



asset management group

Submitted Electronically

May 22, 2020

Mr. Christopher Kirkpatrick
Secretary
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Proposed Amendments to the Commission's Regulations Related to the Real-Time Public Reporting Requirements (**RIN 3038-AE60**)

Dear Mr. Kirkpatrick:

The Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**” or “**AMG**”)¹ respectfully submits this comment letter to address select portions of the notice of proposed rulemaking to the Commodity Futures Trading Commission’s (the “**Commission**” or “**CFTC**”) Real-Time Public Reporting Requirements (the “**Proposed Rule**” or “**Proposal**”).² As a general matter, AMG supports the Commission’s efforts over the years to establish and modify its trade reporting regime, which, if crafted appropriately, can lead to the Commission’s related goals of liquidity, transparency and price discovery in the swaps markets.³ As the Commission is aware, at its February 20, 2020 Open Meeting, the Commission unanimously approved revisions to its reporting and dissemination requirements that would revise the real-time public reporting and dissemination requirements for certain market participants,⁴ change the definition of “block trade”, change the block swaps categories, update the block swap categories, update the thresholds and cap sizes and adjust the delay for public dissemination of block trades.

As more fully discussed below, SIFMA AMG is writing to comment on the following aspects of the Proposed Rule: (i) Determining Minimum Block Sizes and Cap Sizes and the Process to Determine Appropriate Minimum Block Sizes; (ii) Time Delays for Public Dissemination of Swap Transaction and Pricing Data; (iii) Expanded Swap Categories for Reporting and (iv) Post-Priced Swaps (“**PPS**”). SIFMA AMG believes that these comments are appropriate, in order for the Commission to adopt real-time reporting regulations capable of providing swaps markets with appropriate mix of liquidity, transparency and price discovery without overly burdening market participants.⁵ Further, AMG believes that robust

¹ SIFMA AMG brings the asset management community together to provide views on policy matters and to create industry best practices. SIFMA AMG’s Members represent U.S. and multinational asset management firms whose combined global assets under management exceed \$39 trillion. The clients of SIFMA AMG Member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

² CFTC, Real-Time Public Reporting Requirements, 85 FR 21516 (April 17, 2020) available at: <https://www.cftc.gov/sites/default/files/2020/04/2020-04405a.pdf>

³ *Id.* at 21516.

⁴ The Proposed Rule would change the reporting requirements for swap data repositories (“**SDRs**”), derivatives clearing organizations, swap execution facilities (“**SEFs**”), designated contract markets, swap dealers, major swap participants, and swap counterparties that are neither SDs nor MSPs.

⁵ The Proposal notes in several places that the Commission’s goals with regard to real-time reporting relate to “liquidity, 305032260 v14

and flexible block trading is an essential component of liquid swap markets and that correctly determining block size thresholds and dissemination delays is necessary to assure the continued viability of block trading in the swap market. To this end, it is critical to note that before proposing any changes to time delays or block sizes generally, the Commission should consider the interdependency between liquidity and transparency and time delays and block sizes. Further, any changes to time delays or block sizes should only be done after a data-driven analysis by the Commission.

1. AMG Does Not Support The Proposed Changes to Determining Minimum Block Sizes and Cap Sizes

AMG is concerned with the proposed changes to the methodologies and process for determining the appropriate minimum block sizes (“AMBS”) and cap sizes. AMG believes that the proposed changes are arbitrary and not based on an appropriate cost/benefit analysis or even data available to the Commission.

As set forth in the Proposal, the Commission is proposing to (i) use a 67% notional amount calculation test (the “67% Test”) rather than the current 50% test as the methodology for determining AMBS; (ii) require the CFTC to select all reliable SDR data for at least a one year period for each relevant swap category using a trimmed data set and (iii) exclude transactions that are beyond two standard deviations above the mean for the other commodity asset class and three standard deviations above the mean for all other asset classes.⁶ AMG notes that the Proposal omits a data driven analysis and does not provide any convincing rationale for why a 67% Test was chosen for block sizes or why a 75% test was chosen for cap sizes (the “75% Cap Test”).⁷

As a general rule, a lower minimum block size requirement will result in less market transparency, but more liquidity, and conversely, a higher minimum block size requirement will result in more market transparency, but less liquidity. AMG believes any changes to the methodologies for determining the appropriate minimum block sizes and cap sizes must consider the impact on market transparency and

transparency, and price discovery.” *See, e.g.*, Proposal at 21516, 21522, 21527 (noting that the reporting of swap transaction and pricing data relates to “the goals of increasing market transparency, improving price discovery, and mitigating risk.”), and 21533.

⁶ *Id.* at 21538; proposed Rule 43.6(c)(1). The increase in the notional amount of block trade sizes combined with the increased risk associated with interest rate hedging in a low interest rate environment negatively impacts market participants, including clients of AMG Members, by reducing anonymity for bespoke hedging trades without any corresponding benefit.

For interest rate swaps, the negative impacts are most pronounced for long-dated (10 years and greater) interest rate swaps, where block sizes are significantly increasing on a notional and risk-weighted basis. Market participants are facing a different interest rate environment than May 2013, when the block size requirements were initially mandated. USD interest rates have significantly declined since May 2013. Low USD interest rates have the effect of increasing the amount of risk transfer for a given amount of notional. While this predominantly impacts longer tenors (10 years and greater), the effect on 30 year interest rate swaps is particularly pronounced. In May 2013, the sensitivity of a 1bp move in USD interest rates (“DV01”) for \$120mm 30-year swaps was \$0.246mm. For the same \$120mm 30-year interest rate swaps today, the DV01 is \$0.332mm, **a 37% increase**. The DV01 for the new proposed block size of \$160mm of 30 year interest rate swaps is \$0.443mm. Thus, the increase in the block size for 30yr swaps would be **82% higher in risk terms** than the level that was set in May 2013.

There is also an inconsistency in the proposed block sizes when the amount of DV01 a block trade represents at each tenor is analyzed. Again, the amount of risk transfer required for block treatment for 30-year swap is disproportionately higher than for other tenors. In addition, the changes to the block trade categories in Section 43.6 and application of minimum block trade methodology have significant negative impacts to market participants, including clients of AMG Members. In short, block trade sizes are dramatically increasing in areas where clients of AMG Members execute large program trades and have a greater need for anonymity. However, the proposed block trades sizes would compromise this needed anonymity.

⁷ *See* Proposal at 21538.

liquidity.⁸ AMG respectfully notes the market for swap products continues to evolve, and the 67% Test would cover a significantly higher percentage of certain markets than it would have in 2013 when the Commission adopted its current block sizes and cap sizes requirements.⁹ AMG Members are concerned that large trades that fall between the current block trade thresholds and the new much larger proposed block trade thresholds may now be subject to the risk of information leakage as such trades, to the extent they are subject to a trading obligation, will now be subject to the RFQ-3 process.¹⁰ When combined with the proposed 67% Test, AMG believes certain markets may experience significant liquidity challenges, especially during periods of heightened market stress. AMG notes that the Commission has not demonstrated in the Proposal how the increase from 50% to 67% strikes the appropriate balance between market liquidity and market transparency. Increasing block sizes may not necessarily increase transparency and the Commission should do a liquidity assessment to properly set block sizes.

AMG is further concerned that the 67% Test and the 75% Cap Test are each substantially too high. From a practical standpoint, this means a greater number of trades would need to be executed on SEF. The proposed increase from 50% to 67% would result in a significant increase to block limits (and related cap sizes) generally and, depending on the product, a threshold several times current sizes. AMG is especially concerned the higher thresholds and cap sizes would adversely affect markets during periods of high volatility or lower liquidity and respectfully requests the Commission to include data from the recent COVID-19 downturn in their review and analysis to determine whether the higher limits are indeed advisable. Even at current block size limits, during the March 2020 downturn, some block trades were difficult to execute.¹¹ Accordingly, the Commission should revisit the minimum block thresholds and cap sizes over an appropriate time horizon, which should include periods of market stress.

AMG is also uncertain why the Commission would use the 67% Test and 75% Cap Test for all swap categories rather than proposing amendments illustrating why a selected notional test is appropriate for a specific swap category. The lack of a nuanced approach may result in proposed block thresholds and cap sizes that are inappropriate for certain categories of swaps.¹² Further, such a blunt approach does not appropriately balance the dual goals of market transparency and liquidity. Specifically, some AMG Members believe that the 67% Test for currency and interest rate products would create unintended consequences for markets and market participants. If the methodologies for determining the appropriate minimum block size do not consider real risk for interest rate swaps, then longer dated swaps may become subject to block trading requirements whereas shorter dated products would not meet the minimal block size. Additionally, the appropriate block threshold and cap size for some products will

⁸ Section 2(a)(13)(E) of the Commodity Exchange Act requires that the Commission's rules for the public availability of swap transactions and pricing data consider the impact of any regulations on market liquidity.

⁹ CFTC, Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866 (May 31, 2013) available at <https://www.federalregister.gov/documents/2013/05/31/2013-12133/procedures-to-establish-appropriate-minimum-block-sizes-for-large-notional-off-facility-swaps-and>

¹⁰ This is compounded by the current trade process because some potential trades may become subject to "information leakage," which can result in a "winner's curse" problem as market participants show both directional information regarding their trade and the size.

¹¹ Some AMG Members indicated that they experienced liquidity challenges at levels below the current block thresholds during March 2020. These Members also noted that, had the proposed block rules been in effect, certain non-deliverable forwards may not have been able to trade. Put another way, existing block sizes were too large as compared to what market liquidity would bear at the time and the proposed changes would likely prove more challenging.

¹² Such categories include long tenor rate products and currency pairs. For example, the Chilean Peso-USD block size is \$41 million compared to an estimated "social size" of trading of \$5 to \$10 million. The Eurodollar block size is approximately five times larger than the Chilean Peso size, however the trading market is many multiples larger. As a result, any trading in the proposed block size in the Chilean Peso will have a material impact on trading in this market. Aside from wider pricing result, liquidity could also be restricted. Similar issues occur in pairings for Argentinian Peso, Brazilian Real, Colombian Peso and Indian Rupee.

depend on whether the Commission extends its current reporting regulations, which we discuss in Section 2 of this letter. As a result, certain swaps would be treated differently under the block reporting requirements not for economic or risk reasons, but solely because of arbitrary regulatory requirements.¹³

Rather than adopting a 67% Test for all products, AMG believes the Commission should analyze whether a dollar value change test (a “**DV01 Test**”) would be a more appropriate standard for interest rate products.¹⁴ A DV01 Test responds to changes in basis points of a particular product, resulting in a test capable of evaluating the risks associated with such a product. Interest rates have the effect of increasing the amount of risk transfer for a given amount of notional. The negative impacts are most pronounced for longer-dated (10 years and greater) interest rate swaps, where block sizes are significantly increasing on a notional and risk-weighted basis. Accordingly, the DV01 Test would better measure risks associated with certain interest rate swaps regardless of the tenor of the underlying product and is worthy of additional analysis by the Commission.

AMG is concerned the higher block trade thresholds under the Proposed Rule would adversely impact its Members’ clients by reducing market liquidity and creating higher trading costs. The time required to execute offsetting hedges for large transactions naturally varies based on swap currency, tenor and size. With little empirical evidence supporting how the changes will positively impact U.S. markets, the Commission should conduct a study to review whether such changes are indeed supported by data.

As noted above, the Commission would establish AMBS by swap categories using 67% notional amount methodology and would post the data to the CFTC’s website.¹⁵ AMG respectfully notes that the Proposal does not discuss whether market participants would be given notice and an opportunity to comment prior to any changes to AMBS. AMG requests that the Commission adopt a thirty (30) day notice and public comment period to allow market participants time to provide feedback to the Commission of the impacts of any proposed changes to AMBS. We also request that the Commission include a 3 month implementation period following any AMBS or cap changes to give market participants sufficient time to adjust their trading behaviors and update their operations, policies and procedures.

AMG believes the Commission has not provided sufficient data warranting the proposed changes for determining AMBS and fails to specifically justify its proposed changes. In 2013, when adopting current Rule 43.6(e)(1), the Commission noted that by adopting a 50% notional amount calculation, it would “allow SDRs to collect at least one year of reliable data for each swap category prior to the application of the higher 67-percent notional amount calculation to determine appropriate minimum block sizes in the post initial period.”¹⁶ However, the Proposal does not discuss evaluating SDR data or give a rationale for the accuracy of 67% Test. AMG acknowledges that the Commission’s goals of ensuring liquidity, transparency and price discovery may at times conflict, but believes any changes to existing regulations should be grounded in and supported by further data analysis. Absent (i) conducting a robust study and (ii) making data and findings of such study available to market participants, the Commission should refrain from altering its current determinations for establishing minimum block sizes.

¹³ To best preserve liquidity, AMG believes the Commission should, at a minimum, study and consider the following data point categories for each product class when increasing or decreasing the minimum block sizes and cap sizes: (i) average bid/offer width; (ii) average size quoted; (iii) cumulative size quoted; (iv) average percent of two-way markets; (v) average RFQ response times; (vi) volume of rolled trades, and (vi) whether such trades are delta-1. We also request the Commission to consider the impact of any changes during stressed market conditions.

¹⁴ See n. 6 for additional information pertaining to the impact of interest rates and tenor on interest rate swaps.

¹⁵ *Id.* at 21539; proposed Rule 43.6(e).

¹⁶ See 78 FR 32893.

2. AMG Requests that the Commission Conduct Further Review of Time Delays for the Real Time Public Reporting for Block Trades and Not Adopt the Proposed 48 Hour Delay

AMG does not agree with the Proposal's extension of the current time delay for reporting block trades to 48 hours for all blocks, as set forth in Proposed Rule 43.5(c)-(h). Based on AMG Members' experience in the markets, a 48 hour delay for all swap products would hinder market transparency and hamper price discovery. While AMG Members have differing views as to the most appropriate reporting timeframe for each product, AMG believes that a one-size-fits-all approach of 48 hours for all products would conflict with the Commission's goals.

AMG does not support the time delay aspects of the Commission's proposal for three reasons, all of which are discussed in the Proposal. First, as noted by Commissioner Dan M. Berkovitz in his Public Statement and Remarks,¹⁷ the logic behind extending the reporting period to allow for all swaps to be reported on a 48 hour delay is not readily apparent. AMG suggests further study of appropriate time delays with a focus on the venues, counterparties and product types currently included in CFTC Rule 43.5(d) to determine whether an extended reporting period on a tailored basis is justified in furtherance of the Commission's goal to facilitate market liquidity without sacrificing market transparency. Thereafter, if the Commission believes such an extended reporting period is justified, the Commission should propose regulations specifying the relevant reporting period and request public comment. We also request that the Commission realize the interdependency between liquidity and transparency and time delays and block sizes in their study.

Second, as the Commission noted in the Proposal, for many "block trades" the hedging process is completed quickly and generally completed by the end of the trading day in which the block trade is executed.¹⁸ Accordingly, by the Commission's own logic, a reporting period of 48 hours does not readily appear appropriate for many block trades.

Third, as the Commission is aware, the European Securities and Market Authority ("**ESMA**") adopted a T+2 reporting requirement for certain derivative products. While AMG generally supports the Commission's efforts to harmonize its regulations with both U.S. and foreign regulators, this effort at "harmonization" will fall short. ESMA recently adopted regulations requiring certain products be reported in 15 minutes or less.¹⁹ ESMA has also released a consultation paper questioning whether its prior reporting requirements achieved the intended goal of creating greater market transparency for financial markets.²⁰ Accordingly, by unnecessarily extending the trade reporting timeframe, the Commission would be ignoring the lessons learned by ESMA and European market participants and could result in U.S. markets becoming less transparent than those of other nations.

Accordingly, AMG respectfully requests that the Commission conduct further review of appropriate time delays for block trades and not adopt the proposed extended time delay for block trade reporting.

¹⁷ Public Statement & Remarks. Statement of Commissioner Dan M. Berkovitz on Proposed Amendments to Part 43: Real-Time Reporting Requirements (February 20, 2020) available at:

<https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement022020>.

¹⁸ See Proposal at 21534.

¹⁹ See ESMA (2016) Commission Delegated Regulation (EU).../...of 14.7.2016 at Article 7(4), available at https://ec.europa.eu/finance/securities/docs/isd/mifid/rts/160714-rts-2_en.pdf#page=14.

²⁰ See ESMA (2020) Consultation Paper MiFID II/MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives at 154, available at https://www.esma.europa.eu/sites/default/files/library/esma70-156-2189_cp_review_report_transparency_non-equity_tod.pdf.

3. AMG Does Not Support Expanded Swap Categories for Reporting

AMG does not support the proposed changes to Rule 43.6(b)(1)(ii)(A)-(I) and believes that the addition of 15 swap categories unnecessarily complicates the trade reporting process for the interest rate asset class (“IRS”). Currently, Rule 43.6(b) utilizes three currency groups (super-major currencies, major currencies, and non-major currencies) and nine tenor ranges.²¹ When adopting current Rule 43.6(b), the Commission expressed a desire to create a category for most individual currencies, but at that time the Commission believed creating approximately 200 swap categories would have unnecessarily complicated the reporting process and some categories would have too few reported trades to be meaningful. AMG believes the current requirements appropriately balance market transparency and price discovery against the burdens placed on market participants by having to comply with the requirements associated with multiple interest rate asset class categories.

If adopted, the creation of 15 currency categories for IRS would result in a total of 135 swap reporting categories just for IRS. AMG respectfully believes that creating 135 swap categories will indeed burden market participants with a complicated reporting process that may not provide any meaningful market transparency or lead to price discovery for numerous categories of IRS. The Proposal notes that 96% of the total population of IRS are in the top 15 currencies, but does not discuss the complications and burdens that creating 135 categories of IRS would put on market participants. While AMG understands the Commission’s overall goal of requiring robust market data, creating 135 swap categories unnecessarily overcomplicates the trade reporting process and may not meaningfully enhance market transparency. In other words, such an outcome would run counter to the Commission’s objective when it adopted current Rule 43.6(b).

In sum, AMG believes the reporting of interest rate swaps as required by current Rule 43.6(b) provides adequate market transparency without overly burdening market participants and therefore respectfully requests the Commission to withdraw the proposed changes to Rule 43.6(b).

4. Post-Priced Swaps Should be Afforded Practical Flexibility for Delayed Reporting

AMG supports Proposed Rule 43.3(a)(4)(i), whereby a reporting counterparty is permitted to delay the reporting of PPS to the earlier of the price being determined or 11:59:59 (EST) on the execution date.²² Market participants, including asset managers, previously raised concerns with the reporting requirements for swaps in which one or more terms are unknown at the time the swap is executed.²³ Under current regulations, PPSs are either reported late or reported with a placeholder. The Commission reasons that requiring a reporting party to report a swap prior to the price being known could (a) increase the costs of entering into a PPS and thus discourage market liquidity and (b) create unnecessary “noise” in the market which fails to lead to sufficient and accurate price discoveries. AMG agrees with the Commission’s reasoning and, accordingly, strongly supports Proposed Rule 43.3(a)(4)(i). The adoption of Proposed Rule 43.3(a)(4)(i) would help facilitate liquid markets in PPS without sacrificing price transparency.

²¹ See Proposal at 21535.

²² See Proposal § 43.3(a)(4)(i) which further provides that if the price of a swap that is a PPS is not determined by 11:59:59 pm EST on the execution date, the reporting counterparty shall report to a swap data repository by 11:59:59 pm EST on the execution date for such PPS other than the price and any other undetermined variable terms and shall report each such item of previously undetermined swap after such item is determined.

²³ See DMO’s Roadmap to Achieve High Quality Swaps Data (July 10, 2017) available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf

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In summary, AMG:

1. Does not support Proposed Rules 43.6(c) and 43.6(e), related to AMBS and cap sizes, and rather than proposing amendments to these regulations, the Commission should empirically determine how the proposed changes would practically impact markets and market participants.
2. Does not support the blunt approach of Proposed Rule 43.5(c)-(h) and believes the Commission should use a data-driven approach and consider venue, counterparty and product when deciding if an extended reporting period is consistent with the Commission's stated goals.
3. Does not support the proposed changes to Proposed Rule 43.6(b)(1)(ii)(A)-(I) and specifically believes the addition of 15 swap categories unnecessarily complicates the trade reporting process for IRS.
4. Supports Proposed Rule 43.3(a)(4)(i) allowing for the delayed reporting of PPS.

We appreciate the opportunity to share our views and we would be happy to arrange a conference call or video conference to discuss our comments in further detail. Please do not hesitate to contact Jason Silverstein at (212) 313-1176 or jsilverstein@sifma.org.

Respectfully submitted,

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