

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

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- **17 CFR Parts 23 and 155**
- **RIN Number 3038-AD25**
- **Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your proposed rules: Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties.

You are proposing for comment new rules under Section 4s(h) of the Commodity Exchange Act (CEA) to implement provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) relating generally to external business conduct standards for swap dealers (SDs) and major swap participants (MSPs).

I support the proposed rules. They are quite principles based, which is very often necessary when dealing with things like communication and sales practices in rapidly evolving markets. The proposed rules will also increase transparency and reduce conflicts of interest, which will act to promote confidence in and the integrity of swap markets.

Prohibition on fraud, manipulation and other abusive practices

§ 23.410 establishes the prohibition on fraud, manipulation and other abusive practices. For example proposed § 23.410(a)(3) makes it unlawful for and SD or MSP to “engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative”. I agree with this entirely. However I note that the proposals here are almost exactly the same as

contained in your earlier proposed rules on Prohibition of Market Manipulation.<sup>1</sup> I cannot see the need to duplicate the requirements here and so I would recommend that this whole section is removed from the proposed rules.

Proposed § 23.410(c) prohibits “knowingly” trading ahead and front running. I would argue that this rule is subsumed by the general proposed § 23.410(a)(3) (see comment above), as § 23.410(c) implies fraudulent, deceptive or manipulative intent. I would assume that trading in a swap in the normal course of business would not be classed as trading ahead or front running.

### Scenarios

§ 23.431(a)(1)(i)-(ii) require SDs and MSPs to provide scenario analyses in certain situations. For example, for a “high risk complex bilateral swap...the scenario analysis shall be done over a range of assumptions, including severe downside stress scenarios that would result in a significant loss”. I must say that this requirement is too vague and subjective. I would rather recommend the creation of some central guidance, or rules, which would mandate a more consistent and robust stress testing here. For example, the stress scenarios should be calibrated to a 99,5% confidence level (tail event) over one year (commonly called a 1-in-200 year stress / event), or something similar, otherwise the scenario testing may not provide meaningful information to counterparties.

I would also specifically recommend that you reference volatility as an important risk in the risk information and scenario analyses required under § 23.431(a)(1).<sup>2</sup> Volatility may be implicitly covered by market risk, but it is a critical risk driver that demands separate informative disclosure.

### Price transparency

§ 155.7 establishes the required execution standards. In particular § 155.7(a)(2) requires that a Commission registrant must: “Execute the order on terms that have a reasonable relationship to the best terms available for such swap on designated contract markets or swap execution facilities trading such swap”. I applaud this rule. In order to reduce ambiguity and subjectivity, and to improve transparency I would specifically recommend that any deviation in the execution terms from the best terms available should be disclosed, together with a variance analysis of the differences between the terms, for example split by cost, funding, profit etc.

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<sup>1</sup> See § 180.1, 75 FR 67662: notice of proposed rulemaking on Prohibition of Market Manipulation, RIN 3038-AD27, CFTC, November 2010. These proposed rules would also presumably act to protect Special Entities.

<sup>2</sup> E.g. § 23.431(a)(1) refers to “material risks of the particular swap, which may include, market, credit, liquidity, foreign currency, legal, operational, and any other applicable risks”. I would recommend specific reference to volatility here.

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### Summary

I support the proposed rules, which will establish sufficient business conduct standards for swap dealers and major swap participants. I would only recommend that some more specific guidance should be provided on material risks and scenarios in § 23.431(a)(1), and that a Commission registrant should be required to disclose additional, specific analyses of any differences in terms from the best terms available in the market under § 155.7(a).

Yours sincerely

Chris Barnard