

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038-AE89

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rule

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is adopting amendments to the margin requirements for uncleared swaps for swap dealers (“SD”) and major swap participants (“MSP”) for which there is no prudential regulator (the “CFTC Margin Rule”). Specifically, the Commission is adopting an amendment, along with certain conforming, technical changes, to extend the compliance schedule for the posting and collection of initial margin (“IM”) under the CFTC Margin Rule to September 1, 2021, for entities with smaller average daily aggregate notional amounts of swaps and certain other financial products (“Final Rule”). The compliance schedule currently extends from September 1, 2016 to September 1, 2020. The revised compliance schedule mitigates the potential of a market disruption, which could be triggered by the large number of entities that would come into the scope of the IM requirements at the end of the current compliance schedule on September 1, 2020.

DATES: This Final Rule will become effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

Section 4s(e) of the Commodity Exchange Act (“CEA”)¹ requires the Commission to adopt rules establishing minimum initial and variation margin requirements for all swaps² that are (i) entered into by an SD or MSP for which there is no Prudential Regulator³ (collectively, “covered swap entities” or “CSEs”) and (ii) not cleared by a registered derivatives clearing organization (“uncleared swaps”).⁴ To offset the greater risk to the SD or MSP⁵ and the financial system arising from the use of

¹ 7 U.S.C. 1 *et seq.*

² For the definition of swap, *see* section 1a(47) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(47) and 17 CFR 1.3. The term “swap” includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

³ *See* 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a Prudential Regulator must meet the margin requirements for uncleared swaps established by the applicable Prudential Regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term “Prudential Regulator” to mean the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The definition further specifies the entities for which these agencies act as Prudential Regulators. The Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (“Prudential Regulators’ Margin Rule”).

⁴ *See* 7 U.S.C. 6s(e)(2)(B)(ii). In Commission regulation 23.151, the Commission further defined this statutory language to mean all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that the Commission has exempted from registration as provided under the CEA. 17 CFR 23.151.

⁵ For the definitions of SD and MSP, *see* section 1a of the CEA and Commission regulation 1.3. 7 U.S.C. 1a and 17 CFR 1.3.

uncleared swaps, these requirements must (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps held by the SD or MSP.⁶

The Basel Committee on Banking Supervision (“BCBS”) and the Board of the International Organization of Securities Commissions (“IOSCO”) established an international framework for margin requirements for uncleared derivatives in September 2013 (the “BCBS/IOSCO framework”).⁷ After the establishment of the BCBS/IOSCO framework, the CFTC, on January 6, 2016, consistent with Section 4s(e), promulgated rules requiring CSEs to collect and post initial and variation margin for uncleared swaps,⁸ adopting the implementation schedule set forth in the BCBS/IOSCO framework, including the revised implementation schedule adopted on March 18, 2015.⁹

In July 2019, the BCBS and IOSCO further revised the framework to extend the implementation schedule for compliance with IM requirements to September 1, 2021.¹⁰ Shortly after, the Commission proposed to amend and similarly extend the compliance schedule for the IM requirements under the CFTC Margin Rule (“Proposal”).¹¹

II. Final Rule

⁶ 7 U.S.C. 6s(e)(3)(A).

⁷ See BCBS/IOSCO Margin requirements for non-centrally cleared derivatives (September 2013), available at <https://www.bis.org/publ/bcbs261.pdf>.

⁸ See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission’s regulations. 17 CFR 23.150 - 23.159, 23.161. In May 2016, the Commission amended the CFTC Margin Rule to add Commission regulation 23.160, providing rules on its cross border application. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016). 17 CFR 23.160.

⁹ See BCBS/IOSCO Margin requirements for non-centrally cleared derivatives (March 2015), available at <https://www.bis.org/bcbs/publ/d317.pdf>.

¹⁰ See BCBS/IOSCO Margin requirements for non-centrally cleared derivatives (July 2019), available at <https://www.bis.org/bcbs/publ/d475.pdf> (“July 2019 BCBS/IOSCO Margin Framework”).

¹¹ See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 56950 (Oct. 24, 2019).

The Commission is adopting the Final Rule to amend the CFTC Margin Rule to extend the schedule for compliance with the IM requirements by adding September 1, 2021 as an additional phase-in date, in order to help ensure continued access to the swaps markets for certain entities with relatively smaller levels of swaps trading activities as discussed below and in light of the recent revision to the implementation schedule set forth in the BCBS/IOSCO framework. The Commission received nine comment letters expressing support for the Proposal to extend the CFTC compliance schedule for the IM requirements, noting that the change aligns the CFTC Margin Rule with the BCBS/IOSCO framework and allows market participants to manage resources and mitigate trading disruptions that could arise at the conclusion of the current compliance schedule.¹²

The CFTC Margin Rule requires covered swap entities to post and collect IM with counterparties that are SDs, MSPs, or financial end users with material swap exposure (“MSE”)¹³ (“covered counterparties”) in accordance with a compliance

¹² The Commission received nine relevant comment letters from the Asset Management Group of the Securities Industry and Financial Markets Association, Blackrock, Inc., the Futures Industry Association, the eleven Federal Home Loan Banks, the Global Foreign Exchange Division of the Global Financial Markets Association, the International Swaps and Derivatives Association, Inc., the Institute of International Bankers jointly with the Securities Industry and Financial Markets Association, the Managed Funds Association, and State Street Corporation. Some of these comment letters, in addition to a letter from the American Council of Life Insurers, addressed issues outside the scope the Proposal. The Commission will monitor these issues as well as any additional issues that may be raised in the future concerning the implementation and operation of the CFTC Margin Rule, and act upon them as appropriate.

¹³ Commission regulation 23.151 provides that MSE for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July or August of the previous calendar year that exceeds \$8 billion, where such amount is calculated only for business days. A company is a “margin affiliate” of another company if: (i) either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (ii) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards; or (iii) for a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied. 17 CFR 23.151.

schedule set forth in Commission regulation 23.161.¹⁴ The compliance schedule comprises five compliance dates, from September 1, 2016 to September 1, 2020, staggered such that CSEs and covered counterparties, starting with the largest average daily aggregate notional amounts (“AANA”) of uncleared swaps and certain other financial products, and then successively lesser AANA, come into compliance with the IM requirements in a series of five phases.

The fourth compliance date, September 1, 2019, brought within the scope of compliance CSEs and covered counterparties each exceeding \$750 billion in AANA. The fifth and last compliance date of September 1, 2020, absent a rule change, will bring into the scope of compliance all remaining CSEs and covered counterparties, including financial end user counterparties with an MSE exceeding \$8 billion in AANA. As a result of the large reduction in the compliance threshold from \$750 billion to \$8 billion at the end of the compliance schedule, a significant number of financial end user counterparties, including relatively small counterparties, will be required to comply with the IM requirements and implement related operational processes. According to the CFTC’s Office of the Chief Economist (“OCE”), compared with the first through the fourth phases of compliance, which brought approximately 40 entities into scope, phase 5 could bring approximately 700 entities, as well as 7,000 relationships representing the number of IM agreements that would need to be in place to carry out swap transactions.¹⁵

As stated in the Proposal, market participants have expressed concerns regarding

¹⁴ See 17 CFR 23.161.

¹⁵ See Richard Haynes, Madison Lau, & Bruce Tuckman, *Initial Margin Phase 5* (Oct. 24, 2018), available at https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf (“OCE Initial Margin Phase 5 Study”).

the onset of phase 5 under the current schedule given the operational complexity associated with IM calculation and third-party segregation of IM collateral.¹⁶ As a large number of counterparties prepare to meet applicable IM deadlines, newly in-scope entities could encounter operational difficulties because a significant number of the entities may engage the same limited number of entities that provide IM required services, involving, among other things, the preparation of IM-related documentation, the approval and implementation of risk-based models for IM calculation, and custodial arrangements. The potential for compliance delays may lead to disruption in the markets, including the possibility that some counterparties could, for a time, be prohibited from entering into uncleared swaps and, therefore, be unable to use swaps to hedge their financial risk. In recognition of these difficulties, BCBS/IOSCO revised its framework to extend the schedule for compliance with the IM requirements and provide an additional phase-in period for smaller counterparties.¹⁷

The CFTC believes it is appropriate to amend the CFTC Margin Rule consistent with the BCBS/IOSCO framework's revision. In particular, the Commission is adopting the Final Rule to extend the compliance schedule for the IM requirements in order to mitigate the potential for a market disruption that could be brought upon by phase 5 at the end of the current compliance schedule. The Commission's action reflects an effort to undertake coordinated action with international counterparts and the Prudential

¹⁶ See, e.g., Letter from the Securities Industry and Financial Markets Association ("SIFMA"), the American Bankers Association ("ABA"), the Global Foreign Exchange Division of the Global Financial Markets Association ("GFXD"), and the Institute of International Bankers ("IIB") (April 5, 2019); Letter from the Managed Funds Association (June 20, 2019).

¹⁷ See July 2019 BCBS/IOSCO Margin Framework.

Regulators¹⁸ to achieve regulatory harmonization with respect to uncleared swaps margin.

In adopting the Final Rule, the Commission has considered the relatively small amount of swap activity of the financial end users that would be subject to the one year extension. The OCE has estimated that the average AANA per entity in phase 5, under the current schedule, would be \$54 billion compared to an average \$12.71 trillion AANA for each entity in phases 1, 2, and 3 and \$1 trillion in phase 4. The OCE has also estimated that the total AANA for entities that would be subject to the one year extension, if adopted, would be approximately three percent of the total AANA across all the phases.¹⁹ Given the relatively small amount of swap activity of the financial end users in the extended compliance date group, the Commission believes the Final Rule will have a relatively minor impact on the systemic risk mitigating effects of the IM requirements during the extension period.

As proposed, the Final Rule amends Commission regulation 23.161(a) by adding a sixth phase of compliance for certain smaller entities that are currently subject to phase 5. The Final Rule requires compliance by September 1, 2020, for CSEs and covered counterparties with an AANA ranging from \$50 billion up to \$750 billion. The compliance date for all other remaining CSEs and covered counterparties, including financial end user counterparties exceeding an MSE of \$8 billion in AANA, is extended to September 1, 2021.

In addition, the Commission is adopting non-substantive, conforming technical

¹⁸ The Prudential Regulators recently issued a notice of proposed rulemaking to, among other things, revise their rules consistent with the revised BCBS/IOSCO framework. *See* Margin and Capital Requirements for Covered Swap Entities, 84 FR 59970 (Nov. 7, 2019).

¹⁹ *See* OCE Initial Margin Phase 5 Study at 4-5.

changes to Commission regulation 23.161(a).²⁰ The Commission is amending Commission regulation 23.161(a) to replace, where applicable, between an entity or a margin affiliate only one time with between the entity and a margin affiliate only one time. This change conforms the CFTC Margin Rule to the rule text of the Prudential Regulators' Margin Rule, promoting harmonization between both regulators.

The Commission is also amending Commission regulation 23.161(a) to replace, where applicable, shall not count a swap or a security-based swap that is exempt pursuant to § 23.150(b) with shall not count a swap that is exempt pursuant to § 23.150(b). This change removes the term “security-based swap” from certain parts of Commission regulation 23.161(a). The change is necessary because, due to a transcription error, the current rule text incorrectly indicates that Commission regulation 23.150(b) exempts security-based swaps from the CFTC Margin Rule even though such provision only applies to swaps. Notwithstanding this technical change that eliminates the reference to Commission regulation 23.150(b) with respect to security-based swaps, Commission regulation 23.161(a) will continue to exclude any security-based swap, for purposes of the calculation of the various thresholds set forth in Commission regulation 23.161(a), that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934, as is the case under the current rule text.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”)²¹ imposes certain requirements

²⁰ The adopted changes include revisions to text in Commission regulation 23.161(a) relating to compliance dates that have already passed.

²¹ 44 U.S.C. 3501 *et seq.*

on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. The Final Rule, as adopted, contains no requirements subject to the PRA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) requires agencies, in promulgating regulations, to consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a flexibility analysis regarding the economic impact on those entities.²² In the Proposal, the Commission certified that the Proposal would not have a significant economic impact on a substantial number of small entities. The Commission requested comments with respect to the RFA and received no comments.

As discussed in the Proposal, the Final Rule only affects SDs and MSPs that are subject to the CFTC Margin Rule and their covered counterparties, all of which are required to be eligible contract participants (“ECPs”).²³ The Commission has previously determined that SDs, MSPs, and ECPs are not small entities for purposes of the RFA.²⁴ Therefore, the Commission believes that the Final Rule will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies

²² 5 U.S.C. 601 *et seq.*

²³ Each counterparty to an uncleared swap must be an ECP, as the term is defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18) and Commission regulation 1.3, 17 CFR 1.3. *See* 7 U.S.C. 2(e).

²⁴ *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs) and Opting Out of Segregation, 66 FR 20740, 20743 (April 25, 2001) (ECPs).

pursuant to 5 U.S.C. 605(b) that this Final Rule will not have a significant economic impact on a substantial number of small entities.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations. Further, the Commission has considered the extraterritorial reach of the Final Rule and notes where this reach may be especially relevant.

This Final Rule extends the compliance schedule for the CFTC Margin Rule and introduces an additional compliance date for smaller counterparties.²⁵ The revised compliance schedule requires CSEs and covered counterparties, with an AANA ranging from \$50 billion up to \$750 billion, to exchange IM in phase 5. All remaining CSEs and covered counterparties, including financial end user counterparties exceeding an MSE of \$8 billion in AANA, will come into scope in the additional sixth phase beginning September 1, 2021.

As discussed in the Proposal, the Commission believes that as a result of the large number of counterparties that would be required to comply with the IM requirements for

²⁵ The Commission is also adopting conforming technical changes to Commission regulation 23.161(a). Given the non-substantive nature of these changes, there are no costs or benefits to be considered.

the first time at the end of the current compliance schedule, market disruption may arise. The markets may be strained given counterparties' demand for resources and services to meet the September 2020 deadline and operationalize the exchange of IM, involving, among other things, counterparty onboarding, approval and implementation of risk-based models for the calculation of IM, and documentation associated with the exchange of IM.

The baseline against which the benefits and costs associated with the Final Rule are compared is the uncleared swaps markets as they exist today, including the impact of the current compliance schedule and the implementation of phase 5 on September 1, 2020. With this as the baseline, the following are the benefits and costs of the Final Rule.

The Commission sought comment on all aspects of the cost and benefit considerations in the Proposal but received no substantive comments.

1. Benefits

As described above, the Final Rule extends the compliance schedule for the IM requirements for certain smaller entities to September 1, 2021. The Final Rule is intended to alleviate the potential congestion and possible market disruption resulting from the large number of counterparties that would come into scope under the current compliance schedule and the strain on the uncleared swaps markets resulting from the increased demand for limited resources and services to set up operations to comply with the IM requirements, including counterparty onboarding, adoption and implementation of risk-based models to calculate IM, and documentation associated with the exchange of IM.

The Final Rule prioritizes applicable IM compliance deadlines in order to focus on certain financial end users, SDs, and MSPs that engage in greater swap trading activity

and that may significantly contribute to systemic risk in the financial markets, while providing a 12-month delay for smaller counterparties, whose swap trading may not pose the same level of risk, to prepare for their eventual compliance with the IM requirements. The Final Rule therefore promotes a smooth and orderly transition into IM compliance.

The Final Rule amends the CFTC Margin Rule consistent with the revised BCBS/IOSCO margin framework and the Prudential Regulators' proposed rulemaking to amend the IM compliance schedule.²⁶ The Final Rule promotes harmonization with international and domestic margin regulatory requirements and reduces the potential for regulatory arbitrage.

2. *Costs*

The Final Rule extends the time frame for compliance with the IM requirements for the smallest CSEs and covered counterparties in terms of notional amount, including SDs and MSPs and financial end users that exceed an MSE of \$8 billion, by an additional 12 months. Uncleared swaps entered into during this period with the smallest covered counterparties may be treated as legacy swaps exempt from the IM requirements. In the Commission's view, the contagion risk associated with these potentially uncollateralized legacy swaps is a lesser concern because the legacy swap portfolios will be entered into with counterparties that engage in lower levels of notional trading.

The Final Rule also delays the implementation of IM by smaller CSEs. There may not be as much IM posted to protect the financial system as would otherwise be the case. As such, the severity of any financial contagion that might occur may potentially increase.

²⁶ See *supra*, n. 18.

3. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of the Final Rule pursuant to the five considerations identified in section 15(a) of the CEA as follows:

(a) Protection of Market Participants and the Public

The Final Rule will protect market participants and the public against the potential disruption that may be caused by the large number of counterparties that would come into scope of the IM requirements at the end of the current compliance schedule.

Under the revised compliance schedule, fewer counterparties will come into scope in phase 5 and many smaller counterparties will be able to defer compliance until the sixth and last compliance date on September 1, 2021. As such, the demand for resources and services to achieve operational readiness will be reduced, mitigating the potential strain on the uncleared swaps markets.

Also, the Final Rule will appropriately prioritize IM compliance requirements for counterparties and CSEs that have greater swap trading activity, while giving more time to smaller counterparties to come into compliance with the IM requirements.

Inasmuch as this Final Rule delays the implementation of IM for the smallest CSEs, there may not be as much IM posted to protect the financial system as would otherwise be the case. Consequently, the severity of any financial contagion that might occur may potentially increase, especially among the smallest CSEs.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

The Final Rule will make the uncleared swaps markets more streamlined by facilitating counterparties' transition into compliance with the IM requirements.

Counterparties will have additional time to document their swap relationships and set up adequate processes to operationalize the exchange of IM. As such, the Final Rule will promote fairer competition among counterparties in the uncleared swaps markets, as it will remove the potential incentive of CSEs to prioritize arrangements with larger counterparties to the detriment of smaller counterparties and will help maintain the current state of market efficiency.

By preventing the market disruption that could be brought upon by the large number of counterparties that would come into scope at the end of the current compliance schedule, the Final Rule promotes the financial integrity of the markets, reducing the probability of congestion resulting from the heightened demand for limited financial infrastructure resources. On the other hand, there will be less IM posted overall, making uncleared swaps markets more susceptible to financial contagion where the default of one counterparty could lead to subsequent defaults of other counterparties potentially harming market integrity.

(c) Price Discovery

The Final Rule will not harm price discovery and might help preserve it. In the absence of the Final Rule, counterparties, in particular smaller counterparties, could be discouraged from entering or even foreclosed from entering the uncleared swaps markets because they may not be able to secure resources and services in a timely manner to operationalize the exchange of IM. These counterparties thus could be shut out from the uncleared swaps markets, potentially reducing liquidity and harming price discovery.

(d) Sound Risk Management

The Final Rule will stave off the potential market disruption that could result from

the large number of counterparties that would come into the scope of the IM requirements at the end of the current compliance schedule. The extended compliance schedule will alleviate the potential congestion in establishing the financial infrastructure to post IM between in scope entities and will give counterparties time to prepare for the exchange of IM and to establish operational processes tailored to their uncleared swaps and associated risks. The additional compliance time may also improve risk management practices because there might be some parties who may prefer to enter into cleared swaps rather than install otherwise required financial infrastructure in a short time frame, choosing to enter into swaps that are more standardized but that do not match their risk management needs as well.

The Commission acknowledges that the Final Rule extends the time frame for compliance with the IM requirements for the smallest CSEs and covered counterparties by an additional 12 months. Uncleared swaps entered into during this period by these entities may be treated as legacy swaps and will not be subject to the IM requirements. As a result, lesser amounts of margin will be collected to mitigate the risk of uncleared swaps, which may increase the possibility of systemic risk. Nevertheless, the risk associated with these potentially uncollateralized legacy swaps is a lesser concern because the legacy swap portfolios will be entered into with counterparties that engage in lower levels of notional trading.

(e) Other Public Interest Considerations

The Final Rule amends the CFTC Margin Rule consistent with the revised BCBS/IOSCO margin framework and the Prudential Regulators' proposed rulemaking to amend the IM compliance schedule, promoting harmonization with international and

domestic margin regulatory requirements and reducing the potential for regulatory arbitrage.

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b) of the CEA), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.²⁷

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. Further, the Commission believes that allowing parties more time to come into compliance with the CFTC Margin Rule by splitting the last compliance phase into two phases will preserve competition by encouraging more participation in the uncleared swaps markets. The Commission requested comments on whether the Proposal implicated any other specific public interest to be protected by the antitrust laws and received no comments.

The Commission has considered this Final Rule to determine whether it is anticompetitive and has identified no anticompetitive effects. The Commission requested comments on whether the Proposal was anticompetitive and, if it is, what the anticompetitive effects are, and received no comments.

Because the Commission has determined that the Final Rule is not

²⁷ 7 U.S.C. 19(b).

anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major swap participants, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading

Commission amends 17 CFR part 23 as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b-1,6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111-203, 124 Stat. 1641 (2010).

2. Amend § 23.161 by:

a. Revising paragraphs (a)(1)(iii), (a)(3)(iii), (a)(4)(iii), (a)(5)(iii), and (a)(6); and

b. Adding a new paragraph (a)(7).

§ 23.161 Compliance dates.

(a) * * *

(1) * * *

(iii) In calculating the amounts in paragraphs (a)(1)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10(e)).

* * * * *

(3) * * *

(iii) In calculating the amounts in paragraphs (a)(3)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10(e)).

(4) * * *

(iii) In calculating the amounts in paragraphs (a)(4)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10(e)).

(5) * * *

(iii) In calculating the amounts in paragraphs (a)(5)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10(e)).

(6) September 1, 2020 for the requirements in §23.152 for initial margin for any

uncleared swaps where both—

(i) The covered swap entity combined with all its margin affiliates; and

(ii) Its counterparty combined with all its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in March, April, and May 2020 that exceeds \$50 billion, where such amounts are calculated only for business days; and where

(iii) In calculating the amounts in paragraphs (a)(6)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o.10(e)).

(7) September 1, 2021 for the requirements in §23.152 for initial margin for any other covered swap entity with respect to uncleared swaps entered into with any other counterparty.

* * * * *

Issued in Washington, DC, on March 25, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Commissioner Rostin Behnam

I vote to approve the Commodity Futures Trading Commission's (the "Commission" or "CFTC") decision today to extend the compliance schedule for the posting and collection of initial margin ("IM") by swap dealers ("SDs") and major swap participants ("MSPs") for which there is no prudential regulator (collectively, "covered swap entities") under the CFTC Margin Rule, 17 CFR 23.160, which implements section 4s(e) of the Commodity Exchange Act ("CEA").¹ As a seminal part of the policy response following the 2008 financial crisis, Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act² added section 4s(e) requiring the adoption of rules establishing minimum initial and variation margin requirements for all uncleared swaps entered by covered swaps entities.

Among many universal commitments established by global leaders in the 2009 G20 Communique,³ margin requirements for uncleared swaps remain a critical component of financial reform, specifically within the global derivatives markets. As we

¹ 7 U.S.C. 1 *et seq.*

² The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 section 731, 124 Stat. 1376, 1704-5 (2010).

³ G20, *Leaders' Statement, The Pittsburgh Summit* (Sept. 24-25, 2009), available at <http://www.g20.utoronto.ca/2009/2009communique0925.html>.

learned during the financial crisis, margin provides confidence in times of market stress and volatility by ensuring that collateral is available to offset counterparty losses.

Right now, we are collectively enduring uncertainty as a result of Covid-19. As financial leaders are taking action and providing responses intended to address market stress, our progress is being tested as we operate within the new realities of communication and the work environment. We cannot hesitate in our efforts to preserve market interests and protect customers and market participants in a timely, decisive manner. It remains critically important that we ensure market continuity, transparency, and resiliency as we work towards normalcy.

Today's amendments align implementation of the CFTC Margin Rule with the framework issued by the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO").⁴ The amendments represent a cohesive, data-driven effort by the staffs of the CFTC, the Prudential Regulators—who have proposed similar amendments to the margin implementation schedule for SDs and MSPs subject to their regulations⁵—and international counterparts through the BCBS/IOSCO Working Group on Margining Requirements ("WGMR") towards regulatory harmonization with respect to margin for uncleared swaps.

Implementing the margin requirements for uncleared swaps is a challenge we have faced collectively.⁶ As global harmonization is a key hallmark of the 2009 G20

⁴ See BCBS and IOSCO "Margin requirements for non-centrally cleared derivatives," (July 2019), <https://www.bis.org/bcbs/publ/d475.pdf>.

⁵ See Margin and Capital Requirements for covered swap entities, 84 FR 59970 (Nov. 7, 2019).

⁶ See Rostin Behnam, Our Collective Strength, Remarks of CFTC Commissioner Rostin Behnam at the 2018 ISDA Annual Japan Conference, Shangri-La Hotel, Tokyo (Oct. 26, 2018), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam11>; Rostin Behnam, Sowing the Seeds of Success in 2020, Remarks of CFTC Commissioner Rostin Behnam at the ISDA 34th Annual General

reforms, ensuring we remain vigilant to risks and responsive to real-world concerns articulated by market participants as we work together towards these feats of regulatory engineering will serve us all well into the future. I commend the work of the our CFTC staff in demonstrating its analytical expertise in both validating the need for the sixth phase of compliance for certain smaller entities, and analyzing the risks of requiring such entities to remain in phase 5.

The extension of the compliance schedule for initial margin requirements for an additional year will accommodate roughly 700 entities and 7,000 relationships. While that may seem monumental, the CFTC's Office of Chief Economist estimates that these relationships represent a relatively small amount of swap activity; approximately three percent of the total average daily aggregate notional amounts of uncleared swaps and certain other financial products across all the compliance phases.⁷

I believe it is important to highlight that today's amendments seek to address transition risks by mitigating potential market disruptions due largely to limitations of service providers and related operational burdens associated with those approximately 7,000 relationships. It remains my expectation that the large number of covered entities who will now fall into the sixth phase of compliance will work diligently over the next year and a half and that with the additional time and a clear demand for services, market participants and the entities they engage will focus resources on compliance.

Meeting, Grand Hyatt Hong Kong, Hong Kong (Apr. 9, 2019), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam13>.

⁷ See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 56950, 56952 (proposed Oct. 24, 2019); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants at II.

To the extent commenters identified additional and potentially significant implementation challenges, I appreciate CFTC staff's ongoing commitment to monitoring these and other issues as they evolve. Our open engagement and willingness to address appropriate concerns is a hallmark of our agency, and I believe it is one of our greatest strengths. We should continue to maintain our high standards as we move forward in any additional targeted, strategic modifications to the CFTC Margin Rules and others.

Appendix 3—Concurring Statement of Commissioner Dan M. Berkovitz

I concur with issuing the final rule to extend by one year the initial swap margin compliance deadline for financial entities with smaller swap portfolios.

As I noted in my statement when this rule was proposed, generally I am not sympathetic to requests to extend compliance deadlines when a long lead-in period has been provided. The compliance date for swap margin rule compliance was set more than four years ago. However, this deadline extension will benefit hundreds of entities with smaller swap portfolios while having only a limited impact on the systemic risk mitigation benefits of the initial margin requirements.

Importantly, the final rule does not change variation margin requirements that are already effective. The extension in the final rule only applies to the initial margin requirement, which covers estimated potential future exposures.

Furthermore, the final rule only extends the deadline for financial end users that have average daily aggregate notional amounts ("AANA") less than \$50 billion. A CFTC Office of the Chief Economist ("OCE") analysis indicates that around 700 entities with 7,000 swap arrangements that need to be modified would be included in this group. The final rule provides more time to these smaller users of swaps, which will help

maintain the hedging capabilities of these market participants while they negotiate and establish the necessary margining agreements.

The OCE analysis also provides data on the muted impact of the final rule on systemic risk mitigation. The total estimated AANA for entities that can use the extension is approximately three percent of the total AANA of entities subject to the margin rules. In my view, this data is critical to supporting a one year extension as it indicates the likely effect on systemic risk mitigation will be quite limited.

Also, other United States and foreign regulators are adopting similar extensions. The prudential banking regulators in the United States have adopted a margin rule deadline extension proposal that is substantively the same as the CFTC final rule. At this time there is no reason to believe the prudential regulators will not adopt their proposal.

Finally, the current financial market turmoil resulting from the global coronavirus pandemic makes issuance of this relief to these smaller financial end users particularly timely.

Accordingly, I concur in adopting the final rule.