Public Statements & Remarks

Statement of Commissioner Dawn D. Stump Regarding Block Size Threshold in Final Rule: Amendments to Real-Time Public Reporting Requirements

September 17, 2020

I have often referenced the need for a review of policies as per the wishes of the G-20 Leaders' Statement from the Pittsburgh Summit in 2009, which included an expectation that members would "assess regularly implementation and whether it is sufficient to improve transparency in the derivatives markets, mitigate systemic risk, and protect against market abuse."[1] Today, the Commission finds itself debating a challenging issue with a robust history. In order to properly assess whether we are making the right choices, I prefer to consider where we have come from. Luckily, the history of prior Commissions' deliberations and transparency of regulatory rule-writing efforts affords us such an opportunity for a look back.

Prior to the Dodd-Frank Act[2] and enactment of the CFTC's swap data reporting regulations, there was very limited, if any, public transparency and price discovery in swaps markets. Today, under the initial calculation applied for block sizes, Commission staff states that 87% of interest rate swap transactions and 82% of credit derivative swap transactions are reported in real time.

The Commission previously decided[3] that an initial calculation (50-percent threshold notional) was appropriate to determine block sizes, and that it would be followed by implementation of a higher block size threshold (67-percent threshold notional) when one year of reliable data from SDRs was available. That Commission was in the unenviable position of making policy determinations without the benefit of the relevant market structures being operational. The original block calculation and the associated sizes were determined before both the trading venues where swaps transact (Swap Execution Facilities, or SEFs) and the data warehouses that collect swaps market information reported to the Commission (Swap Data Repositories, or SDRs) were fully operational.

In the Dodd-Frank Act, Congress amended the Commodity Exchange Act (CEA) to require the Commission to "take into account whether the public disclosure will materially reduce market liquidity."[4] Whether the Commission did (or was able to) make such an assessment in 2013, when it finalized the original process and treatment for block transactions, is debatable. I cannot say for certain whether the original calculation was appropriate. It was based on limited available data, such as public data that was not applicable to our jurisdictional swaps markets. It was constructed well before the regulations it impacted, the SEF trading mandate. And the data that it should have relied on, from SDRs, was not available, much less reliable. The Commission based its determination of block size, and the resulting SEF execution methods, on a calculation contrived without the benefit of data from SEFs or SDRs.

Despite many years of experience with SEFs and SDRs since then, the Commission is today choosing to continue down the previously determined path of raising block sizes instead of leveraging data. Commenters, including entities responsible for providing liquidity and entities utilizing swaps to perform risk management, expressed concerns that increasing the block size thresholds would negatively impact the swaps market and raise costs for end users. Yet, we are moving forward to further limit the number of transactions that can receive block treatment under real time reporting, and the resulting allowable methods of execution if a swap is included in the SEF mandate. That is, we are raising the threshold largely because a previous Commission decided to do so many years ago.

Though I may not be happy that this Commission is left to grapple with an arbitrary metric set by a former Commission in 2013, even that Commission recognized the importance of considering data before proceeding. The original block rules spoke of the Commission updating the threshold once it had one year's worth of reliable data. No Commission has ever updated the calculation to adopt higher block sizes, and one would reasonably expect this is due to a lack of reliable data. Today, the Commission is rectifying data reliability challenges by adopting a robust set of rule amendments to improve the quality of swap data reporting, but chooses not to re-assess the block size thresholds with the improved data that will result from those new rules. Perhaps that data will show that we have gone too low or too high in setting the thresholds. I would prefer not to predetermine the outcome until we can ascertain and evaluate the improved data.

The Commission proposed an updated list of categories and refreshed block sizes in February 2020. In the interim period, changes, some that I hope will yield positive results, have been made to affect the categories, calculations, and, as a result, the actual block sizes. However, the lack of transparency concerns me. I believe in this case, it would benefit the Commission to hear from market participants as to their views on the changes to all of these parameters.

I believe that the driving force behind the substantial rewrite of the swap data reporting rule set we are adopting today is that the Commission is not confident in the quality of SDR data, and that an overhaul is needed to provide the CFTC with complete and accurate information for data-driven policy decision making. I feel strongly that the vast majority of the rule amendments before the Commission today will improve the quality of the data reported to SDRs and available for our analysis. I am encouraged that after the 18-month compliance date, staff will be able to better review reliable data and inform the Commission of their analysis as it pertains to block size. I believe the more prudent course of action would be to finalize the remainder of the rules before us today, but set aside any Commission action on block size, thereby preserving current block sizes until the Commission and the public can consider these issues in light of the improved reporting rules and with the new, more reliable data that will result from those rules.

The Commission should incorporate reliable swaps data and what it has learned since the inception of SEFs to make a more fully informed decision on this very meaningful metric. The numbers established in 2013 were arbitrary, and eight years later a different Commission is now faced with reconciling that, still without the availability of reliable data. I believe it is equally unfair to leave another Commission, 30 months from now, with the same predicament. We should not be finalizing a rule to transition to the higher block size calculation today while dictating that other Commissioners implement our decision or have to deal with the consequences of our decision making that is based on contemporary, unreliable data.

It is unclear what, if any, Commission or staff analysis might transpire between the effective date of the swap data reporting rules (18 months) and the block size threshold compliance date (30 months). I intend to ensure that any input received will be taken seriously, notwithstanding its retrospective nature and the fact that it is well beyond many of our terms of office. I wish for the Commission to soon hold a formal forum to receive input from affected market participants, especially end users in these markets, such as those who manage teacher retirement and college savings plans for millions of Americans. It is that input, and reliable data reported pursuant to the enhanced reporting rules we are adopting today, on which the Commission's block determinations should be based.

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[1] *See* Leaders' Statement from the 2009 G-20 Summit in Pittsburgh, Pa. at 9 (Sept. 24-25, 2009), available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.

[2] Public Law 111-203, 124 Stat. 1376 (2010).

[3] Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 Fed. Reg. 32866 (May 31, 2013).

[4] CEA Section 2(a)(13)(E)(iv), 7 U.S.C. § 2(a)(13)(E)(iv).

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