



August 18, 2022

Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
Washington DC 20581

Submitted via CFTC website: <https://comments.cftc.gov/>

**Re: Notice of Intent to Revise Swap Data Recordkeeping and Reporting Requirements (OMB Control No. 3038-0096) and Real-Time Public Reporting (OMB Control No. 3038-0070)<sup>1</sup>**

Dear Mr. Kirkpatrick:

Bloomberg SEF LLC<sup>2</sup> appreciates the opportunity to provide the Commodity Futures Trading Commission (“CFTC” or the “Commission”) with our comments regarding the Commission’s proposal to collect certain information mandated by Commission regulations related to Swap Data Recordkeeping and Reporting Requirements and Real-Time Public Reporting (the “Proposal”). Bloomberg appreciates the importance of the Commission’s efforts to provide clarity and ensure compliance with sections 2(a)(13) and 21(b) of the Commodity Exchange Act and recognizes that the Proposal will assist in achieving both goals. We write to recommend that swap execution facilities (“SEFs”) be permitted to submit the Swap Data Error Correction Notification Form (“Notification Form”) through the existing CFTC portal through which SEFs file other reports with the Commission. We also write to highlight that certain notifications that are apparently required by the Notification Form will be impossible for a SEF to complete, as SEFs are not in possession of the information required by the Notification Form and are not otherwise able to obtain it.

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<sup>1</sup> Notice of Intent to Revise Collection 3038-0096 (Swap Data Recordkeeping and Reporting Requirements) and Collection 3038-0070 (Real-Time Public Reporting) (June 24, 2022), *available at* <https://www.cftc.gov/LawRegulation/FederalRegister/publicinformationcollectionrequirements/2022-13485.html>.

<sup>2</sup> Bloomberg SEF LLC is a wholly owned subsidiary of Bloomberg L.P. operating a swap execution facility (“BSEF”) that is registered with, and regulated by, the CFTC. BSEF provides its participants with access to liquidity across credit, interest rate, foreign exchange, and commodity (i.e., precious metals only) swaps. Bloomberg L.P. is a global leader in business and financial information, delivering trusted data, news, and insights that bring transparency, efficiency, and fairness to markets. The company helps connect influential communities across the global financial ecosystem via reliable technology solutions that enable our customers to make more informed decisions and foster better collaboration.

*SEFs should be permitted to file via the CFTC Portal.*

While a SEF is currently obligated under Commission Regulations 45.14 and 43.3(e) to notify CFTC Staff if a SEF determines it will fail to timely correct an error in swap data or swap transaction and pricing data, respectively, this is the first time that the Commission has specifically prescribed the form and manner of notification which a SEF must adopt.<sup>3</sup> We appreciate the clarity that the Notification Form provides to SEFs to ensure that sufficient information is provided to the Commission under Regulations 45.14 and 43.3(e), and recommend that the Commission also prescribe that the Notification Form should be filed by SEFs via the CFTC Portal, similar to the submission method utilized by SEFs for the SEF Event Specific Reporting Form.

*SEFs do not have access to open swap data and are not able to update information regarding these swaps through the Notification Form.*

We note the Commission has indicated that “while the Swap Data Error Correction Notification Form provides the form and manner and specifies sufficient information required to satisfy previously-approved information collections under regulations 45.14 and 43.3(e), the Commission does not believe it imposes any new collection of information.” However, we do not agree that the Notification Form does not impose any new collection of information requirements on SEFs. The plain language and intent of CFTC Letter No. 22-06 (Staff Advisory on Reporting of Errors and Omissions in Previously Reported Data), which is effectuated by the Notification Form, imposes an unprecedented and new obligation on SEFs to “review, as early as possible, their open swaps data in order to identify and correct any errors.” The Commission further notes in CFTC Letter No. 22-06 that “[c]orrecting outstanding errors in swap data, including swap data for swaps that are no longer open swaps but are maintained by an SDR as if the swaps were still open swaps, in advance of December 5, 2022, may reduce the number of Swap Data Error Correction Notification Forms that SEFs [...] will be required to submit to self-report swap data errors.”

Historically, SEFs have never been required to review open swaps data and we note, in fact, that it is impossible for SEFs to fulfill this new obligation to identify, correct and report such errors for a number of reasons, as set forth below. The Commission’s proposal that SEFs should be able to review open swaps data to identify swaps which are incorrectly identified at an SDR as “open” is based on an invalid assumption that SEFs have direct access to open swaps data. They do not. SEFs do not have transparency into whether open swaps have actually been terminated because SEFs do not have access to this data, which is only provided by an SDR to reporting counterparties of a swap. In our experience, BSEF has only been permitted to receive back from its SDR the exact same information that it submitted to the SDR. This position has been made clear to BSEF on numerous occasions by its SDR, and Commission Regulation 49.17(f) supports the position that an SDR is prohibited from providing swap data to any market participant other than the counterparties to the particular swap. Because of this, we believe the Commission’s estimation of the burden of the proposed collection of information on this point is inaccurate, as SEFs are unable

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<sup>3</sup> On June 10, 2022, the Commission’s Division of Data published a “Swap Data Error Correction Notification Form,” which sets out the form and manner for notifications pursuant to Commission Regulations 45.14 and 43.3(e) and enumerates information sufficient to provide an initial assessment of the scope of the error or errors that were discovered and any initial remediation plan for correcting the error or errors, if an initial remediation plan exists.

to comply by reason of inability to gain access to such data. Only to the extent that BSEF has *actual* knowledge of any such open swaps, which have actually been terminated and are brought to BSEF's attention, would BSEF be able to utilize the Notification Form to notify CFTC Staff.

Despite BSEF's inability to directly comply with the new obligation in CFTC Letter No. 22-06 to identify, correct and report incorrect open swaps data to CFTC Staff, we respectfully acknowledge the importance and attention that the Commission is giving to this matter. To that end and to support the Commission's efforts to improve the quality of swap data which is used by CFTC Staff, BSEF will issue a notice to its participants reminding them of their duty to comply with CFTC requirements, including with respect to providing accurate information regarding terminated swaps that are still open in an SDR and remind them that their failure to do so will result in a violation of BSEF's rules and subject them to possible sanctions by BSEF and/or the Commission. We also encourage the Commission to amend the Notification Form to account for the fact that SEFs do not have access to open swap information.

We share the Commission's concern that "[s]waps that erroneously appear in SDRs as open swaps, despite having been terminated, account for a significant number of existing swap data errors that staff have identified."<sup>4</sup> However, we believe the duty to review and correct these errors rests squarely with reporting counterparties and clearing houses rather than SEFs. Based on internal and external discussions, we understand that one of the reasons terminated swaps remain erroneously open in an SDR is because reporting counterparties fail to terminate some "initial swaps".<sup>5</sup> An "initial swap" is a transaction executed by an agent as a single trade that is allocated later to different client accounts of the agent. In contrast, "original alpha swaps" (which are not "initial swaps") are swaps that are the result of allocations, and pursuant to Regulation 45.3(c), must be reported to an SDR by a reporting counterparty. Required swap continuation data for swaps that are *not* original swaps must be reported by a reporting counterparty. Because the termination of such swaps is required continuation data, a reporting counterparty to an "initial swap" bears the burden for terminating the "initial swap".

It is also our understanding that, in some cases, clearing houses do not attempt to terminate "initial swaps". However, when a clearing house *does* attempt to terminate an "initial swap", it is our understanding that because the clearing house does not have "initial swaps" counterparty information (there is no obligation for any entity to provide it to a clearing house), it will terminate the "initial swap" using counterparty information from the corresponding original swap. As a result, the beta/gamma non-reporting counterparty does not match the "initial swap" non-reporting counterparty (e.g., post-allocation mismatches) and the termination report will be rejected by an SDR. Because of this, we think that the incidence of erroneously open "initial swaps" would be greatly reduced if the Commission reminded reporting counterparties to "initial swaps" of their obligation to terminate them.

Based on our review, we also believe that clearing houses bear primary responsibility for correction and reporting of errors related to original swaps, as many swap data reporting errors

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<sup>4</sup> CFTC Letter No. 22-06 (June 10, 2022), *available at* <https://www.cftc.gov/csl/22-06/download>.

<sup>5</sup> "Initial swap" has the meaning assigned to it in Commission Regulation 45.3(c).

related to such swaps are actually generated by clearing house internal processes and external workflows. Many of those errors seems to be related to post-allocated cleared swaps. It is the obligation of a reporting counterparty to submit post-allocation swaps information to an SDR, and reporting counterparties have up to eight (8) business hours to do it. We understand that there are times when a clearing house will submit an exit message prior to an original alpha swap allocation actually being received by the clearing house. Then, when a clearing house attempts to terminate an original swap, there is nothing actually capable of termination since the original alpha swap report doesn't exist yet, and so the original alpha swap remains erroneously flagged as "open" at the SDR. We believe the incidence of erroneously open original swaps would also be reduced if clearing houses were required to terminate original swaps no earlier than eight (8) business hours after the clearing houses clear an original swap.<sup>6</sup>

We hope that other SEFs, like BSEF, will also determine to assist the Commission in its efforts to improve data quality and also issue notices to their participants. Collectively, we believe increased diligence by reporting counterparties and a correction in clearing house workflows to correct errors will greatly improve the quality of swap data Staff use to improve, surveil and protect the swaps markets.

*The Notification Form should be revised to account for the fact that a remediation plan may not be available at the time the form is filed.*

While we appreciate the clarity that the Notification Form provides to SEFs and other market participants to ensure that sufficient information is provided to the Commission under Regulations 43.3(e) and 45.14, we note that not all information may be readily available to a SEF at the time of required submission to the Commission (e.g., Regulations 43.3(e)(1)(ii) and 45.14(a)(1)(ii) require that if a SEF determines it will fail to timely correct an error for any reason, it must notify Staff within **12 hours** of its determination that it will fail to timely correct the error using the Notification Form and provide any initial remediation plan (if an initial remediation plan exists). While Regulations 43.3(e)(1)(ii) and 45.14(a)(1)(ii) do not contain a strict requirement for a SEF to provide an initial remediation plan or to even provide an estimate of when an initial remediation plan will be available, the Notification Form states: "If no initial or other remediation plan exists, [a Notifying Entity must include] the date when the Notifying Entity expects to have a remediation plan to correct the error(s)." Considering the tight timeframe of 12 hours to notify the Commission of a SEF's determination that it will fail to timely correct an error, it is doubtful that any SEF (or any other Notifying Entity for that matter) will be able to accurately ascertain when it anticipates providing a remediation plan. Therefore, by including this requirement, the Notification Form is likely to either generate inaccurate responses or incentivize a Notifying Entity to give itself the maximum amount of time to provide a remediation plan out of concern that it will make an unintentional misstatement to the Commission because the Notifying Entity has insufficient information at post-12 hours determination to provide an accurate date.

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<sup>6</sup> For trades executed on a SEF, original swap information for post-allocated swaps will be provided to a clearing house by a SEF under Commission Regulation 37.701 if a non-reporting counterparty (agent) provided such information to the SEF.

We recommend that the requirement in the Notification Form to provide an expected date by which the Notifying Party will have a remediation plan to correct the error be removed or qualified to account for the fact that an expected timeline to implement a remediation plan may not be available at the time the Notification Form is filed (e.g., the Notification Form could be amended to state: “If no initial or other remediation plan exists, the date *(if known)* when the Notifying Entity expects to have a remediation plan to correct the error(s)”).

*The Commission should consider adopting a materiality threshold to trigger the requirement to file the Notification Form.*

We also believe the requirement to file the Notification Form should not be triggered by every type of error. Instead, we believe the Commission should adopt a risk-based approach that sets forth clear criteria a Notifying Party may apply to determine whether an error meets the threshold for notification (e.g., based on materiality/number of errors or other such concrete criteria prescribed by the Commission).

Lastly, we do not believe the Commission’s estimation of burden hours is based on accurate assumptions, in that we anticipate there could be multiple reports per year triggered by either the errors of a Notifying Entity or in the case of a SEF, its participants. Therefore, the actual anticipated number of hours (instead of 6 burden hours annually) is likely significantly higher than the Commission anticipates due to greater filing frequency than indicated and the significant amount of time required to coordinate with stakeholders across Engineering, Compliance, Risk and Legal to ensure the accuracy and completeness of the information provided in the Notification Form.

We ask for the Commission’s due consideration of the issues outlined in this letter and the recommended changes to the Notification Form. To the extent that the suggested changes cannot be made presently, we recommend that they be explored in the near future through one of the Commission’s advisory committees, such as the Global Markets Advisory Committee.

We appreciate your willingness to consider our comments and would be pleased to discuss any questions that you may have with respect to this letter.

Very truly yours,



Derek J. Kleinbauer  
President  
Bloomberg SEF LLC