

Milbank

March 21, 2022

Via Email to rule-comments@sec.gov

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Proposed Rule 9j-1; Release No. 34-93784; File No S7-32-10

Dear Ms. Countryman,

Milbank LLP appreciates the opportunity to comment on the Securities and Exchange Commission's (the "**Commission's**") proposed rule 9j-1 (the "**Proposed Rule**") under the Securities and Exchange Act of 1934 (the "**Exchange Act**"), addressing the prevention of fraud, manipulation, and deception in connection with effecting transactions in, or inducing or attempting to induce the purchase or sale of, any security-based swap ("**SBS**").¹

As counsel to a range of investors, creditors and issuers in matters involving the use of credit derivatives,² we support the Commission's goals in promulgating the Proposed Rule. We agree that the SBS market, and the credit default swaps ("**CDS**") market in particular, will be more robust, and therefore more useful to a wider variety of creditors and borrowers, if market participants can be confident that their agreements will not be susceptible to fraud or manipulation. As the Commission notes, a robust SBS market improves the efficiency and utility of the capital markets generally. At the same time, we know from experience that users of credit derivatives require a clear understanding of any regulations that may subject them to regulatory or supervisory liability before executing their investment strategies. Because CDS market participants (nearly all of whom are sophisticated financial institutions) are generally subject to regulation under other provisions of the securities, investment advisory or banking laws, they are reluctant to engage in any transactions for which the regulatory consequences may be uncertain. With this experience in mind, we are concerned that, because we believe key elements of the Proposed Rule are overly broad and ambiguous, it would, if adopted as proposed, serve to chill, rather than foster, participation in the CDS market, thereby reducing the utility of the CDS contracts and impairing liquidity in the underlying securities and loan transactions as a result. We therefore ask that the Commission clarify its guidance and refine the

¹ SEC Release No. 34-93784 (December 15, 2021), 87 Fed. Reg. 6652 (February 4, 2022).

²Of particular relevance to our comments here, we represented the CDS Contract Improvement Committee, an ad hoc group of nine buy-side firms who actively use the CDS contract in their investment portfolios, in connection with the formulation of proposals that formed the core of the International Swaps and Derivatives Association's 2019 Narrowly-Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions.

Proposed Rule (particularly proposed 9j-1(b)) so that CDS market participants can transact in both the SBS and the underlying cash instruments in all the legitimate ways they currently do without having to curtail such activities for fear of retrospectively-determined liability.

We support the comments made in the letters submitted separately by each of (a) the Managed Funds Association and (b) group composed of the International Institute of Bankers, the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association in respect of the Proposed Rule. We wish to supplement those comments, however, by asking the Commission to re-consider the Proposed Rule so as to provide further clarifications of the standards to be used to identify manipulative conduct in the credit markets. In doing so, we ask the Commission to take careful note of the need for credit market participants to have certainty, at the time they seek to transact, that legitimate credit market transactions will not be deemed after the fact to have been manipulative simply because activity in one instrument had an impact on another that may have been unanticipated by other creditors or investors.

Our letter is structured as follows: First, we note certain ways in which we believe the Proposed Rule, particularly proposed 9j-1(b), is both overbroad and ambiguous. Second, in an effort to suggest ways in which we believe the Commission should refine its guidance, we address the examples of activities explicitly characterized as problematic under the Proposed Rule and explain why we believe these activities either should not be areas of concern for the Commission or have already been addressed by changes to the CDS contract. Third, we note the ways in which we believe the Commission's cost-benefit evaluation does not correctly assess the expected costs and benefits of the Proposed Rule.

I. The Proposed Rule is Overbroad in Scope and Ambiguous

A. Proposed Rule 9j-1(b)

The scope of the Proposed Rule and the description of the conduct prohibited thereby are unworkably vague and represent a material departure from the existing anti-manipulation regimes applicable to securities, commodities, and futures. Further, the "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" (the "**Proposing Release**")³ offers only vague and general descriptions of the types of conduct meant to fall within the scope of Proposed Rule 9j-1(b) and does not articulate any specific standard to determine whether conduct is "manipulative" or "distortive."⁴

1. Proposed Rule 9j-1(b) Represents A Material Departure From Existing Prohibitions On Manipulation And It Is Unclear How Courts Would Apply The Proposed Rule

The Proposed Rule does not articulate the standard for defining the manipulation proscribed by Proposed Rule 9j-1(b). Under the Proposed Rule, market participants are left to

³ SEC Release No. 34-93784 (December 15, 2021), 87 Fed. Reg. 6652 (February 4, 2022).

⁴ See Proposing Release at 46-48.

wonder how the Commission would apply the new standard. The anti-manipulation provisions of existing securities laws are generally interpreted by courts to prohibit conduct that is intended to deceive investors by artificially affecting market activity or prices,⁵ with deceptive intent being an essential element for conduct to be considered “manipulative.”⁶ On the other hand, prohibitions on manipulation of commodities under the Commodities Exchange Act generally require that: “(1) defendant possessed an ability to influence market prices; (2) an artificial price existed; (3) defendant caused the artificial prices; and (4) defendant specifically intended to cause the artificial price.”⁷ In this context, artificial prices are those that are “unreflective of the forces of supply and demand” and diverge from the “intrinsic value” or “fair value” of the relevant asset.⁸

While the Commission does not indicate which body of case law it believes most appropriate to apply to Proposed Rule 9j-1(b), we note that the prohibited conduct described in the Proposing Release includes conduct that (a) includes no deceptive element and (b) does not cause the price of an SBS to be unreflective of the forces of supply and demand or diverge from the intrinsic value of the SBS. This further underscores the uncertainty around how Proposed Rule 9j-1(b) will be interpreted and applied, as the Commission’s guidance in the Proposed Rule does not appear to be rooted in either of the two traditional frameworks (although we note that in the Proposing Release the Commission stated that the Proposed Rule was based in part on CFTC Rule 180.2).

For example, an “orphaning” transaction in which a CDS protection seller arranges a transaction with the issuer that results in the elimination of all deliverable obligations would not involve any deceptive or misleading acts by the CDS protection seller, and any change in the market price of the CDS contract would be the result of a *bona fide* change in the intrinsic value of that CDS contract, reflecting the forces of supply and demand.

We note that Proposed Rule 9j-1(b) makes it unlawful for any person to “manipulate or attempt to manipulate the price **or valuation** of any security-based swap”, potentially in an effort to reach these types of conduct – however, to our knowledge, a prohibition on manipulation of the “valuation” of an asset does not exist in any U.S. regulatory context and would require a new body of case law to be formed to determine how any such new prohibition should be interpreted. We note that because existing anti-manipulation provisions generally address divergences between price and value, no analogy can be drawn in cases where it is the change in *value* that is prohibited.

⁵ See, e.g., *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462, 476 (1977) (“‘Manipulation’ is ‘virtually a term of art when used in connection with securities markets’...The term refers generally to practices, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity.”) (citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976)).

⁶ See, e.g., *Ernst & Ernst*, 425 U.S. at 199 (“Use of the word ‘manipulative’ is especially significant. It is and was virtually a term of art when used in connection with securities markets. It connotes intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities.”)

⁷ *In re Amaranth Natural Gas Commodities Litigation*, 730 F.3d 170, 173 (2d Cir. 2013).

⁸ See, e.g., *United States Commodity Futures Trading Commission v. Donald Wilson*, 2018 WL 6322024, at *13-16 (S.D.N.Y. Nov. 30, 2018).

2. The Proposed Rule Implicates A Wide Range Of Ordinary Course Activities That Are Essential To Both CDS And Cash Markets

We believe this lack of clarity will be debilitating to the CDS market. As currently drafted, the Proposed Rule does not articulate when an activity in respect of securities or loans undertaken by a party to a CDS referencing such instrument (whether or not the CDS holder is in possession of material non-public information), would **not** be considered manipulative. Under the Proposed Rule, there may be no way for a CDS holder to protect itself from liability for alleged manipulation in connection with any transaction in the underlying securities or loan market, given that such transactions should affect the valuation of the CDS contract. This is why we believe it is important for the Commission to further articulate the standard by which manipulative conduct will be judged. If there is a risk that the “facts and circumstances” will be judged in hindsight to constitute manipulation, CDS market participants will avoid the relevant transactional activity altogether. In the absence of a precise standard by which to judge manipulative conduct, market participants are likely to protect themselves by transacting in one of the two markets, but not both. The result will be to weaken the liquidity and information forcing benefits of CDS as a hedging product.

Some examples of legitimate credit market activity that would be threatened by the Proposed Rule include:

- An investor who has bought CDS on a company asking for a debt term to be changed to make the loan deliverable for CDS or prevent the CDS from being orphaned.
- An investor who holds CDS (either long or short) participating in an ad hoc restructuring group.
- An investor who holds bonds and has bought CDS refusing to consent to a restructuring, choosing to rely on CDS protection.
- An investor who owns bonds and has sold CDS selling bonds back to the Reference Entity.
- An investor who holds bonds and has bought CDS requiring that a restructuring plan be designed to trigger a credit event in order to receive the benefit of the CDS hedge (particularly relevant for companies outside the US).
- Trading the basis between the cash market and the CDS market, where a trade in the CDS market could be anticipated to affect the cash price and vice versa.
- An investor who has sold CDS providing rescue financing to distressed issuers.
- An investor who has sold CDS building a blocking or otherwise large position in cash instruments.

At the very least, the Commission should amend the rule to explicitly list out certain activities – such as the examples above – as conduct that the Commission will consider to be

presumptively legitimate. This clarification will allow market participants to trade freely between cash and derivative instruments and provide them with concrete guidance regarding which ordinary course conduct, that may have a foreseeable impact on the value of an SBS or related security, would not be subject to regulatory scrutiny.

We would also note that the broad and vague nature of the Proposed Rule may implicate ordinary course activities in SBS markets other than CDS. For example, an activist equity investor may utilize options or another equity SBS while building a position in a target company – would this investor run afoul of the Proposed Rule by then announcing its strategy or engaging with the company and causing an increase in the share price of the company and the value of the SBS? Presumably the Commission does not intend to prohibit this type of conduct, but the Proposing Release does not articulate any standard that would distinguish this conduct from other conduct meant to fall within the ambit of the Proposed Rule.

3. We Request That The Commission Revisit The Scope Of Proposed Rule 9j-1(b) And Provide Additional Clarity As To How It Would Be Applied

For the foregoing reasons, enacting Proposed Rule 9j-1(b) will cause substantial uncertainty in the market regarding what conduct is permitted and how to comply with the newly-enacted rules. In light of this uncertainty, SBS market participants may elect to curtail their use of SBS or withdraw from the market entirely. As noted by the Commission in the Proposing Release, decreased activity in the SBS market may cause decreased activity in the underlying capital markets and increase the cost of capital for issuers. We would therefore request that the Commission (i) remove the “valuation” prong from Proposed Rule 9j-1(b) as well as the application of the rule to other “payments and deliveries related thereto” and (ii) provide additional clarity as to the standard that would apply to claims brought under Proposed Rule 9j-1(b).

B. The Negligence-Based Liability Standard Under Proposed Rule 9j-1(a)(3)-(4) Would Be Disruptive To SBS Markets

Sections 9j-1(a)(3) and (4) of the Proposed Rule fail to account for certain unique features of the SBS market. For example, under the Proposed Rule, mistakes in calculating interim payments and errors resulting in delay of payment could result in liability. As these examples illustrate, the Proposed Rule effectively creates a negligence-based liability standard which is inconsistent with the concept of fraud: fraud typically requires intent or, at the very least, recklessness. Since violations of the Proposed Rule 9j-1(a) require only negligence and not any form of scienter, mere human error – which often occurs from the high volume nature of the SBS business/frequent settlement activities – could result in liability. Subjecting every trading decision to potential liability will deter many parties from entering into an SBS, increase their costs, and distort the markets. Overall, negligence-based liability is even more problematic in light of the expansive scope of the Proposed Rule. Furthermore, much of the conduct that could give rise to liability cannot be evaluated until after the conduct has already occurred, which is especially problematic where liability is negligence-based and not subject to a scienter requirement.

II. The Examples of Problematic Activity Cited in the Proposed Rule Should Not Concern the Commission

The Proposing Release provides several examples of the types of activities that the Commission considers problematic. However, in our view, many of these examples either (i) have already been addressed by the NTCE Supplement or (ii) are, in practice, not inherently problematic for SBS or cash markets. Set forth below we offer our observations regarding the list of the opportunistic trading strategies identified by the Commission in the Proposing Release. We request that the Commission refine its descriptions of trading strategies it considers problematic prior to adopting a final rule.

- (1) “A CDS buyer working with a reference entity to create an artificial, technical, or temporary failure-to-pay credit event in order to trigger a payment on a CDS to the buyer (and to the detriment of the CDS seller).”
- (2) “The strategy above (as well as other strategies) can be combined with causing the reference entity to issue a below-market debt instrument in order to artificially increase the auction settlement price for the CDS (i.e., by creating a new “cheapest to deliver” deliverable obligation).”

Collectively, examples (1) and (2) appear to specifically describe “Hovnanian”⁹, where a CDS buyer and the reference entity entered into a transaction that included (i) a “Failure to Pay” credit event designed not to cross-default any other debt obligations and (ii) the issuance of a long-dated bond with a below-market interest rate that traded at a substantial discount to par after issuance, which became the “cheapest-to-deliver” obligation that set the auction settlement price.

The conduct referenced in examples (1) and (2) was addressed by the NTCE Supplement and we do not believe these strategies are practically possible any longer. With respect to example (2), we would also note that the issuance of a “below-market debt instrument” would generally only affect the auction settlement price if the auction is conducted (and the related credit event occurs) at a time when the reference entity is not insolvent or near insolvency, because as the reference entity nears insolvency the value of its debt obligations will converge to their expected recovery in bankruptcy and features such as a below-market coupon rate will no longer be a material factor in their valuation. Thus, in addition to the NTCE Supplement provisions directly addressing the issuance of below-market obligations, the provisions of the NTCE Supplement addressing artificial credit events also serve as a deterrent for the issuance of below-market obligations.

- (3) “CDS buyers endeavoring to influence the timing of a credit event in order to ensure a payment (upon the triggering of the CDS) before expiration of a CDS, or a CDS seller taking similar actions to avoid the obligation to pay by ensuring a credit event occurs after the expiration of the CDS, or taking actions to limit or expand the number and/or kind of deliverable obligations in order to impact the recovery rate.”

This example cites a broad range of market activities, each of which we discuss separately below. As previously discussed, vague and far-reaching examples of potentially problematic

⁹ Matt Levine, *Hovnanian’s Weird CDS Trade Gets Weirder*, BLOOMBERG (Apr. 10, 2018), <https://www.bloomberg.com/opinion/articles/2018-04-10/hovnanian-s-weird-cds-trade-gets-weirder>.

conduct such as this are of extreme concern to market participants attempting to decipher what conduct would be prohibited under the Proposed Rule.

CDS buyer influencing the timing of a credit event: To the extent different from an artificial credit event described in example (1) (which is addressed by the NTCE Supplement), it is unclear what specific conduct the Commission is referencing here. One potential example of legitimate activity that could fall under this description is a “basis package” holder who is negotiating the debt restructuring of a company outside the U.S. requiring that a credit event occur as part of the restructuring such that they would receive the benefit of their hedge. This activity is an essential part of many restructuring processes outside of the U.S. and if captured by the Proposed Rule would severely undermine the efficacy of CDS as a hedge of credit risk.

CDS seller delaying a credit event: We believe this example refers to a CDS seller providing a loan to a near-insolvent reference entity to delay a bankruptcy filing. While we understand that this activity may appear to the Commission to disrupt the expectations of CDS market participants, we would strongly urge the Commission to make clear that this conduct is per se permissible under the Proposed Rule. The first order effect of this conduct that is a distressed issuer is able to secure financing when it may not otherwise be able to, but even more importantly, any uncertainty as to the permissibility of this conduct will act as a significant deterrent to CDS sellers who are considering whether to extend financing to non-investment grade issuers, which in turn will reduce credit availability and increase borrowing costs for issuers.¹⁰ Further, analysis of default timing is one of the most well-known issues to market participants who are entirely aware of the risks that the reference entity will find rescue financing and delay or avoid a default over any specific time period. Finally, while this strategy (sell near-dated CDS and then extend a loan to the reference entity) appears simple and obvious on its face, there are very few examples cited of it occurring, strongly suggesting that other more important factors are driving CDS protection sellers’ decisions regarding extending credit in these circumstances.

The Commission’s reference to limiting the kinds of deliverable obligations is ambiguous. It is unclear what type of behavior the Commission is referring to or whether the reference is meant to encompass anything other than “orphaning”, which is separately referenced below. Vague references such as this are concerning because they could be interpreted to pick up something as simple as acquiring a large position in cash instruments, exercising a put right or selling bonds back to a reference entity.

The Commission’s reference to expanding the kinds of deliverable obligations is similarly ambiguous, and the issuance of below-market debt obligations is discussed above and adequately covered by the NTCE Supplement. Generally speaking, the issuance of additional deliverable obligations supports additional liquidity in the CDS market and ensuring ample supply of deliverable obligations is part of a well-functioning CDS market.

¹⁰ We note that CDS protection sellers are also active participants in the underlying cash markets, and there is some evidence that they are *even more active* than CDS protection buyers in the debt instruments of reference entities. See Robert Czech, *Credit Default Swaps and Corporate Bond Trading*, BANK OF ENGLAND STAFF WORKING PAPER NO. 810 at 15.

- (4) “CDS sellers offering financing to restructure a reference entity in such a way that “orphans” the CDS – eliminating or reducing the likelihood of a credit event by moving the debts off the balance sheets of the reference entity and onto the balance sheets of a subsidiary or an affiliate that is not referenced by the CDS.”

Although not addressed by the NTCE Supplement, there are exceedingly few examples of conduct approaching an intentional orphaning transaction included in the academic sources cited by the Commission in the Proposing Release. In fact, the most frequently cited example of an intentional orphaning is “McClatchy”¹¹ – a transaction that was never actually consummated. We emphasize the rarity of orphaning transactions simply to underscore the fact that the CDS market is largely unaffected by this behavior even in circumstances where it is technically possible.¹²

- (5) “Taking actions, including as part of a larger restructuring, to increase (or decrease) the supply of deliverable obligations by, for example, adding (or removing) a co-borrower to existing debt of a reference entity, thereby increasing (or decreasing) the likelihood of a credit event and the cost of CDS.”

The conduct described by the Commission in this example appears to be practically the same type of behavior described in (3) with respect to deliverable obligations and we refer to our related comments set forth above.

Finally, with respect to opportunistic trading strategies generally, we would note that the transactions underpinning these strategies are complex and already involve substantial risks and costs to the opportunistic trader (including legal and reputational risks as well as the usual credit and counterparty risks associated with trading SBS and cash instruments) – any risk that a strategy will not work exactly as intended materially impacts the cost benefit analysis of attempting such a strategy and acts as a substantial deterrent to this behavior. In a market like the CDS market where participants are sophisticated and have diverging economic incentives it is incredibly difficult to design an opportunistic strategy that is not at risk of potential disruption. In our view, this effect already acts as a substantial barrier to use of opportunistic strategies and is evidenced by the extreme rarity of these events in a market where trillions of dollars of notional value have been traded referencing hundreds of companies.

III. The Commission’s Cost-Benefit Analysis of the Proposed Rule

Finally, we are concerned that the Commission has not adequately assessed the costs and benefits of Proposed Rule 9j-1 as required under the Administrative Procedures Act.

We are concerned that in evaluating the potential benefits of the Proposed Rule, the Commission has given undue focus to addressing the conduct underlying a few well-publicized

¹¹ Matt Levine, *Credit Derivatives Bring People Together*, BLOOMBERG (June 28, 2018), <https://www.bloomberg.com/opinion/articles/2018-06-28/credit-derivatives-bring-people-together>.

¹² Orphaning generally requires a very specific set of circumstances to be both achievable and economically worthwhile for a CDS seller to attempt. A comprehensive description of these circumstances is beyond the scope of this letter, but the CDS seller generally must at least have a large CDS position and also control a substantial majority of the deliverable obligations. Orphaning is also not a sure-fire strategy, as the reference entity can still issue new debt obligations and “un-orphan” the CDS.

events in the CDS market. Because these events have been, on the whole, extremely infrequent, and in some cases are no longer possible as a result of the NTCE Supplement, we doubt that concerns over these events have caused investors to materially curtail their activity in the CDS market. We therefore doubt that the Proposed Rule will result in any market-wide benefit from addressing those concerns. Similarly, we do not believe that the Proposed Rule will cause any significant reduction in the actual amount of manipulative activity occurring in the SBS markets.¹³ In any event, we would ask the Commission to solicit and consider feedback from market participants on this point prior to adopting the Proposed Rule in order to more accurately assess its potential benefits.

We would further note that in the Proposing Release, the Commission states that the Proposed Rule will provide “additional precision and specificity regarding the application of existing antifraud and anti-manipulation provisions of the Federal securities laws to misconduct in the security-based swap market”¹⁴, which the Commission believes may (a) decrease risk of fraud by “enhance[ing] the Commission’s oversight of the security-based swap market” and (b) “decrease compliance costs for some market participants who may, as a result of the additional specificity of the rule, need to spend fewer resources determining appropriate compliance under Section 9(j)”.¹⁵ As noted above, we believe that the Proposed Rule introduces substantial uncertainty in the application of anti-fraud and anti-manipulation provisions of the Federal securities laws, and we would therefore seriously question any potential benefits suggested to result from “additional precision and specificity” provided by the Proposed Rule.

Moreover, we believe that the uncertainty that the Proposed Rule will cause will materially increase compliance costs for market participants, to the extent that these participants elect to continue trading in the SBS markets at all. Under the Proposed Rule, market participants will have to assess how their activity in the SBS and cash markets will be assessed under the vague principles described in the Proposing Release without any guidance as to how these principles are to be applied by the Commission’s enforcement staff or how they would be applied by the courts. Further, conduct will, necessarily, be assessed by the Commission’s enforcement staff and the courts on a post facto basis, with a benefit of hindsight not available to market participants in real-time – thus, for market participants seeking to stay safely on-sides of the Proposed Rule, they will have to assess all potential outcomes (intended or not) of their conduct and whether there will be a sufficient record to satisfy enforcement staff as to their intent. This is likely to be a burdensome and time-consuming endeavor that will increase legal and compliance costs for market participants, and in many cases may not produce a clear result, even with respect to ordinary course activities.

We believe that, in its current form, the Proposed Rule potentially implicates a wide range of innocuous and ordinary course activities that are essential to well-functioning markets in both SBS and underlying cash instruments.¹⁶ As a result, we believe that, if enacted as proposed, the Proposed Rule is likely to have a chilling effect on SBS markets by reducing liquidity and the

¹³ See Section II, for a more detailed analysis of activities the Commission considers problematic that are unlikely to present issues in practice.

¹⁴ Proposing Release at 132.

¹⁵ *Id.*

¹⁶ See Section I.A.2, for a list of examples of ordinary course activities that are likely to be impeded by the Proposed Rule.

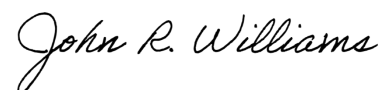
breadth of market participation, and in turn diminishing the information-value conveyed by the SBS market with respect to the related cash markets – further, these effects are likely to affect the related cash markets by reducing liquidity and capital formation and increasing the cost of capital for issuers.¹⁷

For the reasons set forth above, we are concerned that the Commission has not adequately considered the costs of implementing the Proposed Rule and we would urge the Commission to modify the Proposed Rule to address the serious concerns raised in this letter and by other commenters.

* * *

We appreciate the opportunity to provide comments in response to the Proposed Rule and the Commission’s consideration of our views. If you have any questions or would like additional information, please contact the undersigned at [REDACTED].

Very truly yours,



John R. Williams

¹⁷ We strongly agree with the Commission’s statements that “[t]he market participation increases in security-based swaps may enhance liquidity in the underlying market and related swap indices, and in general, lower debt and equity capital costs for security-based swaps referenced entities” and that “the underlying security market uses the derivative market to assess its quality, as the derivative market in some circumstances is forward looking, liquid, and more informative than the underlying market”, and we appreciate the Commission’s inclusion of these important principles in the Proposing Release. *See* Proposing Release at 133-134.