

William J. Harrington

917-680-1465

April 23, 2025

**CFTC FOIA Compliance Office**

Commodity Futures Trading Commission

Three Lafayette Centre

1155 21st Street NW

Washington, DC 20581

[FOIAsubmissions@cftc.gov](mailto:FOIAsubmissions@cftc.gov)

**Re: Freedom of Information Act Request**

***“The January 24th resubmission of the presentation will also be maintained in the CFTC record associated with your above-referenced petition [WJH § 13.1 Petition of May 26, 2020] as to which the Commission has not opened a separate public comment file.”<sup>1</sup>***

Dear All,

My name is Bill Harrington. I have pursued full-time, unpaid advocacy to improve the regulation and capitalization of the flip-clause-swap-contract since January 1, 2011.<sup>2</sup> My sole aim is to bolster the common good by ridding the United States of demonstrably damaging finance.

I submit today’s Freedom of Information Act (FOIA) Request electronically as the Commission Special Announcement stipulates.<sup>3</sup>

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<sup>1</sup> “[CFTC Secretary Kirkpatrick Email Response to Bill Harrington and Three SEC Entities](#)”, February 5, 2025. See Appendix A, pp5-6.

<sup>2</sup> (<https://www.sec.gov/comments/4-790/4-790.htm>), accessed April 23, 2025.

<sup>3</sup> “*Special Announcement—To facilitate the FOIA request process during the COVID-19 pandemic, please submit all requests electronically if possible.*” (<https://www.cftc.gov/FOI/index.htm>), accessed April 23, 2025.

#### **“Reasonable Description of Records Sought”<sup>4</sup>**

I seek **all of the one or more parts** of the “CFTC record associated” with “WJH § 13.1 Petition of May 26, 2020 (‘§ 13.1 Petition to the Secretariat for the U.S. Commodity Futures Trading Commission to Issue a Rule that Prohibits a Swap Dealer, Major Swap Participant, or Other Regulated Entity from Predicating a Swap Obligation on a Flip Clause, Walk-Away, or Variable Subordination’)” **that I did not provide** via email to the Secretary of the Commission on or before today, April 23, 2025.<sup>5</sup>

#### **“Agreement to Pay”<sup>6</sup>**

I will “pay for any copying, search, or review costs incurred in processing the request.”

#### **Information to Aid the FOIA Response**

Regarding the “CFTC record associated’ with ‘WJH § 13.1 Petition of May 26, 2020’”, please see CFTC Secretary Chris Kirkpatrick’s email to me of February 5, 2025. Today’s FOIA Request excerpts the Kirkpatrick email on page 1 and on page 3, and reproduces the whole email in “Appendix A”, pages 5-6.

The CFTC posts “WJH § 13.1 Petition of May 26, 2020 (‘§ 13.1 Petition to the Secretariat for the U.S. Commodity Futures Trading Commission to Issue a Rule that Prohibits a Swap Dealer, Major Swap Participant, or Other Regulated Entity from Predicating a Swap Obligation on a Flip Clause, Walk-Away, or Variable Subordination’)” on [cftc.gov](https://www.cftc.gov).<sup>7</sup>

I provided significant parts of the “CFTC record associated’ with ‘WJH § 13.1 Petition of May 26, 2020’” — collectively, the respective parts may comprise most if not all of the record — via emails to the Secretary of the Commission from one or both of [wjharrington@yahoo.com](mailto:wjharrington@yahoo.com) and [bill@croataninstitute.org](mailto:bill@croataninstitute.org).

Today’s FOIA Request must return at least one item, namely, CFTC Secretary Kirkpatrick’s belated reply to me of June 26, 2020, in which the Secretary finally acknowledged CFTC receipt of my petition of May 26, 2020.<sup>8</sup>

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<sup>4</sup> “Each FOIA request should include a reasonable description of the records sought ...” (<https://www.cftc.gov/FOI/foiarequests.html>), accessed April 23, 2025.

<sup>5</sup> “CFTC Secretary Kirkpatrick Email Response to Bill Harrington and Three SEC Entities”, February 5, 2025. See Appendix A, pp5-6.

<sup>6</sup> “Each FOIA request should include ... an agreement to pay for any copying, search, or review costs incurred in processing ....” (<https://www.cftc.gov/FOI/foiarequests.html>), accessed April 23, 2025.

<sup>7</sup> (<https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3106>), accessed April 23, 2025.

<sup>8</sup> “([https://croataninstitute.org/wp-content/uploads/2022/06/CFTC-WJH-2020-6-26-Sec-13.1-Rulemaking-Petition-Acknowledgment\\_WJHarrington\\_06-26-2020.pdf](https://croataninstitute.org/wp-content/uploads/2022/06/CFTC-WJH-2020-6-26-Sec-13.1-Rulemaking-Petition-Acknowledgment_WJHarrington_06-26-2020.pdf)).

**FOIA Rationale — The “Commission has not opened a separate comment file” for WJH petition<sup>9</sup>**

***“The January 24th resubmission of the presentation will also be maintained in the CFTC record associated with your above-referenced petition as to which the Commission has not opened a separate public comment file.”<sup>10</sup>***

The Commission may well opt to “waive or reduce fees.”<sup>11</sup> After all, “disclosure of the information” **is vital** to “the public interest” that I have served since 2011 by instructing the CFTC and other U.S. regulators on the “single, best meaning of the statute authorizing” regulation of the “flip clause, walkaway, and other variable subordination”.<sup>12, 13</sup>

*“My comprehensive work to evaluate the flip-clause-swap-contract conclusively demonstrates that the unequivocally best and only reasonable CFTC action is to ban the contract inside and outside the U.S. Ditto CFTC statutory authority. An overarching Dodd-Frank provision operates to suppress the flip-clause-swap-contract by restricting CFTC ability to exempt entities from capital and margin rules. Further, three more Dodd-Frank provisions pertaining to other financial regulators also operate to suppress the flip-clause-swap-contract.”<sup>14</sup>*

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<sup>9</sup> “A FOIA request is required to obtain non-public records.” ([FOIA | CFTC](#)), accessed April 23, 2025.

<sup>10</sup> “CFTC Secretary Kirkpatrick Email Response to Bill Harrington and Three SEC Entities”, February 5, 2025. See Appendix A, pp5-6 herein.

<sup>11</sup> “A requester who seeks a fee waiver pursuant to the Commission’s rules should show that disclosure of the requested information would be in the public interest. II “The Commission will waive or reduce fees if . . . disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” (<https://www.cftc.gov/FOI/foiarequests.html>), accessed April 23, 2025.

<sup>12</sup> The White House, “Fact Sheet: President Donald J. Trump Directs Repeal of Regulations That Are Unlawful Under 10 Recent Supreme Court Decisions”, April 9, 2025. “[A]gencies are to repeal any regulation that is not consonant with the “single, best meaning” of the statute authorizing it.” (<https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-directs-repeal-of-regulations-that-are-unlawful-under-10-recent-supreme-court-decisions/>).

<sup>13</sup> The Dodd-Frank Act is “the statute authorizing” regulation of the “flip clause, walkaway, and other variable subordination.” See Harrington, William J., “Submission to the U.S. Court of Appeals for the 2nd Circuit ‘In re Lehman Brothers Holdings Inc., No. 18-1079—’Motion to File Proposed Amicus Curiae Brief to the U.S. 2nd Circuit Re: Case No. 18-1079 (Lehman vs 250 Financial Entities Re Flip Clause Enforceability)’”, filed June 25, 2019 and cured July 15, 2019, p17 (PDF-p18). “In July 2010, Congress enacted its clear intent to eliminate the flip-clause-swap-contract in multiple sections of the Dodd-Frank Act.” Also, see the respective sections “Argument, I. A. Financial Regulators Will Impose Rigorous Margin Requirements on ALL Uncleared Swap Contracts (Sections 731 and 764)”, pp24-25 (PDF-pp 64-65) and “Argument, I. B. Walkaway Clauses Are NOT Enforceable Against FDIC or FHFA (Section 210)”, pp28-29 (PDF-pp68-69). **At Court docket and** (<https://www.sec.gov/comments/4-799/4799-513135-1484802.pdf>), accessed April 23, 2025.

<sup>14</sup> Harrington, William J. “Joint Submission to CFTC Regarding (1) ‘§ 13.1 Petition for Rulemaking (CFTC Flip Clause Ban)’ AND (2) ‘CFTC Japan Capital Comparability Determination’ AND to SEC

In fact, “disclosure of the information” **is exponentially vital** to “the public interest” because the information will empower others to join me in instructing the CFTC on the “single, best meaning” of the Dodd-Frank Act regarding regulation of the “flip clause, walkaway, and other variable subordination.” To crowdsource group tutelage of the CFTC, I will immediately post the disclosed information with my analyses, and disseminate the materials widely to target recipients.

More broadly, “disclosure of the information” will contribute “significantly to public understanding of the operations or activities of the government” by spotlighting that the CFTC ignores the public good by ignoring the “single, best” action to eradicate the single, worst type of crisis-causing finance, namely, the “flip clause, walkaway, and other variable subordination.”

To wit, the information disclosure will likely show that I generated the overwhelming part, if not almost all, of the “‘CFTC record associated’ with ‘WJH § 13.1 Petition of May 26, 2020’”.<sup>15</sup> In turn, CFTC substantiation that my petition contributions are the “single, best” work on the “single, best meaning” of the Dodd-Frank Act regarding CFTC regulation of the “flip clause, walkaway, and other variable subordination” **must mean** that the CFTC should have enacted my petition in 2020.

To the extent that “disclosure of the information” **does produce one or more parts** of the “‘CFTC record associated’ with ‘WJH § 13.1 Petition of May 26, 2020’” that one or more persons other than me contributed, I will quickly refine my already “single, best” work by posting an evaluation of each contribution on attributes such as petition support or rejection, rationale, information integrity, logic, and vested “commercial interest”.

For my part, the “disclosure of the information” in not and cannot be in “in the commercial interest of the requester”. Please see today’s FOIA Request, page 1.

*“I have pursued full-time, unpaid advocacy to improve the regulation and capitalization of the flip-clause-swap-contract since January 1, 2011. My sole aim is to bolster the common good by ridding the United States of demonstrably damaging finance.”*

If you have any questions, you may telephone me at 917-680-1465 and email me at [wjharrington@yahoo.com](mailto:wjharrington@yahoo.com).<sup>16</sup>

Best regards,

Bill Harrington

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Regarding (3) ‘Petition for Rulemaking No. 4-790 (SEC Flip Clause Ban)’ AND (4) ‘Petition for Rulemaking No. 4-799 (SEC Clarity on NRSROs)’”, October 10, 2024, p8.

(<https://www.sec.gov/comments/4-790/4790-528135-1517642.pdf>), accessed April 23, 2025.

<sup>15</sup> For instance, if the disclosed information comprises only the Christopher Kirkpatrick reply to me of June 26, 2020.

<sup>16</sup> “Sample FOIA Request”. (<https://www.cftc.gov/FOI/foiarequests.html>), accessed April 23, 2025.

## **APPENDIX A**

**CFTC Secretary Kirkpatrick Email Response to Bill Harrington and  
Three SEC Entities, February 5, 2025.**

----- Forwarded message -----

From: Kirkpatrick, Chris <[CKirkpatrick@cftc.gov](mailto:CKirkpatrick@cftc.gov)>

Date: Wed, Feb 5, 2025 at 12:50 PM

Subject: RE: [EXTERNAL] Re: SEC File Numbers 4-790 & 4-799 // CFTC File for WJH § 13.1 Petition of May 26, 2020

To: Bill Harrington <[bill@croataninstitute.org](mailto:bill@croataninstitute.org)>, Countryman, Vanessa A.

<[CountrymanV@sec.gov](mailto:CountrymanV@sec.gov)>, [rule-comments@sec.gov](mailto:rule-comments@sec.gov) <[rule-comments@sec.gov](mailto:rule-comments@sec.gov)>, Secretarys-Office <[secretarys-office@sec.gov](mailto:secretarys-office@sec.gov)>

Cc: [supervision-cra@esma.europa.eu](mailto:supervision-cra@esma.europa.eu) <[supervision-cra@esma.europa.eu](mailto:supervision-cra@esma.europa.eu)>, [ocr@sec.gov](mailto:ocr@sec.gov) <[ocr@sec.gov](mailto:ocr@sec.gov)>, [creditratings@fca.org.uk](mailto:creditratings@fca.org.uk) <[creditratings@fca.org.uk](mailto:creditratings@fca.org.uk)>

Good afternoon,

The CFTC confirms receipt of your January 24, 2025, submission. The presentation attached to that submission was posted in the appropriate rulemaking comment file at the time the presentation was originally delivered to the CFTC, and remains publicly available at this location:

<https://comments.cftc.gov/PublicComments/ViewExParte.aspx?id=1016&SearchText=>.

**The January 24th resubmission of the presentation will also be maintained in the CFTC record associated with your above-referenced petition, as to which the Commission has not opened a separate public comment file [emphasis added].**

Best regards,

**The Secretariat**

**Office of the General Counsel**

**Commodity Futures Trading Commission**