Please note that the comments expressed herein are solely my personal views

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- 17 CFR Part 43
- RIN Number 3038-AD08
- Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your Further notice of proposed rulemaking: Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades.

You are proposing regulations to implement certain statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Specifically, in accordance with section 727 of the Dodd-Frank Act, you are proposing regulations that would define the criteria for grouping swaps into separate swap categories and would establish methodologies for setting appropriate minimum block sizes for each swap category. In addition, you are proposing further measures to prevent the public disclosure of the identities, business transactions and market positions of swap market participants.

I broadly support your proposed two-period, phased-in approach to determine appropriate minimum block sizes. During the initial period you propose initial appropriate minimum block sizes under proposed § 43.6(e); during the post-initial period you will analyze at least one year's worth of swap transaction data in order to determine post-initial appropriate minimum block sizes under proposed § 43.6(f). You will also update the post-initial appropriate minimum block sizes no less than once each calendar year thereafter using the calculation methodology set forth in proposed § 43.6(c)(1). I agree that this is a pragmatic and sensible approach that will allow market participants to make necessary arrangements in order to comply with the rules.

67-percent notional amount calculation

You have to propose rules which satisfy conflicting objectives. The intent of Congress is on record and clearly stated as follows:

> While we expect the regulators to distinguish between particular contracts and markets, the guiding principal in setting appropriate block-trade levels should be that the vast majority of swap transactions should be exposed to the public market through exchange trading. With respect to delays in public reporting of block trades, we expect the regulators to keep the reporting delays as short as possible.[1]

However, the Dodd-Frank Act states that "the rule promulgated by the Commission shall contain provisions… that take into account whether the public disclosure will materially reduce market liquidity".[2] Your proposals are not informative on whether the appropriate minimum block sizes will materially reduce market liquidity.[3] Therefore let's focus now on the "vast majority" objective.

On principle, I would argue that the 67-percent notional amount calculation does not achieve the objective of a "vast majority" of swap transactions becoming subject to real-time public reporting. I note that in your own wording:

> The proposed 67-percent notional amount calculation is intended to ensure that within a swap category, approximately two-thirds of the sum total of all notional amounts are reported on a real-time basis. Thus, this approach would ensure that market participants have a timely view of a substantial portion of swap transaction and pricing data to assist them in determining, inter alia, the competitive price for swaps within a relevant swap category.[4]

A "substantial portion" is not the same as a "vast majority". In ordinary usage, it would be considered significantly less. Therefore, in the absence of a conclusion that you have set appropriate minimum block sizes that will materially reduce market liquidity, I would recommend that you should actually consider higher thresholds. However, more worryingly you also specifically seek public comment on (and are thus actively considering) whether to use a lower threshold for the notional amount calculation. For example in your request for comment Q33, you ask: "As a variation of the proposed approach, should the Commission

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[1] See Congressional Record S5922, July 15, 2010.

[2] See CEA section 2(a)(13)(E)(iv), added by the Dodd-Frank Act.

[3] However, you state that: "If market participants reach the conclusion that the Commission has set appropriate minimum block sizes for a specific swap category in a way that will materially reduce market liquidity, then those participants are encouraged to submit data in support their conclusion. In response to such a submission, the Commission has the legal authority to take action by rule or order to mitigate the potential effects on market liquidity with respect to swaps in that swap category. In addition, if through its own surveillance of swaps market activity, the Commission becomes aware that an appropriate minimum block size would reduce market liquidity for a specific swap category, then under those circumstances the Commission may exercise its legal authority to take action by rule or order to mitigate the potential effects on marketing liquidity with respect to swaps in that swap category." See 77 FR 15480.

[4] See 77 FR 15480.

use a 50-percent notional amount calculation methodology for determining the appropriate block sizes for these asset classes?"[5] I think we must be credible here: in no stretch of the imagination could one-half of the sum total of all notional amounts be considered the "vast majority". Therefore I would recommend that, as a minimum, any move to a lower threshold than 67% should be rejected.

Yours sincerely

C.R.B.

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[5] See 77 FR 15480.