Appendix C to Part 38 - Demonstration of Compliance That a Contract Is Not Readily Susceptible to Manipulation**

**(c) Futures Contracts Settled by Cash Settlement. (1) Cash settlement is a method of settling certain futures or option contracts whereby, at contract expiration, the contract is settled by cash payment in lieu of physical delivery of the commodity or instrument underlying the contract. An acceptable specification of the cash settlement price for commodity futures and option contracts would include rules that fully describe the essential economic characteristics of the underlying commodity (e.g., grade, quality, weight, class, growth, issuer, maturity, source, rating, description of the underlying index and index's calculation methodology, etc.), as well as how the final settlement price is calculated. In addition, the rules should clearly specify the trading months and hours of trading, the last trading day, contract size, minimum price change (tick size) and any limitations on price movements (e.g., price limits or trading halts).**

*Essential Economic Characteristics of the Contract Terms*

The terms and conditions of the Contracts are listed in Exhibit B.

Some terms of the Contracts are fixed (e.g., currency and fixed rate), while other terms are flexible and determined by the counterparties (e.g., effective date, maturity date and the notional amount). This combination of standard and flexible terms allows the contract to have a basic consistent form, while allowing counterparties to tailor some aspects of the Contracts to their economic needs. This structure follows industry convention; the terms of the Contracts match the terms of credit default swaps that are commonly offered in the market.

*Calculation of Cash Settlement Price*

As described in Exhibit B, the cash settlement process for the Contracts includes the following payments:

- **Fixed Monthly Cash Payments:** These payments are reflected in basis points and paid by the protection buyer to the protection seller.
- **Upfront Fee Payment:** This fee is a portion of the payments, which is expressed in percentage points of the notional. The fee is present valued and paid at the inception of the Contract by the protection buyer to the protection seller.
- **Contingent Payment:** Payments related to credit event settlement will be determined pursuant to the 2014 ISDA Credit Derivatives Definitions as published by the International Swaps and Derivatives Association, Inc. Such payments are paid by the protection seller to the protection buyer.

This cash settlement method for credit default swaps is often used for credit default swaps and thus widely accepted by market participants.



**(2) Cash settled contracts may be susceptible to manipulation or price distortion. In evaluating the susceptibility of a cash-settled contract to manipulation, a designated contract market should consider the size and liquidity of the cash market that underlies the listed contract in a manner that follows the determination of deliverable supply as noted above in (b)(1). In particular, situations susceptible to manipulation include those in which the volume of cash market transactions and/or the number of participants contacted in determining the cash-settlement price are very low. Cash-settled contracts may create an incentive to manipulate or artificially influence the data from which the cash-settlement price is derived or to exert undue influence on the cash-settlement price's computation in order to profit on a futures position in that commodity. The utility of a cash-settled contract for risk management and price discovery would be significantly impaired if the cash settlement price is not a reliable or robust indicator of the value of the underlying commodity or instrument. Accordingly, careful consideration should be given to the potential for manipulation or distortion of the cash settlement price, as well as the reliability of that price as an indicator of cash market values. Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash settlement price. Documentation demonstrating that the settlement price index is a reliable indicator of market values and conditions and is commonly used as a reference index by industry/market agents should be provided. Such documentation may take on various forms, including carefully documented interview results with knowledgeable agents.**

The Contracts are not readily susceptible to manipulation for a number of reasons. First, the underlying market for the Contracts have considerable depth and liquidity, making manipulation very difficult to achieve. Second, the management and calculation of the reference price is based on clear and comprehensive rules. Third, as noted above, the method for calculating the cash settlement price – involving upfront fee payments, fixed monthly cash payments, and (in the case of a credit event) a contingent payment – is widely used and generally accepted by market participants. Finally, tpSEF Inc. (“tpSEF”) working with its regulatory services provider, the National Futures Association, has a robust market surveillance program that is effectively able to surveil this market, detect uncommon activity, and investigate any such activity for signs of manipulation (note that the foregoing also demonstrates compliance with Core Principle 4).

**(3) Where an independent, private-sector third party calculates the cash settlement price series, a designated contract market should consider the need for a licensing agreement that will ensure the designated contract market's rights to the use of the price series to settle the listed contract.**

**(i) Where an independent, private-sector third party calculates the cash settlement price series, the designated contract market should verify that the third party utilizes business practices that minimize the opportunity or incentive to manipulate the cash-settlement price series. Such safeguards may include lock-downs, prohibitions against derivatives trading by employees, or public dissemination of the names of sources and the price quotes they provide. Because a cash-settled contract may create an incentive to manipulate or artificially influence the underlying market from which the cash-settlement price is derived or to exert undue influence on the cash-settlement computation in order to profit on a futures position in that commodity, a designated contract market should, whenever practicable, enter into an information-sharing agreement with the third-party provider which would enable the designated contract market to better detect and prevent manipulative behavior.**

Please see above regarding the calculation of the cash settlement price.

**(ii) Where a designated contract market itself generates the cash settlement price series, the designated contract market should establish calculation procedures that safeguard against potential attempts to artificially influence the price. For example, if the cash settlement price is derived by the designated contract market based on a survey of cash market sources, the designated contract market should maintain a list of such entities which all should be reputable sources with knowledge of the cash market. In addition, the sample of sources polled should be representative of the cash market, and the poll should be conducted at a time when trading in the cash market is active.**

Please see above regarding the calculation of the cash settlement price.

**(iii) The cash-settlement calculation should involve computational procedures that eliminate or reduce the impact of potentially unrepresentative data.**

**(iv) The cash settlement price should be an accurate and reliable indicator of prices in the underlying cash market. The cash settlement price also should be acceptable to commercial users of the commodity contract. The registered entity should fully document that the settlement price is accurate, reliable, highly regarded by industry/market agents, and fully reflects the economic and commercial conditions of the relevant designated contract market.**

Please see above regarding the availability, reliability and widespread acceptance of the method used to generate the cash settlement price.

**(v) To the extent possible, the cash settlement price should be based on cash price series that are publicly available and available on a timely basis for purposes of calculating the cash settlement price at the expiration of a commodity contract. A designated contract market should make the final cash settlement price and any other supporting information that is appropriate for release to the public, available to the public when cash settlement is accomplished by the derivatives clearing organization. If the cash settlement price is based on cash prices that are obtained from non-public sources (e.g., cash market surveys conducted by the designated contract market or by third parties on behalf of the designated contract market), a designated contract market should make available to the public as soon as possible after a contract month's expiration the final cash settlement price as well as any other supporting information that is appropriate or feasible to make available to the public.**

Information on the reference index is available on [ihsmarkit.com](http://ihsmarkit.com).

#### **(4) Contract terms and conditions requirements for futures contracts settled by cash settlement.**

**(i) An acceptable specification of the terms and conditions of a cash-settled commodity contract will also set forth the trading months, last trading day, contract size, minimum price change (tick size) and daily price limits, if any.**

The terms and conditions of the Contracts include the essential economic terms of the Contracts. The counterparties will begin calculating accrued obligations from the effective date to the maturity date (*i.e.*, "last trading day") of each contract – dates which are set by the counterparties. The minimum size is determined by the counterparties, as is customary for contracts of this type.

**(A) *Commodity Characteristics:* The terms and conditions of a commodity contract should describe the commodity underlying the contract.**

The terms and conditions of the Contracts note that the Contracts are based on an index of twenty-five (25) reference obligations that are tranches of commercial mortgage-backed securities offerings.

**(B) *Contract Size and Trading Unit:* An acceptable specification of the trading unit would be a contract size that is consistent with customary transactions in the cash market. A designated contract market may opt to set the contract size smaller than that of standard cash market transactions.**

The size of the Contracts, which is determined by the counterparties to each Contract, are consistent with customary transactions in the market.

**(C) *Cash Settlement Procedure:* The cash settlement price should be reliable, acceptable, publicly available, and reported in a timely manner as described in paragraphs (c)(3)(iv) and (c)(3)(v) of this appendix C.**

The cash settlement procedure and an explanation of how it is reliable, acceptable, publicly available, and reported in a timely manner is included above.

**(D) *Pricing Basis and Minimum Price Fluctuation (Minimum Tick):* The minimum price increment (tick) should be set a level that is equal to, or less than, the minimum price increment commonly observed in cash market transactions for the underlying commodity. Specifying a futures' minimum tick that is greater than the minimum price increment in the cash market can undermine the risk management utility of the futures contract by preventing hedgers from efficiently establishing and liquidating futures positions that are used to hedge anticipated cash market transactions or cash market positions.**

As determined by the counterparties.

**(E) *Maximum Price Fluctuation Limits:* Designated contract markets may adopt price limits to: (1) Reduce or constrain price movements in a trading day that may not be reflective of true market conditions but might be caused by traders overreacting to news; (2) Allow additional time for the collection of margins in times of large price movements; and (3) Provide a "cooling-off" period for futures market participants to respond to bona fide changes in market supply and demand fundamentals that would lead to large cash and futures price changes. If price-limit provisions are adopted, the limits should be set at levels that are not overly restrictive in relation to price movements in the cash market for the commodity underlying the futures contract. For broad-based stock index futures contracts, rules should be adopted that coordinate with New York Stock Exchange ("NYSE") declared Circuit Breaker Trading Halts (or other market coordinated Circuit Breaker mechanism) and would recommence trading in the futures contract only after trading in the majority of the stocks underlying the index has recommenced.**

As determined by the counterparties.

**(F) *Last Trading Day:* Specification of the last trading day for expiring contracts should be established such that it occurs before publication of the underlying third-party price index or determination of the final settlement price. If the designated contract market chooses to allow**

**trading to occur through the determination of the final settlement price, then the designated contract market should show that futures trading would not distort the final settlement price calculation.**

The last trading day is the maturity date of each contract, which is set by the counterparties.

**(G) *Trading Months*: Trading months should be established based on the risk management needs of commercial entities as well as the availability of price and other data needed to calculate the cash settlement price in the specified months. Specification of the last trading day should take into consideration whether the volume of transactions underlying the cash settlement price would be unduly limited by occurrence of holidays or traditional holiday periods in the cash market. Moreover, a contract should not be listed past the date for which the designated contract market has access to use a proprietary price index for cash settlement.**

If there is no credit event, the protection buyer will pay the protection seller fixed monthly cash payments.

**(H) *Speculative Limits*: Specific rules and policies for speculative position limits are set forth in part 150 and/or part 151, as applicable, of the Commission's regulations.**

tpSEF will comply with Parts 150 and 151 of the Commission's regulations. Currently, there are no speculative limits applicable to the Contracts under Parts 150 and 151 of the Commission's regulations.

**(I) *Reportable Levels*: Refer to § 15.03 of the Commission's regulations.**

tpSEF will adhere to the applicable reporting levels set forth in § 15.03 of the Commission's regulations.

**(J) *Trading Hours*: Should be set by the designated contract market to delineate each trading day.**

The Contracts are traded twenty-three hours a day from Sunday to Friday. The Contracts are not traded between 5:30 p.m. and 6:30 p.m. Eastern Time.