

October 31, 2022

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
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Re: Release No. 34-93784; File No. S7-32-10 Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions.

Ms. Countryman:

I am writing to express my support for this rule and suggest the Commission make some minor changes to better meet their goal of investor protection. I urge the Commission to finalize this rule as soon as possible. The longer the delay, the greater the danger; any damage wrought via swaps (a 'lurking bomb') that goes undetected because of delays would not reflect well. Overall I applaud this rule and others that are substantively increasing transparency in U.S. markets, and hope very much to see more proposals like this in future. **The more information released to the public, the better.** Many people are priced out of data sources - now more than ever. A level playing field requires level access to information. Working families need to be able to look both ways before crossing Wall Street.

Financial Weapons of Mass Destruction

The most obvious object lesson regarding the desperate need for greater transparency in swaps markets is Archegos Capital Management. Archegos, at its height, had \$20 billion in assets.¹ But in the spring of 2021, in part through its use of total return swaps, Archegos sparked a \$30 billion dollar sell-off that left many of the world's largest banks footing the bill. Mitsubishi UFJ Group estimated a loss of \$300 million; UBS, Switzerland's biggest bank, lost \$861 million; Morgan Stanley lost \$911 million; Japan's Nomura, lost \$2.85 billion; but the biggest hit came to Credit Suisse Group AG which lost \$5.5 billion.² Archegos, which was managed by Bill Hwang lost \$20 billion over two days. These losses were made possible due to the unique characteristics of total return swaps. We are still dealing with the fallout from this event.

Large swap positions are clearly a threat to financial and national stability. In point of fact, the 'Archegos Blowup' demonstrated that swaps can be used to threaten global stability.

¹ Erik Schatzker, et al., Bill Hwang Had \$20 Billion, Then Lost It All in Two Days, BLOOMBERG BUSINESSWEEK, FEATURE, April 8, 2021.

² Margot Patrick and Quentin Webb, Archegos Hit Tops \$10 Billion After UBS, Nomura Losses, WALL STREET JOURNAL, MARKETS, April 27, 2021

Indeed, Warren Buffet has referred to TRS contracts as “financial weapons of mass destruction, carrying dangers that, while now latent, are potentially lethal.”³ Notably, while Archegos also used Family Office status to evade some requirements, this aspect can be considered immaterial compared to the current lack of transparency in the swaps market.⁴

Based on their clear and present danger alone, the proposed rule is necessary and very likely does not go far enough. Any compliance costs and inconvenience to funds and firms are miniscule compared to the financial devastation that can be caused by the Commission continuing to under-regulate the swaps market. In short, the extreme risk posed by unobserved trading in swaps requires tight and responsible regulation. A financial weapon of mass destruction might be less flashy and less easy to think about, but the resultant damage and deaths are no less real.⁵

I strongly support the Commission's effort's at increasing transparency through release of public data. Daily reporting and release is an excellent standard, as it both encourages rigor and keeps less-wealthy market participants competitive where they would otherwise be 'priced out' of a more level playing field. It is in the public's best interests to have the ability to protect themselves, their communities, and even their country from irresponsible, greedy, and potentially compulsive risk-taking. Sometimes the best way to protect investors is to equip them to protect themselves.

The Commission should absolutely utilize its authority under Section 10B(d) of the Exchange Act to publicly release data. Fraud is widespread, and the current Chair has repeatedly publicly stressed that the resources of the SEC are limited. By allowing the People to see potentially dangerous swap activity, they will be better able to assess the investments they make and observe the dynamics of the market. A more level playing field is absolutely in the public interest, and the damage that can be done via swap activity (e.g., Archegos) necessitates that investors be equipped to defend themselves and the markets they use.

Regarding Evasion of Reporting Requirements

I applaud the Commission's efforts to minimize the risk that market participants find a way to evade its authority. I believe the Commission should make every effort to apply the rule internationally: The threats are global, and so the regulations that protect U.S. markets (and, in the case of swaps and Archegos, global markets) must be international.

In general, the reach of the rule must be cast more broadly to account for the fact - not the possibility, but the fact - that market participants will actively search for and find ways to

³ Letter from Warren Buffet, Chairman Board, Berkshire Hathaway Inc., to S'holders (Feb. 21, 2003) <https://www.berkshirehathaway.com/letters/2002pdf.pdf>. See also Webb, et al., What Is a Total Return Swap and How Did Archegos Capital Use It?, WALL STREET JOURNAL, MARKETS, March 30, 2021

⁴ See Mark Schoeff Jr., Archegos Implosion Could Lead to Family-Office Regulation, INVESTMENT NEWS (Apr. 8, 2021) *"The Archegos blow up didn't occur because of lack of oversight of family offices, said David Guin, a partner at Withers Bergman. It had to do with regulation of derivatives trading. 'The issue was that there is no required reporting of swaps positions,' said Guin, who has family-office clients. 'Fixing this situation would require swaps reporting, not regulating family offices. It's possible the SEC will change course and say family offices ought to be regulated, but it seems unlikely to me.'"* <https://www.investmentnews.com/archegos-implosion-could-lead-to-family-office-regulation-204956>.

⁵ Reeves, A., Stuckler, D., McKee, M., Gunnell, D., Chang, S. S., & Basu, S. (2012). Increase in state suicide rates in the USA during economic recession. *The Lancet*, 380(9856), 1813-1814. <https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2812%2961910-2/fulltext>

evade the government's authority. While the Commission has clearly considered many perspectives on the issue of swaps transparency, it cannot account for every instance. As such, I encourage the Commission to broaden the scope of this rule to better minimize the chance that a "financial weapon of mass destruction" detonates. More specifically, the Security-Based Swap Position definition should include all security-based swaps based on the same underlying security or reference entity, regardless of whether they are debt (including CDS) or equity-based, so that funds and firms cannot evade reporting requirements by using different types of complex financial instruments.

Regarding the possibility that multiple actors might, in an 'unofficial group', cooperate by building sub-threshold swap positions in a single security for manipulative purposes. In the Proposed Rule (pg 104), the Commission states the primary purpose of the rule is "*...to provide market participants (including counterparties, issuers and their stakeholders) and regulators with access to information that may indicate that a person (or a group of persons) is building up a large security-based swap position.*" If there is a possibility that a group of persons could collude via multiple sub-threshold swap positions to target a single equity security, the Commission should alter the definition of 'large position', perhaps to \$100M short/long / \$200M gross (rather than \$300M gross). Given the greater occurrence of fraud and manipulation within smaller issuers, a percent-of-cap threshold of 5% may be sufficient (however, the Commission may find that 3-4 actors each with 4.98% positions could heavily manipulate a single security).

These are, however, simply naive suggestions. I see and deeply appreciate the Commission's efforts to minimize evasion. I am only an individual investor that is very concerned about evasion of regulations.

The Commission Should Harmonize With Rule 13h-1

The Commission should follow the precedent in Rule 13h-1, which identifies "large traders" using the trader's entire position in all NMS securities. The overall picture of a trader's appetite for excessive risk can only be formed by looking at their total swap position. Allowing large traders to take on excessive risk via swaps in many different individual securities while avoiding reporting requirements is against the spirit of the rule, and goes against the Commission's prior rulemaking. As well, I refer again to the greater relative risk posed by swaps trading. Why should a more dangerous and volatile financial instrument be *less* stringently regulated than less risky options? If anything, the Commission should apply slightly less lenient requirements, in proportion to the ultimate dangers posed. I encourage the Commission to consider how multiple actors might cooperate to build large exposure to a single security, while each fail to meet the threshold set out in the proposed rule.

Penalties for Evading Requirements Are Insufficient

In the past, penalties for evading requirements have been just a fraction of the cost of doing business. For example, in 2020 Morgan Stanley agreed to pay \$5 million for evading swap reporting requirements.⁶ While the Commission talked tough, the penalty clearly did not fit the crime:

⁶ <https://www.sec.gov/news/press-release/2020-238>

Market participants cannot disregard the rules of the road established by Reg SHO for all short sales,” said Daniel Michael, Chief of the Complex Financial Instruments Unit. “For many years, Morgan Stanley has improperly relied on Reg SHO’s aggregation unit exception, resulting in orders being mismarked for countless transactions.”

“Countless transactions”, **countless violations using very risky and complex instruments**, clear evasion of the government’s authority, and a financial entity with over \$12 billion in profits that year had to pay... \$5 million (0.4% of profit), with no admission of guilt. If the Commission cannot adequately enforce rules like these, they are nothing but empty words. The Commission said “market participants cannot disregard the rules of the road”, but they clearly can. We know that; we see you. To restore and maintain confidence in U.S. markets, the Commission must be prepared to levy fines and penalties that are in proportion to the potential damage of the instruments used.

In Summary

The proposed rule is exactly what I hope to see from the Commission. While I have concerns it does not go far enough to limit evasion by determined and well-capitalized actors, the thresholds seem acceptable and the Commission is demonstrating its commitment to market safety through better regulation of potentially disastrous risk-taking via dangerously volatile and powerful financial instruments. In the past, penalties for evasion of reporting requirements have been minimal and, arguably, ineffectual. Stronger penalties for swaps that are in step with their potential for mass destruction are absolutely in order. The Commission could do much to restore public confidence in U.S. markets by making harsher penalties explicit, and then following through. You have to follow through.

More public data for a more level playing field. Equip us to protect ourselves and each other.

Banana,

Ape