



asset management group

May 2, 2018

Amir Zaidi, Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Proposed Amendments to the CFTC “Embargo Rule,” 17 C.F.R. § 43.3(b)(3)(i)

Dear Mr. Zaidi:

The Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”)¹ is writing in connection with the Commodity Futures Trading Commission’s (“**Commission**”) public indications that it intends to propose amendments to certain of its swap data reporting regulations, and its regulations applicable to swap execution facilities (“**SEFs**”).²

Our comments herein relate to Commission Regulation 43.3(b)(3)(i), generally referred to as the “embargo rule.”³ Specifically—

- We urge the Commission to retain the embargo rule; and
- If the Commission believes that changes to the embargo rule are appropriate, those changes should be tailored to address particular concerns, and closely monitored.

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 See CFTC, Roadmap to Achieve High Quality Swaps Data (July 10, 2017), *available here*: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf; *see also* J. Christopher Giancarlo, Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank at 21 (Jan. 29, 2015), <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf> (hereinafter, the “**White Paper**”).

³ See 17 C.F.R. § 43.3(b)(3)(i).

I. The Commission Should Retain the Embargo Rule

The embargo rule prohibits SEFs from disclosing the details of a swap transaction prior to “the transmittal of such data to a registered swap data repository for public dissemination.”⁴ Some commenters have suggested that the Commission should repeal the embargo rule.

Yet, we believe the Commission’s goal in promulgating the embargo rule remains vital to SEF trading today. The Commission adopted the embargo rule “to ensure that swap transaction and pricing data is disseminated uniformly and is not published in a manner that creates an unfair advantage for any segment of market participants.”⁵ We are concerned that repealing the embargo rule could undermine this important objective that the embargo rule was adopted to protect.

In the absence of an embargo rule, SEFs or others could monetize data prior to its public dissemination, which would impose additional costs on market users, advantage some market participants over others, and impede the policy goals of real-time public reporting. More specifically, if market participants must pay or meet certain conditions to gain access to the timeliest data, the resulting information asymmetry will disadvantage market participants who do not pay those fees or costs. This means that asset managers, and their clients, could pay more for buy orders and receive less for sell orders because market participants with better information are able to react more quickly.

The embargo rule plays an important role in the public dissemination of real-time price-forming information by swap data repositories (“**SDRs**”). It serves to assure price transparency and a level playing field for all market participants that trade on SEFs. We therefore urge the Commission to retain the embargo rule.

II. Any Changes to the Embargo Rule Should be Calibrated and Closely Monitored

The White Paper observed that the embargo rule inhibits certain trading practices known as “work-ups.”⁶ Work-ups are liquidity pools where counterparties buy or sell additional quantities of a swap immediately after its execution on the SEF at a price matching that of the original trade.⁷

As described in the White Paper, the embargo rule may operate to restrain SEFs from offering work-ups, and thus adversely affect liquidity, because SEFs must enrich data in certain ways before disseminating that data to an SDR. Because of the embargo rule, a SEF would need to pause the work-up process until data is enriched and transmitted to an SDR. To our knowledge, no SEF has found a workable way to do so.

⁴ *Id.* at 43.3(b)(3)(i)(A).

⁵ See Real-Time Public Reporting of Swap Transaction Data, Final Rule, 77 Fed. Reg. 1182, 1200 (Jan. 9, 2012).

⁶ See White Paper at 37 (“The delays in transaction and pricing data disclosure caused by the embargo rule inhibit the long-established ‘work-up’ process,” which “thwarts . . . liquidity generation”).

⁷ See White Paper at 37. Other liquidity-enhancing mechanisms, such as “call-outs” (*i.e.*, auctions to which a select number of participants are invited) are also inhibited by the embargo rule.

While work-ups can be useful liquidity tools in markets where there are limitations to the amount of open interest, as discussed above, we do not believe this concern warrants a wholesale repeal of the embargo rule, particularly as it pertains to SEF trading. If the Commission believes that the concern does warrant changes to the embargo rule, such amendments should be no more extensive than is necessary to permit work-ups and similar liquidity-forming mechanisms. That is, the embargo rule should only be modified as necessary to allow SEFs to disseminate pricing and other trade-related data to their participants for use in organizing liquidity pools or auctions, through which they can trade on related terms. Any dissemination of pricing or trade-related data in this manner should be done to all participants on the SEF at the same time so that no member or participant has an informational advantage over such data over other participants.

Additionally, for the reasons discussed above, the Commission should make clear in any amendments to the embargo rule that SEFs may not delay or change their public reporting workflows in any way in order to monetize data or benefit any class of SEF participant over any other class of SEF participant. We also recommend that the Commission carefully oversee the implementation of any changes to the embargo rule. This includes closely monitoring SEFs to ensure they are reporting data for public dissemination as soon as technologically practicable, as required by Commission Regulations.⁸

III. Conclusion

We would be happy to further discuss the issues identified herein at your convenience. If you have questions, please contact Tim Cameron at 202-962-7447 or tcameron@sifma.org, Laura Martin at 212-313-1176 or lmartin@sifma.org, or Terry Arbit at Winston & Strawn, LLP at 202-282-5862 or tarbit@winston.com.

Respectfully submitted,



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cc: Daniel Bucsa, Deputy Director,
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⁸ See 17 C.F.R. § 43.3(a)(1).