May 22, 2020

By Electronic Submission

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

Re: Real-Time Reporting Requirements (RIN 3038-AE60); Swap Execution Facility Requirements and Real-Time Reporting Requirements (RIN 3038-AE94).

Ladies and gentlemen,

Better Markets, Inc. ("Better Markets")[1] appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC") proposed rulemakings to amend certain public reporting and related regulations for swaps.[2] These proposals collectively would revise numerous swap execution facility ("SEF") and swaps reporting regulations relating to, among other things, the following: (1) the "block trade" definition; (2) the swap categories subject to new proposed methodologies; (3) the methodologies for determining block thresholds and cap sizes within new swap categories; and (4) the permitted public reporting delay for block trades. The CFTC's proposals meritoriously address a host of other reporting issues. However, the CFTC proposals include proposed provisions that would dramatically increase opacity in the swaps markets by revising public reporting timelines for all block transactions to 48 hours, representing more than a **19,000% increase** in permitted reporting delays for critical swaps market segments.

In addition to other elements of the proposals (some of which are discussed below), the proposed 48-hour public reporting delay for block transactions, in particular, therefore **must be withdrawn** for the following primary reasons:

- **No Empirical Basis**: The CFTC's proposal essentially ignores the empirical literature demonstrating the beneficial impact of real-time swaps reporting, with minimal block delays only

1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more.

2 The primary proposed provisions addressed in our comments below can be found in the following rulemaking: CFTC, Real-Time Public Reporting Requirements, 85 Fed. Reg. 21516 (Apr. 17, 2020), available at https://www.cftc.gov/sites/default/files/2020/04/2020-04405a.pdf. However, given interconnections in the swaps data reporting regulations, we have incorporated these comments into the administrative records for each of the pending rulemakings identified above.

for the very largest swaps. Even a cursory examination of the vast body of evidence available to the CFTC would demonstrate that the proposal's block trading delays represent an injudicious and indefensible policy change. Furthermore, the CFTC's proposal fails to account for the robust administrative record and the reportedly now-abandoned Financial Industry Regulatory Authority ("FINRA") rulemaking to institute a similar 48-hour delayed reporting framework for certain corporate bonds.

- **No Legal Basis**: The CFTC's proposal contravenes the statutory objectives of the Commodity Exchange Act ("CEA")[3] and the letter and spirit of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act of 2010's post-trade transparency reforms of the over-the-counter ("OTC") swaps markets.[4] In addition, the CFTC's proposal fails to consider costs and benefits of the proposal, omitting material information required to solicit meaningful public input on the radical departure from current law.

- **No Information on Actual Application and Effect:** The CFTC's proposal simultaneously changes multiple elements of the real-time public reporting framework, obscuring the actual application and effect of the proposed 48-hour delayed reporting for block transactions. The proposals do not solely change the reporting timeline for block transactions but also the methodology and swap categories used to determine the scope of transactions eligible for the dramatically delayed reporting timeline.

Unlike many other elements of the CFTC's proposals (e.g., the 67% of notional methodology proposed for determining block trading thresholds, which must be retained), the 48-hour block trade reporting delays would severely damage improvements to post-trade transparency, liquidity, risk management, market integrity, and fair competition. That proposed element instead would provide unfair, significant, and indefensible trading and informational advantages primarily to just four U.S. bank holding companies that already facilitate more than 87% percent of the reported $201 trillion notional in derivatives within the U.S. banking system.[5]

As we have observed previously, the largest four dealer corporate groups in terms of notional amount outstanding do not just control the uncleared OTC swaps markets; they essentially ***are*** that swaps markets in many respects.[6] **The CFTC therefore should be focused on ensuring that more—not less—timely information is publicly available** not only to market participants and competing liquidity providers but also to these dealers themselves, given their systemic importance and the critical risk management functions enabled ***only*** by reliable marking practices tied to timely, public swaps transaction data.

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[3] The CEA is codified at 7 U.S.C. § 1 et seq.

[4] Pub. L. 111–203, 124 Stat. 1376, 1722-25 (2010).

[5] Office of the Comptroller of the Currency, Quarterly Report on Bank Trading and Derivatives Activities, Third Quarter 2019 (Dec. 2019), available at https://www.occ.gov/publications-and-resources/publications/quarterly-report-on-bank-trading-and-derivatives-activities/files/pub-derivatives-quarterly-qtr3-2019.pdf (noting that "[a] small group of large financial institutions continues to dominate trading and derivatives activity in the U.S. commercial banking system" and that "four large commercial banks represented 87.2 percent of the total banking industry notional amounts and 83.2 percent of industry net current credit exposure"). Each of these four BHCs also facilitates trading in a significant percentage of the $640 trillion notional in global derivatives markets through multiple affiliated non-U.S. dealers. Bank for International Settlements, Statistical release: OTC derivative statistics at end-June 2019 (Nov. 8, 2019), available at https://www.bis.org/publ/otc_hy1911.pdf (noting that "[l]arge dealers in advanced economies (AEs), who report data to the semiannual survey, accounted for the overwhelming majority (92% of notional amounts, 87% of gross market value) of outstanding positions at end-June 2019").

[6] See Better Markets Letter to CFTC, Re: Prohibition of Post-Trade Name Give-Up on Swap Execution Facilities (RIN 3038-AE79) (Mar. 2, 2020), available at https://bettermarkets.com/sites/default/files/Better_Markets_Comment_Letter_on_Post-Trade_Name_Give-Up_on_Swap_Execution_Facilities%28RIN_3038-AE79%29%28March_2_2020%29.pdf.

I. The CFTC's proposed 48-hour public reporting delay for block transactions would diminish post-trade transparency, liquidity, risk management, market integrity, and fair competition in the swaps markets.

The CFTC's well-considered existing framework for the public reporting of block transactions reasonably balances statutory objectives relating to (1) the market quality and risk management benefits of post-trade transparency, and (2) the potential for post-trade transparency to increase hedging costs and have related adverse effects for the very largest swaps. The CFTC's public reporting timelines for block transactions commence at 15 minutes for swaps executed on certain registered entities (i.e., swap execution facilities ("SEFs") and designated contract markets)[7] but increase for various categories to a maximum of 24 hours for OTC swaps not subject to mandatory clearing and not involving swap dealers or major swap participants.[8] This framework, if anything, could usefully be re-examined to increase swaps subject to real-time public reporting, in particular as almost half of current trading in some swaps markets (far too high of a percentage) reportedly trades in block transactions and therefore is publicly reported only on a delayed basis.[9]

The CFTC nevertheless proposes to remove current §§ 43.5(c)–(h) and add proposed new § 43.5(c) that requires SDRs to implement a 48-hour time delay for disseminating swap transaction and pricing data for each applicable swap transaction with a notional or principal amount above the corresponding appropriate minimum block size, if the parties to the swap have elected block treatment. Consistent with the above, the CFTC proposes to remove appendix C. This element of the proposals is challenging to analyze in isolation, however, because the CFTC also proposes multiple related amendments to block trading regulations, including a proposed recalibration of swaps categories and new methodologies for determining appropriate minimum block sizes and masking thresholds. For example, delayed reporting would be dependent on meeting a revised and long-overdue 67% of notional threshold across asset classes, along with a revised methodology for arriving at a higher trade masking threshold. **These two proposed changes, at least, must be retained without the proposed 48-hour public reporting delay that in no way has been demonstrated commensurate with execution and hedging risks**.

It is commendable that a larger number of swaps would be excluded from block treatment on account of multiple, interrelated changes in the proposals (thereby increasing pre- and post-trade transparency for some unknown number of transactions). **The actual application and effect of the collective elements of the proposals are highly speculative, however, while the proposed 48-hour delay is certain to decrease post-trade transparency**, diminish risk management and liquidity, and provide unfair trading and informational advantages to the already dominant dealers in the swaps markets. For this reason, the CFTC must retain its current public reporting timelines in absence of further proposed data to reasonably support the conclusion that a uniform 48-hour block trade reporting delay is (1) **necessary for and commensurate with legitimate risk management and execution risk** (2) across markets and asset classes, (3) as these critical considerations would be affected by the multiple interrelated elements of the proposals.

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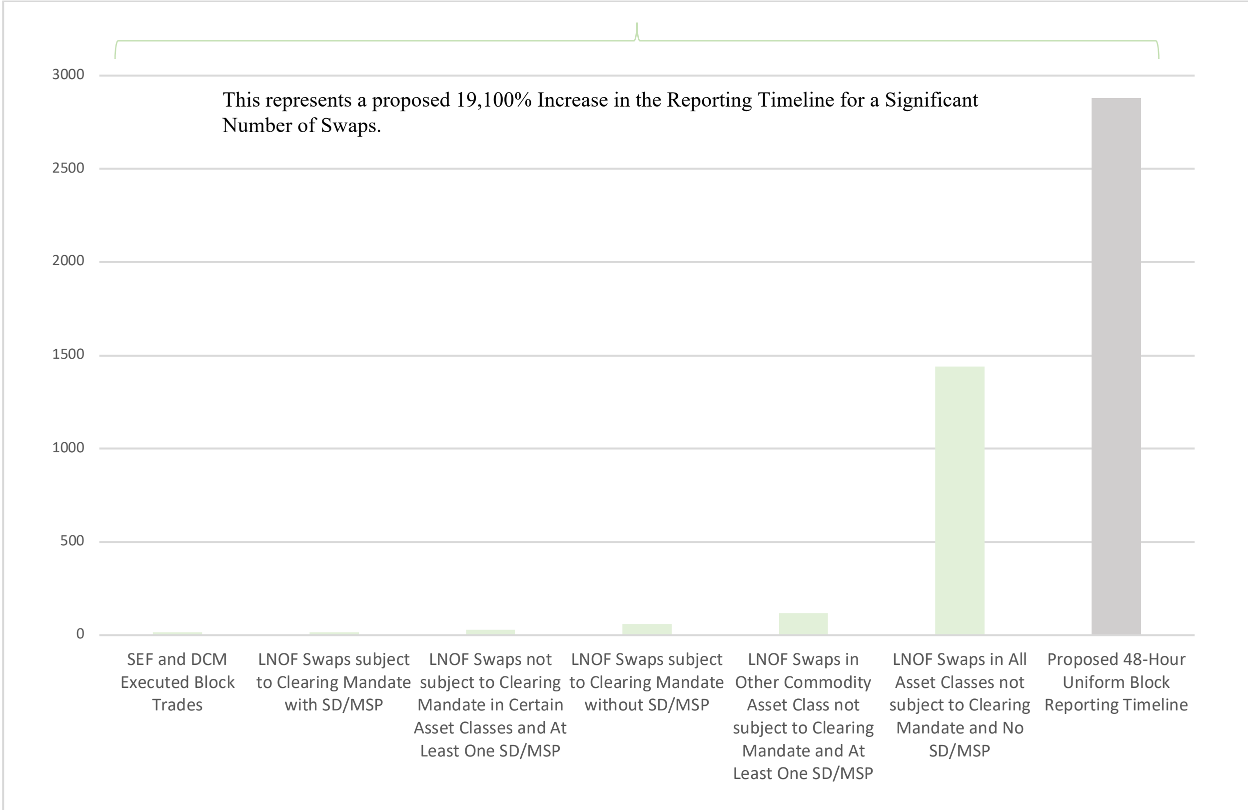
[7] 17 C.F.R. § 43.5(d)(2).

[8] 17 C.F.R. § 43.5(e)-(h).

[9] See, e.g., Letter to CFTC from Clarus Financial Technology, Response to the CFTC proposed rule 17 CFR Part 43 Amendment to the Real-Time Public Reporting Requirements (May 15, 2020), available at https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62513&SearchText=.

Consider the relative public reporting timelines for swaps transaction and pricing data on block transactions under the proposals, which, again, would apply to an unknown number of fewer transactions:

Block Trade and Large Notional Off-Facility Swaps Reporting Timelines (In Minutes)



Source: 17 C.F.R. § 43.5(d)(2);[10] 17 C.F.R. § 43.5(e)-(h);[11] and Proposed § 43.5(c)

There can be no doubt that at least some significant number of swaps executed on SEFs can be hedged in very short order in swaps and related fixed income, futures, and options markets. **Accordingly, there is no valid statutory basis for extending public reporting timelines more than 19,000% for a large percentage of block trades, where risk management and execution risks may have changed little, if at all**.

A. The CFTC's proposal to enact a uniform 48-hour delay for the largest swaps transactions has no empirical basis, does not reflect hedging practices ostensibly rationalizing such a delay, and represents a solution in search of a problem.

The CFTC has provided no empirical basis for the proposed reporting delays, its claimed benefits, or its claimed concerns about hedging costs associated with current law. The empirical evidence, in fact, squarely contradicts the unsupported, self-serving assertions of the derivatives dealers, generally finding reduced spreads, increased diversity, and increased liquidity across the markets since the adoption of the

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10 17 C.F.R. § 43.5(d)(2).

11 17 C.F.R. § 43.5(e)-(h).

real-time public reporting framework for swaps. **A fulsome review of the academic literature is beyond the scope of the present comment letter, but we strongly encourage the CFTC to conduct a comprehensive review of peer-reviewed academic, governmental, and other studies concluding generally that derivatives and similar markets reforms, including minimally delayed public reporting of block transactions, have been beneficial to various market quality measures across asset classes and markets**.[12]

In addition, as we note above, FINRA recently proposed to enact a similar 48-hour reporting delay for investment-grade corporate bonds above $5 million and for high-yield corporate bonds above $1 million.[13] **The CFTC fails to mention the FINRA proposal and the numerous pertinent public comments explaining and providing evidence of the serious adverse consequences that would arise from the 48-hour reporting delay for certain corporate bonds, which raises similar post-trade transparency and risk management issues to the present proposal**. That alone constitutes a material omission and one that is inconsistent with the CFTC's minimal statutory obligations to consider costs and benefits of its proposed actions in light of specified criteria.[14]

Improper Reliance on Supposed Hedging Costs and Practices

The CFTC's broad generalizations about potential hedging costs and hedging practices across swaps categories and asset classes cannot withstand scrutiny. For example, block trades above the proposed 67% of notional threshold may require little or no additional time to hedge in multiple asset classes. The CFTC acknowledges, in fact, that "**for many trades that meet the definition of block trade, the hedging process is often completed as quickly as possible** and typically by the end of the trading day in which the block trade is executed."[15] It fails to adequately account for the fact, though, that hedging transactions in many cases would be executed in swaps and correlated markets ***within minutes***, if not in immediate proximity of execution. That often would be commanded by trading and hedging policies and procedures for active trading desks putting on risk in substantial size. Moreover, downstream risk systems that are

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[12] See, e.g., Bank of England Staff Working Paper N0. 580, Centralized trading, transparency and interest rate swap market liquidity: evidence from the implementation of the Dodd-Frank Act (May 2018) ("We find that the move from an OTC to a more centralized, competitive market structure leads to a substantial reduction in execution costs . . . We then demonstrate that the introduction of centralized trading resulted in a sharp increase in competition between swap dealers."), available at https://www.bankofengland.co.uk/-/media/boe/files/working-paper/2018/centralized-trading-transparency-and-interest-rate-swap-market-liquidity-update. Y. Loon, Z. Zhong, Does Dodd-Frank affect OTC transaction costs and liquidity?, Journal of Financial Economics, (2016) ("Dodd-Frank does affect transaction costs and liquidity. Liquidity improves after the commencement of public dissemination of OTC derivatives trades. Moreover, cleared trades, trades executed on exchange-like venues, end-user trades, and bespoke trades exhibit lower trading costs, price impact, and price dispersion."), available at https://www.sciencedirect.com/science/article/abs/pii/S0304405X16000258. See Y. Loon and Z. Zhong, The Impact of Central Clearing on Counterparty Risk, Liquidity and Trading: Evidence from the Credit Default Swap Market, Journal of Financial Economics (2014) ("[M]atched sample analysis reveals that the increased post-trade transparency following central clearing is associated with an improvement in liquidity and trading activity."), available at https://www.sciencedirect.com/science/article/abs/pii/S0304405X13003012.

[13] See FINRA, Regulatory Notice 19-12: FINRA Requests Comment on a Proposed Pilot Program to Study Recommended Changes to Corporate Bond Block Trade Dissemination, available at https://www.finra.org/rules-guidance/notices/19-12.

[14] CEA section 15(a) requires the CFTC to "evaluate" the costs and benefits of its "proposed" actions in light of statutorily specified "considerations." 7 U.S.C. § 19(a)(2). That provision, instituted by the Commodity Futures Modernization Act of 2000, H.R. 5660, 106th Cong. § 119, requires the CFTC to consider whether and how its proposed rulemakings affect the following considerations: (1) the "protection of market participants and the public;" 7 U.S.C. § 19(a)(2)(A); (2) the "efficiency, competitiveness, and the financial integrity of futures markets;" 7 U.S.C. § 19(a)(2)(B); (3) "price discovery;" 7 U.S.C. § 19(a)(2)(C); (4) "sound risk management practices;" 7 U.S.C. § 19(a)(2)(D); and (5) "other public interest considerations." 7 U.S.C. § 19(a)(2)(E). Furthermore, CEA section 15(a)(1) instructs the CFTC to evaluate these considerations "[b]efore" a regulation is promulgated under the CEA.

[15] CFTC, Real-Time Public Reporting Requirements, 85 Fed. Reg. 21516, 21534 (Apr. 17, 2020).

used by the largest derivatives dealers frequently require that risk management positions be established before overnight processing cycles.

Furthermore, the CFTC has provided no empirical evidence of the supposed issues derivatives dealers have had in hedging their dealing-related transactions. Much evidence suggests no such issues exist. For example, as Clarus Financial Technology ("ClarusFT") observes with respect to the empirical evidence concerning block trade pricing in certain asset classes, "[l]iquidity analysis of USD swaps reveals that price dispersion of large notional swaps is almost identical to normal sized transactions,"[16] suggesting that "all market risks are being adequately hedged within the current 15 minute deferral period."[17] That confirms the fundamental realities of hedging at the largest commercial financial institutions involved in the business of derivatives dealing.

ClarusFT explains, in fact, with additional data (which we encourage the CFTC to carefully review) that "liquidity providers continue to service large packets of risk in a very similar way to prior to the advent of post-trade transparency" and that "market behaviour [with respect to block trading] has not changed since the AMBS were calibrated."[18] From this, it concludes that this empirical information does "not present any evidence that a change towards longer deferrals is necessary."[19] While we agree with the immediate observation that this data conflicts with the rationale for any proposed increase in block trade delays, **this evidence also suggests that the CFTC should maintain its current reasonable reporting timelines for block trades, even with proposed increases to block trading thresholds and related recalibration of swaps categories**.

The Dodd-Frank Act was meant to transform—not codify—trading practices in the swaps markets, and the observation that "market behavior has not changed" itself demonstrates that the CFTC's prudent conservatism in setting forth its initial framework for block trading delays may need to be revisited. Indeed, the CFTC's initial approach was driven, in part, by a dearth of data available at the time that the final regulations were adopted. That largely has been remedied.

Solution in Search of a Problem, and a Solution Causing a Problem

The related consequences of the 48-hour reporting delay are evident. First, the dramatically expanded reporting delays would impede the statutorily mandated transition to multilateral, impartial, competitive, and transparent swaps markets. Second, they would primarily advantage five derivatives dealers facilitating trading in almost 90% of the swaps markets, which undoubtedly would use the resulting lack of transparency and the new 48-hour trading and informational advantages to increase spreads, take actions that reduce market quality across swaps and related markets, and further sabotage the entry of new liquidity providers and the attendant price competition that otherwise would benefit end-users the derivatives markets are meant to serve.

Providing 48 hours for public reporting of block transactions in such circumstances is patently contrary to the CFTC's statutory objectives. It is especially concerning, though, because the CFTC has identified no empirical basis to conclude either (1) that there is a problem relating to block trade reporting

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[16] Letter to CFTC from Clarus Financial Technology, Response to the CFTC proposed rule 17 CFR Part 43 Amendment to the Real-Time Public Reporting Requirements (May 15, 2020).

[17] Id at 2.

[18] Id at 4.

[19] Id.

needing resolution; or (2) that the CFTC's proposal is the appropriate means for resolving any such problems.

Furthermore, it is often overlooked that post-trade transparency greatly affects risk management, because swaps pricing and valuation depend in varying degrees on timely, accurate, and public data being disseminated. Thus, the proposal would not only return to the 2008 financial crisis model of vesting most swaps pricing information in a handful of dealers seeking to limit competition and transparency across the markets for a significant 48-hour period, it would impede responsible risk management directly and indirectly tied to timely, public swaps reporting.

As a final note, Better Markets has repeatedly emphasized that harmonization should not be used as pretext for deregulatory initiatives or measures contravening statutory objectives. Although harmonization of an appropriately balanced regulatory framework that is consistent with Congress' instruction and intent would be sensible and indeed, statutorily commanded, "harmonization" is too often used as pretext.

II. The CFTC's proposed accommodation of so-called "post-priced" swaps is insufficiently explained in the proposal, denies the public a meaningful opportunity for public comment, and must not be adopted without a far more thorough consideration of the CFTC's acknowledged structuring and avoidance concerns.

The CFTC proposes new § 43.3(a)(4) to address the current lack of uniformity among market participants with respect to so-called "post-priced" swaps ("PPSs"), or swaps in which "one or more terms are unknown at the time of execution."[20] The new proposed provision would establish a longer reporting timeline for PPSs than for other types of PRSTs. Specifically, Proposed § 43.3(a)(4)(i) would permit the reporting counterparty to delay reporting a PPS to an SDR until the earlier of (1) "the price being determined;" and (2) "11:59:59 p.m. [ET] on the execution date."[21] In addition, "[i]f the <u>price</u> of a PRST that is a PPS is not determined by 11:59:59 p.m. [ET] on the execution date," the reporting counterparty would be required to report to an SDR "by 11:59:59 p.m. [ET] on the execution date all STAPD for such PPS other than the price and any other then-undetermined Variable Terms" and would subsequently report "each such item of previously undetermined STAPD ASATP after such item is determined."[22]

Although the CFTC does not describe for the public the primary categories and trading uses of PPSs in detail, it does explain its general understanding of trading practices involving such swaps as follows:

> The [CFTC] understands that these swaps are generally characterized by the price, size and/or other terms of the transaction being contingent upon the outcome of [swap dealer] hedging, market results during an observation period (a point in time or a longer period), or the occurrence of certain events—such as the price for a swap underlier being determined at the close of trading on a trading platform—that occur after an SD accepts a client request . . . Although the parties may know the non-[v]ariable [t]erms at the time of execution, the[se] [v]ariable [t]erms generally are not known until the subsequent dealer hedging or other market activity has taken place because the [v]ariable [t]erms are, wholly

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20 CFTC, <u>Real-Time Public Reporting Requirements</u>, 85 Fed. Reg. 21516, 21522 (Apr. 17, 2020).

21 § 43.3(a)(4)(i). CFTC, <u>Real-Time Public Reporting Requirements</u>, 85 Fed. Reg. 21516, 21523 (Apr. 17, 2020).

22 <u>Id</u> (emphasis added).

or partly, contingent on the occurrence of such triggers and determined, wholly or in part, by some aspect of such contingencies.[23]

The CFTC's general description is undoubtedly accurate, but it does not sufficiently describe the use of PPSs for the public to determine the value, if any, of such transactions that would justify codifying a delayed public reporting timeline.

Moreover, the CFTC acknowledges the potential for PPS regulations to facilitate avoidance of real-time reporting regulations in a manner that, again, unfairly benefits derivatives dealers. For example, the CFTC reasons that "**permitting indefinitely delayed reporting of PPSs . . . could encourage swap counterparties to structure some of their swaps as PPSs to take advantage of the longer proposed reporting deadline for PPSs**."[24] We agree. It would not require "indefinite" delay, however, but merely relative delay (i.e., more delay than would be applicable to other types of transactions) to advantage certain market participants. Furthermore, the CFTC elsewhere emphasizes that "some market participants do not report swaps with [v]ariable [t]erms to SDRs until hours, or even days, after the execution thereof,"[25] though practices vary, and the precise volume and scope of such transactions are unknown. The CFTC merely notes that "***one market participant*** estimated that PPSs are a bigger percentage of equity swaps than of any other asset class and constitute approximately 80-90% of CFTC-reportable swaps."[26] That is hardly the hallmark of a considered analysis or an informed exercise of administrative judgment worthy of undermining critical post-trade transparency measures.

Thus, although we would agree that the CFTC must take steps to impose constraints on PPSs that may involve public reporting of swaps "days" after execution, the public interest demands an appropriately informed regulatory proposal that uses information uniquely in the possession of the CFTC (or that could be) and that includes at least common fact patterns, the identified asset classes using PPS practices, the volume of such transactions within asset classes, and the supposed value in such practices for public interest purposes and valid statutory objectives. That information is necessary to a fairly and fully developed administrative record. We reserve judgment on whether PPSs might provide information that "constitute[s] unhelpful 'noise' on the public tape"[27] until such time that the CFTC better understands, or better explains its understanding, of PPS transactions and explores whether they are borne of necessities beyond regulatory avoidance.

However, from the CFTC's description and our understanding of the uses of so-called PPSs, we are confident that reporting ***on the date of execution*** would be achievable for the vast majority of PPSs contingent on an independent market measure. Delayed reporting for supposed "hedging needs" should not be accommodated until the CFTC publishes additional information necessary to examine the implications of such a proposal.

The information noted above must be published for public comment before seeking to codify de facto exemptions with an unknown reach. If the CFTC does not have such information available for analysis and consideration, it should not rely upon unverified and potentially baseless assertions of market participants, much less "one" such participant or trade association.

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23 Id at 21522.

24 Id (emphasis added).

25 Id.

26 Id (emphasis added).

27 Id.

I. Conclusion

In the darkest days of the 2008 financial crisis, regulators, the public, and systemically important financial institutions had insufficient information concerning which counterparties held which derivatives, with whom, and in what amounts. According to some estimates, approximately $673 trillion notional of derivatives were outstanding at the time.[28] This lack of transparency in the derivatives markets amplified the 2008 panic and essentially extorted U.S. policymakers into assuming the worst. The result was hundreds of billions of dollars in direct taxpayer bailouts and trillions more in indirect, cumulative lending facilities, pledges, guarantees, and other arrangements for the very financial institutions whose poor risk management and valuation practices led to and exacerbated the financial crisis.[29] The Dodd-Frank Act addressed these issues, in part, by making timely regulatory and public reporting of swaps transactions a critical pillar of the reforms to OTC derivatives markets.

The CFTC initiated real-time public reporting in the swaps markets approximately seven years ago. The default real-time public reporting framework achieves multiple statutory objectives. By making transaction data broadly available, it increases transparency and market integrity; it facilitates liquidity provision and fair competition across the swaps markets; it enhances risk management; it promotes clearing and trading certainty and therefore multilateral trading; it enables post-trade analytics to facilitate execution efficiency; and ultimately, it better ensures that the intended beneficiaries of the derivatives markets—like funds Americans use to save for retirement—know prices at which similar transactions have been executed and therefore can trade near that price instead of another provided by a dealer with trading and informational advantages. In fact, post-trade transparency has demonstrably benefited broad market quality measures in all financial markets, including equity, bond, and futures markets, not to mention the swaps markets (see our recommendation that the CFTC perform a comprehensive review of the empirical evidence relating to post-trade transparency above).

Post-trade transparency has not been welcomed by the largest derivatives dealers and their trade associations, of course. Timely, public dissemination of transaction information should be expected to reduce dealer spreads, limit subjectivity in valuations and their uses (e.g., margin calculations), and facilitate market structure improvements that disintermediate an increasing number of transactions over time. Without reliable, timely, and public transaction information, the most active derivatives dealers use their market presence to gain trading advantages through information asymmetries and get "between the wall and the wall paper," as Forbes once remarked about a wholesale brokerage model in the U.S. treasury markets.[30] Post-trade transparency, on the other hand, supports development of multilateral, fairly competitive, and resilient swaps markets, which, again, tend to cut into the profits of dominant derivatives dealers.

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28 See National Commission on the Causes of the Financial and Economic Crisis in the United States, The Financial Crisis Inquiry Report, at 299 (Jan. 2011) ("At the end of June 2008, the notional amount of the over-the-counter derivatives market was $673 trillion and the gross market value was $20 trillion."), available at http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf.

29 See, e.g., J. Felkerson, A Detailed Look at the Fed's Crisis Response by Funding Facility and Recipient, Public Policy Brief, Levy Economics Institute of Bard College, No. 123 (2012), available at https://www.econstor.eu/bitstream/10419/121982/1/689983247.pdf (calculating that the "total amount of loans and asset purchases made . . . from January 2007 to March 2012" and determining that the Federal Reserve's cumulative 2008 financial crisis interventions were "over $29 trillion"). See also D. Kelleher, Better Markets, Testimony to the U.S. Senate Committee on Agriculture, Nutrition, and Forestry on the "The State of the Derivatives Market and Perspectives for CFTC Reauthorization (June 25, 2019), available at https://www.agriculture.senate.gov/imo/media/doc/Testimony_Kelleher%2006.25.19.pdf.

30 Thomas Jaffe, Getting between the wall and the wallpaper (Oct. 20, 1997), available at https://www.forbes.com/forbes/1997/1020/6009066a.html#7d354a61363d.

The CFTC's proposals are complex, technical, and consequential rulemakings that merit serious and comprehensive public consideration. That simply is not possible under the circumstances. The most concerning element of the present proposals was published in the Federal Register on April 17, 2020, essentially providing the minimum time period for public comment required under the Administrative Procedures Act. That is not the hallmark of a deliberative rulemaking process designed to solicit a diversity of viewpoints.

Sincerely,

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