COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 43

RIN 3038-AE60

Real-Time Public Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending certain regulations setting forth the real-time public swap reporting and dissemination requirements for swap data repositories ("SDRs"), derivatives clearing organizations ("DCOs"), swap execution facilities ("SEFs"), designated contract markets ("DCMs"), swap dealers ("SDs"), major swap participants ("MSPs"), and swap counterparties that are neither SDs nor MSPs. The amendments, among other things, address certain issues related to reporting post-priced swaps ("PPS") and disseminating swaps associated with prime brokerage arrangements. In addition, the Commission is adopting technical amendments to certain provisions in other parts of its regulations.

DATES: *Effective date:* The effective date for this final rule is [insert date that is 60 days after publication in the Federal Register].

Compliance Date: SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to the rules by [Compliance Date]; provided, however, that SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to §§ 43.4(g) and 43.6 of this final rule by [insert date that is 30 months from the date of finalization].

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SUPPLEMENTARY INFORMATION:

I.   Background

Section 2(a)(13) of the Commodity Exchange Act ("CEA") authorizes and

requires the Commission to promulgate regulations for the real-time public reporting of

swap transaction and pricing data. Section 2(a)(13)(A) defines "real-time public

reporting" as reporting "data relating to a swap transaction, including price and volume,

as soon as technologically practicable after the time at which the swap transaction has

been executed." Section 2(a)(13)(B) authorizes the Commission to make swap

transaction and pricing data available to the public in such form and at such times as the

Commission determines appropriate to enhance price discovery.

Section 2(a)(13) also imposes statutory requirements on the Commission. First,

section 2(a)(13)(E) requires the Commission to prescribe regulations specifying what

constitutes large notional swap transactions and the appropriate time delays for reporting

such transactions to the public. Second, sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) of the

CEA require the Commission to protect the identities of counterparties and certain

business transactions. Third, section 2(a)(13)(E)(iv) directs the Commission, in

promulgating regulations under section 2(a)(13), to take into account whether public

disclosure of swap transaction and pricing data will "materially reduce market liquidity."

Part 43 of the Commission's regulations implements real-time public reporting

requirements.[1] Part 43 requires swap counterparties, SEFs, and DCMs to report publicly

reportable swap transactions to SDRs.[2] Subject to certain exceptions, SDRs are required

to publicly disseminate this swap transaction and pricing data in real-time.[3]

Following the adoption of part 43, Commission staff has worked with SDRs,

SEFs, DCMs, and reporting counterparties to address questions regarding interpretation

and implementation of the regulatory requirements. Several years ago, the Division of

Market Oversight ("DMO") also reviewed the Commission's swap reporting rules. After

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[1] Commission regulations referred to herein are found at 17 CFR chapter I.
[2] Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012) ("2012 Real-Time Public Reporting Final Rule"); Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866 (May 31, 2013) ("Block Trade Rule"). 17 CFR 43.3(a)(1)-(3) and (b)(1).
[3] *See id.*; 17 CFR 43.4.

completing that review, DMO announced[4] its Roadmap to Achieve High Quality Swaps

Data ("Roadmap"),[5] consisting of a comprehensive review to, among other things: "[(i)]

Evaluate real-time reporting regulations in light of goals of liquidity, transparency, and

price discovery in the swaps market [; and (ii)] Address ongoing issues of reporting

packages, prime brokerage, allocations, risk mitigation services/compressions, [exchange

for related futures positions ("EFRPs")], and [PPSs] by clarifying obligations and

identifying those distinct types of transactions to increase the utility of the real-time

public tape."[6]

In February 2020, the Commission proposed certain changes to part 43

("Proposal")[7] addressing the method and timing of real-time reporting and public

dissemination generally and for specific types of swaps—the delay and anonymization of

the public dissemination of block trades and large notional trades; the standardization and

validation of real-time reporting data elements; the delegation of specific authority to

Commission staff; and the clarification of specific real-time reporting questions and

common issues.

The Commission received 33 comment letters regarding the Proposal.[8] After

considering the comments, the Commission is adopting portions of the rules as proposed;

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[4] *See* Commission Letter 17-33, DMO Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (July 10, 2017), *available at*
http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-33.pdf.
[5] The Roadmap is available at
https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan07 1017.pdf. Comment letters are available at
https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824.
[6] Roadmap at 11.
[7] *See* Real-Time Public Reporting Requirements, 85 FR 21516 (Apr. 17, 2020).
[8] The following entities submitted comment letters: American Council of Life Insurers ("ACLI"); Better Markets; Carnegie Mellon; Chatham Financial; Chris Barnard; CHS Inc. and CHS Hedging LLC ("CHS");

revising other portions of the proposed rules and adopting such portions as revised; and

declining to adopt the remainder of the proposed changes. The Commission believes the

rules adopted herein will increase transparency and price discovery in the swaps markets;

provide clarity regarding obligations to report and disseminate swap transaction and

pricing data; and lead to a more effective real-time reporting regime.

II.   Amendments to Part 43

A.   § 43.1 – Purpose, Scope, and Rules of Construction

The Commission is adopting non-substantive changes to § 43.1. The Commission

is removing § 43.1(b). Existing § 43.1(b)(1), titled "Scope," states that part 43 applies to

all swaps, as defined in CEA section 1a(47),[9] and lists certain categories of swaps as

examples. Existing § 43.1(b)(2) states that part 43 applies to registered entities and

parties to a swap, and lists certain categories of swap parties. The Commission believes §

43.1(b) is superfluous. The scope of part 43 coverage is clear from various CEA sections

and the operative provisions of part 43.

The Commission is also re-designating existing § 43.1(c), entitled "Rules of

construction," as § 43.1(b). The first sentence of existing § 43.1(c) states: "The examples

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Citadel; Clarus Financial Technology ("Clarus"); CME Group, Inc. ("CME"); Credit Suisse; Depository
Trust & Clearing Corporation ("DTCC"); The Futures Industry Association ("FIA"); FIA Principal Traders
Group ("FIA PTG"); Foreign Exchange Professionals Association ("FXPA"); The Global Foreign
Exchange Division of the Global Financial Markets Association ("GFMA"); Healthy Markets; ICE Clear
Credit and ICE Clear Europe ("ICE DCOs"); ICE Trade Vault ("ICE SDR"); IHS Markit ("Markit");
International Swaps and Derivatives Association, Inc. and the Securities Industry and Financial Markets
Association ("SIFMA") (collectively, "ISDA-SIFMA (Blocks)"); ISDA and SIFMA (collectively, "ISDA-
SIFMA"); Investment Company Institute ("ICI"); Larry Harris and Kumar Venkataraman ("SMU");
Managed Funds Association ("MFA"); Massachusetts Institute of Technology ("MIT"); The National Rural
Electric Cooperative Association and American Public Power Association ("NFP Electric Associations");
Navitech; Pacific Investment Management Company LLC ("PIMCO"); The Asset Management Group of
the Securities Industry and Financial Markets Association ("SIFMA AMG"); T. Rowe Price ("TRP"); and
Vanguard.
[9] 7 U.S.C. 1a(47).

in this part and in appendix A to this part are not exclusive." The Commission is deleting

the reference to "appendix A" because the Commission is removing examples from

appendix A.[10] The Commission is only removing this reference in case there are other

places within part 43 in which market participants would rely on examples.

The Commission is also deleting § 43.1(d), entitled "Severability." Existing §

43.1(d) provides that if any provision of part 43, or the application thereof to any person

or circumstance, is held invalid, such invalidity shall not affect other provisions or

application of such provision to other persons or circumstances which can be given effect

without the invalid provision or application. In the event a court invalidates one or more

provisions of part 43, it is unclear that the Commission would interpret all related

remaining provisions as continuing to be effective in the absence of the invalid

provision(s). The Commission wishes to maintain the flexibility to make that

determination at the time, and in light, of any such ruling.

The Commission received no comments on the changes to § 43.1. For the reasons

discussed above, the Commission is adopting the changes thereto as proposed.

B.   *§ 43.2 – Definitions*

The paragraph of existing § 43.2 is not lettered. The Commission is lettering the

existing paragraph as "(a)" and adding paragraph (b) to § 43.2. Paragraph (a) will

contain all of the definitions in existing § 43.2, as the Commission is modifying them.

New paragraph (b) will clarify the terms not defined in part 43 have the meanings

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[10] The Commission discusses the changes to appendix A in section III below.

assigned to those terms in § 1.3 of the Commission's regulations, which was implied before but was not explicit.

The Commission is also adding new definitions, amending certain existing definitions, and removing certain definitions. Within each of these categories of definitions, the Commission discusses the changes in alphabetical order, except as otherwise noted.

1. New Definitions

The Commission is adding a definition of "execution date" to § 43.2. As proposed, "execution date" refers to the date, determined by reference to Eastern Time, on which swap execution occurred. The Commission believes the term is necessary for the new regulations for PPSs.[11] GFMA comments the proposed definition of "execution date" is "suitable" and should align with the definition proposed in the part 45 regulations, but does not need to align with other definitions.[12]

The Commission received three comments opposing the definition's reference to Eastern Time. Chatham believes the Commission should use coordinated universal time ("UTC") instead of Eastern Time to avoid reporting counterparties incurring time and expense converting systems to track in Eastern Time.[13] The NFP Electric Associations and CME both believe "execution date" should not reference to a time and note that the

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[11] The Commission discusses the regulations for PPSs in section II.C.2.
[12] GFMA at 4.
[13] Chatham at 1. Chatham requested if the Commission decides on eastern time, the Commission should have SDRs convert UTC to eastern time when submitting to the Commission.

reference to eastern time is inconsistent with the execution data elements in appendix A that reference UTC.[14]

The Commission appreciates commenters raising the reference to Eastern Time is inconsistent with the appendix A data elements regarding execution that use UTC. The Commission believes removing the reference to time from the definition of "execution date" best addresses the issue, as the reference to time is unnecessary with time covered by the data elements[15] that will continue to reference UTC. As such, the new definition of "execution data" will mean the date of execution of a particular swap.

The Commission is adding a definition of "post-priced swap" to § 43.2. A "post-priced swap" will mean an off-facility swap for which the price is not determined as of the time of execution. The Commission discusses the new regulations for PPSs in section II.C.2.

The Commission is adding a definition of "reporting counterparty" to § 43.3. This definition is the same as the existing definition of "reporting party" in § 43.2, but uses the more-specific term "counterparty" instead of "party."

The Commission is adding a definition of "swap execution facility" to § 43.2. Parts 43 and 45 currently use the term, but only part 45 defines it. "Swap execution facility" will mean a trading system or platform that is a SEF as defined in CEA section 1a(50) and in § 1.3 of this chapter and that is registered with the Commission pursuant to CEA section 5h and § 37 of this chapter.

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[14] NFP Electric Associations at 7; CME at 2.
[15] The Commission discusses the data elements in appendix A in section III below.

The Commission is adding a definition of "swap transaction and pricing data" to §
43.2 with minor technical corrections for clarity. "Swap transaction and pricing data"
will mean all data elements for a swap in appendix A[16] of part 43 that are required to be
reported or publicly disseminated pursuant to part 43. The Commission believes this
definition will help distinguish between the different types of data reported pursuant to
the different reporting regulations.

The Commission proposed adding the following six definitions to § 43.2: "mirror
swap;"[17] "pricing event;"[18] "prime broker;"[19] "prime brokerage agency arrangement;"[20]
"prime brokerage agent;"[21] and "trigger swap."[22] These definitions are all related to

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[16] The proposed definition of "swap transaction and pricing data" referenced appendix C. The Commission
is changing the reference to appendix A to reflect the Commission is keeping data elements in appendix A.
[17] The Commission proposed to define mirror swap as a swap: (1) to which a prime broker is a counterparty
or both counterparties are prime brokers; (2) that is executed contemporaneously with a corresponding
trigger swap; (3) that has identical terms and pricing as the contemporaneously executed trigger swap
(except that a mirror swap, but not the corresponding trigger swap, may include any associated prime
brokerage service fees agreed to by the parties and except as provided in the final sentence of this "mirror
swap" definition); (4) with respect to which the sole price forming event is the occurrence of the
contemporaneously executed trigger swap; and (5) the execution of which is contingent on, or is triggered
by, the execution of the contemporaneously executed trigger swap. The notional amount of a mirror swap
may differ from the notional amount of the corresponding trigger swap, including, but not limited to, in the
case of a mirror swap that is part of a partial reverse give-up; *provided*, *however*, that in such cases, (i) the
aggregate notional amount of all such mirror swaps to which the prime broker that is a counterparty to the
trigger swap is also a counterparty shall be equal to the notional amount of the corresponding trigger swap
and (ii) the market risk and contractual cash flows of all such mirror swaps to which a prime broker that is
not a counterparty to the corresponding trigger swap is a party will offset each other (and the aggregate
notional amount of all such mirror swaps on one side of the market and with cash flows in one direction
shall be equal to the aggregate notional amount of all such mirror swaps on the other side of the market and
with cash flows in the opposite direction), resulting in such prime broker having a flat market risk position.
[18] The Commission proposed to define pricing event as the completion of the negotiation of the material
economic terms and pricing of a trigger swap.
[19] The Commission proposed to define prime broker as with respect to a mirror swap and its related trigger
swap, a SD acting in the capacity of a prime broker with respect to such swaps.
[20] The Commission proposed to define prime brokerage agency arrangement as an arrangement pursuant to
which a prime broker authorizes one of its clients, acting as agent for such prime broker, to cause the
execution of a trigger swap.
[21] The Commission proposed to define prime brokerage agent as a client of a prime broker who causes the
execution of a trigger swap acting pursuant to a prime brokerage agency arrangement.
[22] The Commission proposed to define trigger swap as a swap: (1) that is executed pursuant to one or more
prime brokerage agency arrangements; (2) to which a prime broker is a counterparty or both counterparties

swaps entered into by prime brokers ("PBs"). Because all of these proposed definitions

were used in the text of proposed § 43.3(a)(6) or in one or more of the proposed

definitions that were in turn used in proposed § 43.3(a)(6), the Commission discusses all

of the six proposed definitions in section II.C.4.

2. Changes to Existing Definitions[23]

   The Commission is making non-substantive changes to the definitions of: "as

soon as technologically practicable" ("ASATP"); "asset class;" "novation;" "other

commodity;" and "reference price."

   The Commission proposed changing the definitions of "appropriate minimum

block size" (AMBS), "large notional off-facility swap" (LNOFS), and "block trade" in §

43.2.[24] The Commission discusses the three definitions together, as the changes are inter-

connected.

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are prime brokers; (3) that serves as the contingency for, or triggers, the execution of one or more corresponding mirror swaps; and (4) that is a publicly reportable swap transaction that is required to be reported to a swap data repository pursuant to this part and part 45 of this chapter.

[23] The Commission received one comment on the existing definition of "physical commodity swap." The NFP Electric Associations oppose defining "physical commodity swap" by reference to a swap "based on a tangible commodity" because such a definition would be inconsistent with the language of CEA section 1a(47) as well as the Commission's interpretations of "nonfinancial commodity" in the context of swaps. NFP Electric Associations at 7. The Commission declines to adopt any changes to the definition of "physical commodity swap." The Commission believes the current definition is sufficient, and would want to provide adequate notice and comment for all market participants on a change involving a swap definition.

[24] Existing § 43.2 defines "appropriate minimum block size" to mean the minimum notional or principal amount for a category of swaps that qualifies a swap within such category as a block trade or LNOFS. Existing § 43.2 defines "block trade" to mean a publicly reportable swap transaction that: (1) involves a swap that is listed on a registered SEF or DCM; (2) occurs away from the registered SEF's or DCM's trading system or platform and is executed pursuant to the registered SEF's or DCM's rules and procedures; (3) has a notional or principal amount at or above the appropriate minimum block size ("AMBS") applicable to such swap; and (4) is reported subject to the rules and procedures of the registered SEF or DCM and the rules described in part 43, including the appropriate time delay requirements set forth in § 43.5.

The Commission first proposed changing the "block trade" definition in a November 2018 rule proposal.[25] Then, in January 2020, the Commission published a proposal to revise condition (2) of the block trade definition in § 43.2 to read: "(2) Is executed on the trading system or platform, that is not an order book as defined in § 37.3(a)(3), of a registered SEF or occurs away from a registered SEF's or DCM's trading system or platform and is executed pursuant to the registered SEF's or DCM's rules and procedures." [26] The Proposal incorporated the 2020 SEF NPRM's proposed changes to the definition of "block trade" in condition (2), which would apply to swaps that are not "off-facility swaps" and have specified connections to a SEF or a DCM. [27] In the Proposal, the Commission also proposed to incorporate condition (3) of the existing "block trade" definition[28] into condition (1), which would apply to "off-facility swaps."[29] Condition (1) would make the separate definition of "large notional off-facility swap" unnecessary.

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[25] *See* Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018) ("2018 SEF NPRM"). The Commission continues to evaluate the 2018 SEF NPRM.

[26] This proposal addressed certain outstanding block-trade no-action relief SEFs and market participants have operated under for several years, most recently under CFTC Staff Letter No. 17-60 ("NAL No. 17-60). *See* Swap Execution Facility Requirements and Real-Time Reporting Requirements, 85 FR 9407 (Feb. 19, 2020) ("2020 SEF NPRM").

[27] As proposed, paragraph (2) of the "block trade" definition would read: (2) With respect to a swap that is not an off-facility swap, a publicly reportable swap that: (a) Involves a swap that is listed on a SEF or DCM; (b) Is executed on the trading system or platform, that is not an order book as defined in § 37.3(a)(3), of a SEF or occurs away from a SEF's or DCM's trading system or platform and is executed pursuant to the SEF's or DCM's rules and procedures; (c) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (d) Is reported subject to the rules and procedures of the SEF or DCM and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5.

[28] This paragraph currently reads: Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap.

[29] As proposed, paragraph (1) of the "block trade" definition would read: (1) With respect to an off-facility swap, a publicly reportable swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such swap. The Commission also proposed minor changes to the term "off-facility swap," as discussed below in this section.

The Commission believes the change to condition (2) permitting execution of block trades - intended to be cleared or not - on a SEF's non-order book trading systems or platforms furthers the CEA goal of promoting swap trading on SEFs.[30] Moreover, for intended-to-be cleared block trades executed on a SEF's non-Order Book trading system or platform, the change would allow FCMs to conduct pre-execution credit screenings in accordance with § 1.73. The Commission believes that having a single set of block trade rules for both intended-to-be cleared and non-intended to-be-cleared swap block trades will help to reduce operational complexity for both SEFs and market participants.

In addition, the Commission believes that new condition (2), in allowing participants to use a SEF's non-Order Book functionalities to execute swap block trades, is consistent with the Commission's regulatory approach to mitigate risks of information leakage (*i.e.*, a "winner's curse") as market participants can use the functionality of the SEF to execute a block trade in a manner that will not disclose the order to the entire market.[31] SEFs currently provide various modes of execution to enable market participants to execute block trades on the SEF without providing disclosure of the block trade to the market or to multiple market participants.[32]

Finally, the Commission believes permitting block trades to be executed on a SEF's non-Order Book trading platforms while also allowing them to "occur away" from a SEF provides SEFs increased flexibility. In particular, SEFs will be able to provide

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[30] *See* 7 U.S.C. 7b-3(e).
[31] SEF Core Principles Final Rule, 78 FR at 33498, 33562, and 33563.
[32] For example, the Commission has observed that some SEFs offer a "RFQ-to-one" functionality that allows counterparties to bilaterally negotiate a block trade between two potential counterparties, without requiring disclosure of the potential trade to other market participants on a pre-trade basis.

execution methods for block trades that are most suitable, efficient, and cost-effective for the product being traded, the SEF's market, and its market participants.

Therefore, the Commission is adopting paragraph (2) of the "block trade" definition as proposed with a minor non-substantive technical edits for clarity and consistency. However, the Commission is not adopting paragraph (1) of the proposed "block trade" definition and is keeping the definition of "large notional off-facility swap" in part 43.

The Proposal combined the definition of "large notional off-facility swap" into the definition of "block trade" to conform to proposed changes to § 43.5. The changes to § 43.5 would have created a single block trade dissemination delay regardless of whether the transaction was a "block trade" or a "large notional off-facility swap," thus obviating the need for separate definitions.[33] However, since the Commission is not changing § 43.5,[34] it is necessary to retain separate definitions for block trades and LNOFSs in part 43. As a result, the Commission is keeping the definition of "large notional off-facility swap" in § 43.2 and keeping the reference to "large notional off-facility swaps" in the definition of "appropriate minimum block size."[35]

In light of the above changes, § 43.2 will define a "block trade" as a publicly reportable swap transaction that: (1) involves a swap listed on a SEF or DCM; (2) is executed on a SEF's trading system or platform that is not an order book as defined in § 37.3(a)(3) of this chapter, or occurs away from the SEF's or DCM's trading system or

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[33] For example, under existing § 43.5, block trades are subject to a 15 minute dissemination delay, while LNOFS are subject to a range of dissemination delays ranging from 15 minutes to 24 business hours depending upon the type of market participant and asset class involved in the LNOFS transaction.
[34] The Commission discusses § 43.5 in section II.E below.
[35] The Commission is making non-substantive edits to the definition for clarity.

platform and is executed pursuant to the SEF's or DCM's rules and procedures; (3) has a notional or principal amount at or above the AMBS applicable to such swap; and (4) is reported subject to the rules and procedures of the SEF or DCM and the rules described in part 43, including the appropriate time delay requirements set forth in § 43.5.

The Commission received two comments on the Proposal's definition of "block trade." ICI believes the proposed definition incorporating "block trade" and "large notional off-facility swap" would promote clarity and consistency across Commission regulations.[36] The Commission is declining to adopt the proposal because, as described above, separate definitions of "block trade" and "large notional off-facility swap" remain necessary since the Commission is not changing § 43.5.

Conversely, the NFP Electric Associations believe "[t]he concept of a 'block trade' is not well understood in the swap markets" and recommends that the Commission should continue "to use the descriptive term 'large notional off-facility swap,' as drawn from the primary language of CEA section 2a(13)(E), rather than use 'block trade'…."[37] The Commission agrees and, for the reasons described above, is retaining the separate definitions.

The Commission also received six comments on the 2020 SEF NPRM's "block trade" definition.[38] Citadel, ISDA-SIFMA, IECA, and Chris Barnard all generally

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[36] ICI at 4.

[37] NFP Electric Associations at 7.

[38] The following entities submitted comment letters: Chris Barnard; Citadel; FIA; International Energy Credit Association ("IECA"); ISDA; and ICAP Global Derivatives Limited ("IGDL") and tpSEF, Inc. ("tpSEF") (collectively, "TP ICAP SEFs"). Since the proposed § 43.2 definition of "block trade" in the 2020 SEF NPRM is consistent with the second part of the § 43.2 "block trade" definition in the Proposal, the Commission is considering the comments in evaluating the proposed changes to the "block trade" definition in this release.

support the 2020 SEF NPRM's changes.[39] Similarly, FIA agrees with the Commission

"that block trades executed on a SEF's non-[o]rder [b]ook trading system or platform

would allow FCMs to conduct pre-execution risk-based limit screenings in accordance

with [§] 1.73."[40] Finally, the TP ICAP SEFs support the proposed changes to the

definition of "block trade," but believe the Commission should not limit the execution

methods that may be utilized by SEFs for block trades to avoid discouraging SEF trading

and inconsistencies with the CEA, "which was clear that limiting modes of SEF

execution was not the intent of Congress."[41]

The Commission disagrees with the TP ICAP SEFs' assertion there should be no

limitation on the method execution that can be used for a block trade.[42] By exposing a

swap transaction that is above the AMBS to the entire market through the use of a SEF

order book,[43] the Commission believes that a market participant has signaled that the

risks of information leakage and a "winner's curse" are not present to the same extent as

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[39] Citadel at 1; ISDA-SIFMA at 1; IECA at 1-3; Chris Barnard at 1.

[40] FIA at 1; FIA at Appendix B. FIA separately requests the Commission amend § 1.73 to confirm clearing FCMs are not required to conduct pre-execution risk-based limit screenings for transactions executed bilaterally away from the SEF's non-order book trading system or platform and then submitted for clearing. The Commission declines to amend § 1.73 in this rulemaking. For the avoidance of doubt, if the parties purport to execute a block trade away from the SEF without first obtaining a credit check, an FCM clearing member that clears such trade and does not have knowledge of such purported execution is not in violation of the pre-execution credit check requirement under § 1.73. The Commission understands no mechanism exists to enable pre-execution credit checks where blocks are executed away from a SEF; however, these final rules do not preclude participants from developing and using such a mechanism in the future.

[41] TP ICAP SEFs at 4. Rather, the TP ICAP SEFs believe that "SEFs have the greatest knowledge of the liquidity and market characteristics to" determine which execution methods to offer for block trades and as such "[t]he Commission should defer to the SEFs in a manner consistent with principles-based regulation to determine the methodology that they wish to offer for executing block trades."

[42] The Commission notes that trades above the AMBS may still occur on a SEF's order book, as defined in § 37.3(a)(3), however such transactions will not receive treatment as block trades and will not receive a dissemination delay.

[43] 17 CFR 37.3(a)(3) ("Order Books").

they are in other block trades. Therefore, such transactions should not be afforded

flexible execution and delayed public dissemination.

The Commission is changing the definition of "embedded option" in § 43.2 by

removing the reference to "confirmation" at the end of the current definition[44] to reflect

the Commission's removal of the definition of "confirmation" from § 43.2, discussed

further below. As amended, "embedded option" will mean any right, but not an

obligation, provided to one party of a swap by the other party to the swap that provides

the party holding the option with the ability to change any one or more of the economic

terms of the swap.

The Commission is changing the definition of "execution" in § 43.2[45] by

replacing the reference to execution occurring "orally, in writing, electronically, or

otherwise" with "by any method" to shorten the definition without substantively altering

it. The Commission is also removing the phrase that execution occurs "simultaneous

with or immediately following the affirmation of the swap" because the Commission is

removing the term "affirmation" from § 43.2 as well.[46] As amended, "execution" will

mean an agreement by the parties, by any method, to the terms of a swap that legally

binds the parties to such swap terms under applicable law. The NFP Electric

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[44] "Embedded option" is currently defined as any right, but not an obligation, provided to one party of a swap by the other party to the swap that provides the party holding the option with the ability to change any one or more of the economic terms of the swap as those terms previously were established at confirmation (or were in effect on the start date).

[45] Existing § 43.2 defines "execution" as an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law. The existing definition further provides that "[e]xecution occurs simultaneous with or immediately following the affirmation of the swap."

[46] The Commission discusses the proposed removal of "affirmation" in section II.B.3.

Associations support the alignment of defined terms and concepts between part 45 and part 43, such as the common definition of "execution."[47]

The Commission is amending the definition of "off-facility swap" in § 43.2 by removing the reference to "publicly reportable" and "registered." Existing § 43.2 defines off-facility swap as any publicly reportable swap transaction that is not executed on or pursuant to the rules of a registered[48] SEF or DCM. The Commission is removing the requirement that the swap be "publicly reportable" because determining whether a swap transaction is an off-facility swap depends only on whether a swap was executed on or pursuant to the rules of a SEF or DCM; whether it is also a publicly reportable swap transaction is irrelevant.

The Commission is changing the definition of "public dissemination and publicly disseminate" in § 43.2. Existing § 43.2 defines "public dissemination and publicly disseminate" as to publish and make available swap transaction and pricing data in a non-discriminatory manner, through the internet or other electronic data feed that is widely published and in machine-readable electronic format. Separately, § 43.3(d)(1) requires that SDRs "publicly disseminate" swap transaction and pricing data in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved, and analyzed.

The definition of "public dissemination and publicly disseminate" varies enough from § 43.3(d)(1) to create ambiguity for SDRs as to the format they must use in publicly disseminating swap transaction and pricing data. For instance, the definition of "publicly

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[47] NFP Electric Associations at 6.
[48] The Commission is also changing "registered SEF" to "SEF" throughout part 43. The Commission discusses this change in section II.C.1.a.

disseminate" requires that access be non-discriminatory, but § 43.3(d)(1) does not

explicitly require access be non-discriminatory. Therefore, the Commission is re-locating

the qualification in § 43.3(d)(1) that SDRs publicly disseminate swap transaction and

pricing data in a consistent, usable, and machine-readable electronic format that allows

the data to be downloaded, saved, and analyzed to the definition of "public dissemination

and publicly disseminate" in § 43.2.[49] As amended, the definition of "public

dissemination and publicly disseminate" will mean to make freely available and readily

accessible to the public swap transaction and pricing data in a non-discriminatory

manner, through the internet or other electronic data feed that is widely published. Such

public dissemination shall be made in a consistent, usable, and machine-readable

electronic format that allows the data to be downloaded, saved, and analyzed.[50] The

Commission did not propose changing the definition of "publicly reportable swap

transaction," but received six comments on the definition.

ISDA-SIFMA and ICE SDR both request the Commission clarify the list of swaps

that are not included in the definition.[51] The Commission believes, with one exception,

the current definition and the original part 43 adopting release adequately describe the

swaps excluded from the definition, which, as ISDA-SIFMA point out, include inter-

affiliate swaps and portfolio compression exercises. The Commission understands that

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[49] As discussed below in section II.C.8, the Commission is removing existing § 43.3(d)(1) in conjunction with moving the substance of the requirement to the definition of "publicly disseminate."

[50] The revised definition of "public dissemination and publicly disseminate" is also discussed below in section II.C.7 with respect to the responsibilities of SDRs to make publicly disseminated swap transaction and pricing data available to the public.

[51] ISDA-SIFMA at 49; ICE SDR at 7. ISDA-SIFMA note that the list of swaps not included in the definition may include (i) inter-affiliate swaps, (ii) portfolio compression exercises, and (iii) post-allocation swaps. ICE SDR notes that it was unclear whether cross-border transactions are exempt from the definition.

since 2012, different multi-party swap portfolio risk reduction exercises have evolved to accomplish the same goals as portfolio compression exercises. To the extent any such risk reduction exercises serve the same purposes as portfolio compression exercises, the Commission is of the view that the resulting new or amended swaps from the exercise would not be deemed publicly reportable swaps. The purpose of such risk reduction exercises, similar to portfolio compression exercises, is to mitigate risk by replacing or changing swaps, which have already been publicly reported if the original swaps were publicly reportable swap transactions. Any new or amended swaps executed as a result of these exercises would not be arm's-length transactions resulting in a corresponding change in the market risk position between the parties, but may not otherwise meet the Commission's portfolio compression exercise definitions.[52] To qualify, the sole purpose of such risk reduction exercises, like portfolio compression exercises, must be to mitigate risk by replacing or changing swaps that have already been publicly reported, if the original swaps were publicly reportable swap transactions. In addition, the resulting new or amended swaps must be entered into between the same counterparties as the original swap(s) that is amended or terminated, and the risk reduction exercises must be market risk neutral and performed by automated systems of third party service providers. If these conditions are satisfied, like portfolio compression exercises, the replacement or amended swaps resulting directly from a risk reduction exercise would not fall within the definition of publicly reportable swap transaction.[53]

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[52] 77 FR 1182 at 1187.

[53] For avoidance of doubt, the Commission makes clear that the evaluation of whether a swap that results from a risk reduction exercise does or does not fall within the definition of publicly reportable swap transaction is separate and distinct from the evaluation of whether or not the platform operating such risk

In response to ICE SDR's comment that it is unclear whether cross-border transactions are exempt from the definition the "publicly reportable swap transaction," the Commission notes that its cross-border guidance covers cross-border reporting requirements. The Commission does not want to reassess the existing definition or its cross-border guidance without providing adequate notice for all market participants to comment on.

The NFP Electric Associations believe the Commission should exclude a subset of off-facility non-financial commodity swaps from the definition because few, if any, of such swaps enhance discovery.[54] Similarly, Clarus believes providers of portfolio compressions should report trade level details to SDRs for public dissemination.[55] The Commission disagrees and is keeping compressions on the list of transactions excluded from the publicly reportable swap definition or excluding non-financial commodity swaps. The Commission believes its determination that compression swaps do not contribute to price discovery,[56] and that the CEA requires the public dissemination of all swaps,[57] still holds true.

ICE DCOs and CME believe if the Commission finalizes § 43.3(a)(5), it should also change the definition of publicly reportable swap transaction to exclude swaps created through DCO default management processes.[58] The Commission agrees with

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reduction exercises is subject to SEF registration requirements. *See* Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33482-33483 (Jun. 4, 2013).

[54] NFP Electric Associations at 6.

[55] Clarus at 2.

[56] 2012 Part 43 Rule at 1187.

[57] *Id.* at 1223.

[58] ICE DCOs at 2; CME at 7-8. The commenters believed including such swaps could result in front-running as the default management processes may span multiple days. ICE DCOs believe DCO default

CME and ICE DCOs, and is amending the definition to exclude "swaps entered into by a [DCO] as part of managing the default of a clearing member." However, the Commission discusses this change in section II.C.3 below.

The Commission is changing the definition of "trimmed data set" in § 43.2 by changing the standard deviation used in the calculation of the trimmed data set from four to two for the "other commodity" asset class, and from four to three for all other asset classes. The Commission discusses the reasoning behind these changes in section II.F.2.

3. Removed Definitions

The Commission is removing the definition of "Act" from § 43.2 because the term is defined in § 1.3.

The Commission proposed removing the definition of "business day" from § 43.2 because the term is defined in § 1.3. Further, the Commission proposed removing the definition of "business hours" because the term would have been unnecessary as a result of the Commission's proposal to remove references to "business hours" in the § 43.5 regulations for the timing delays for block trades.

The Commission received one comment on removing the definition of "business day." DTCC notes § 43.2 does not include Saturdays while § 1.3 includes Saturdays; thus, replacing § 43.2 with § 1.3 would impact SDR operations as well as the currency conversion requirements in proposed § 43.6(g)(4).[59] Further, DTCC believes it is unclear

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management swaps may be impractical for part 43 reporting because they can be executed at the portfolio level.
[59] DTCC at 2.

whether the term "holiday" as used in the "business day" definition in § 1.3 has an

identical meaning as existing § 43.2.[60]

The Commission agrees with DTCC that removing the definition of business day

from § 43.2 would create a discrepancy in the regulations that would impact operations

for all market participants. Therefore, the Commission is not adopting the proposal to

remove the definition of business day from § 43.2. Similarly, the Commission is not

adopting the proposal to remove the term "business hours" from § 43.2 because, as the

Commission discusses in section II.E.2, § 43.5(c) will continue to reference "business

hours."

The Commission is removing the definition of "confirmation" from § 43.2, along

with the following related definitions: "affirmation" and "confirmation by affirmation."

These definitions are unnecessary in part 43, as they are not used in any of the

regulations.

The Commission is removing the definition of "executed" from § 43.2. The

current definition is vague and the definition of "execution date" will provide the

specificity that the current "executed" definition lacks.

The Commission is removing the definition of "real-time public reporting" from §

43.2. Existing § 43.2 defines "real-time public reporting" as the reporting of data relating

to a swap transaction, including price and volume, ASATP after the time at which the

swap transaction has been executed. The CEA currently already defines "real-time

public reporting" as "to report data relating to a swap transaction, including price and

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[60] *Id.*

volume, [ASATP] after the time at which the swap transaction has been executed."[61] To

avoid creating confusion between the two definitions, the Commission is removing the

definition in part 43.

The Commission is removing the definition of "reporting party" from § 43.2

because it is adding the more-precise definition of "reporting counterparty" to § 43.2, as

discussed above.

The Commission proposed removing the following definitions from § 43.2 as a

result of proposed changes to §§ 43.5 and 43.6 for block trades and LNOFSs: "futures-

related swap," "major currencies," "non-major currencies," and "super-major currencies."

The Commission is not removing these definitions.

The Commission is also removing the following definitions from § 43.2 as a

result of changes simplifying the definition of "novation:" "remaining party,"

"transferee," and "transferor."

The Commission is removing the "unique product identifier" ("UPI") definition

from § 43.2. "Unique product identifier" is currently only used in § 43.4(e). The

Commission is deleting existing § 43.4(e), as discussed below in section II.D.1.

Therefore, the definition of UPI in § 43.2 is unnecessary.

The Commission is removing the definition of "widely published" from § 43.2.

"Widely published" means to publish and make available through electronic means in a

manner that is freely available and readily accessible to the public. "Widely published"

is currently referenced in the definition for "public dissemination and publicly

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[61] 7 U.S.C. 2(a)(13)(A).

disseminate" as the standard by which SDRs must publish data.[62] The Commission

believes that the plain meaning of the term "widely published" is clear and that the

definition is unnecessary and may cause confusion.

C.   *§ 43.3 – Method and Timing for Real-Time Public Reporting*

1. § 43.3(a)(1)-(3) – Method and Timing for Reporting Off-Facility Swaps and Swaps

Executed on or Pursuant to the Rules of a SEF or a DCM

a. § 43.3(a)(1) – General Rule

The Commission is adopting changes to § 43.3(a)(1). Existing § 43.3(a)(1): (i)

requires a "reporting party" to report publicly reportable swap transactions to SDRs

ASATP after execution; and (ii) states that for purposes of part 43, a registered SDR

includes any SDR provisionally registered with the Commission pursuant to part 49 of

this chapter.

The Commission is changing the reference to a "reporting party" to reference the

persons that, depending on the circumstances, have the reporting obligation for a publicly

reportable swap transaction: a reporting counterparty; a SEF; or a DCM to be more

precise. The Commission is also rewording § 43.3(a)(1) for brevity and adding a cross-

reference to proposed § 43.3(a)(2)-(6), which address matters such as who must report

publicly reportable swap transactions and the timing thereof. Consequently, the

Commission is adding language to § 43.3(a)(1) stating that it would be "subject to"

proposed § 43.3(a)(2)-(6) to reflect that, with respect to the transactions and persons

covered by proposed § 43.3(a)(2)-(6), the provisions thereof apply instead of the general

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[62] The term "widely published" is also used in existing § 43.6(g)(4) for currency conversions.

ASATP requirement of proposed § 43.3(a)(1). The Commission is also adding a

requirement that the publicly reportable swap transaction reporting required pursuant to

proposed § 43.3(a)(1)-(6) be done in the manner set forth in proposed § 43.3(d).[63]

Finally, the Commission is deleting the sentence in § 43.3(a)(1) stating that for

purposes of part 43, a registered SDR includes any SDR provisionally registered with the

Commission pursuant to part 49 of this chapter. The Commission is replacing all

references to registered SDRs with references to SDRs in § 43.3(a) specifically and

throughout part 43.[64] The Commission is removing the reference to "registered" because

registered and provisionally registered SDRs are subject to the same Commission

regulations, but the existing regulations only referenced "registered" SDRs.

The Commission did not receive any comments on the non-substantive changes to

§ 43.3(a)(1). For the reasons discussed above, the Commission is adopting the changes

to § 43.3(a)(1) as proposed with non-substantive edits for clarity. Amended § 43.3(a)(1)

will require reporting counterparties, SEFs, or DCMs responsible for reporting a swap to

report the publicly reportable swap transaction to an SDR ASATP after execution subject

to § 43.3(a)(2)-(6) and in the manner set forth in § 43.3(d).

b. § 43.3(a)(2) – Swaps Executed on or Pursuant to the Rules of a SEF or a DCM

The Commission is adopting non-substantive changes to § 43.3(a)(2). Existing §

43.3(a)(2) states that a party to a publicly reportable swap transaction can satisfy its part

43 real-time public reporting obligations by executing publicly reportable swap

transactions on or pursuant to the rules of a SEF or DCM. Existing § 43.3(b)(1) states

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[63] The Commission discusses § 43.3(d) in section II.C.8 below.
[64] To limit repetition, the Commission will not discuss this change repeatedly throughout this release.

that SEFs and DCMs satisfy their real-time public reporting obligations by transmitting swap transaction and pricing data to SDRs ASATP after the publicly reportable swap transaction was executed on or pursuant to the rules of the trading platform or facility.

The Commission is replacing § 43.3(a)(2) with the existing requirement in § 43.3(b)(1). New § 43.3(a)(2) will state that SEFs or DCMs must report publicly reportable swap transactions executed on or pursuant to the rules of a SEF or DCM ASATP after execution. As a result, § 43.3(a)(2), instead of § 43.3(b)(1), will contain SEFs' and DCMs' part 43 reporting obligations. In revising § 43.3(a)(2), the Commission is replacing the reference to a "registered [SEF]" with a reference to SEFs because the term "registered" is unnecessary with the Commission defining "SEFs" in § 43.2 as registered SEFs.[65]

The Commission did not receive any comments on the structural and non-substantive changes to § 43.3(a)(2). For the reasons discussed above, the Commission is adopting the changes as proposed. Amended § 43.3(a)(2) will require that for each swap executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM shall report swap transaction and pricing data to an SDR ASATP after execution.

c. § 43.3(a)(3) – Off-Facility Swaps

The Commission proposed non-substantive changes to § 43.3(a)(3). Existing § 43.3(a)(3) requires reporting parties to report all off-facility swaps to an SDR for the appropriate asset class in accordance with the rules set forth in part 43 ASATP following

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[65] To limit repetition, the Commission will not discuss this change throughout this release.

execution, and sets out the reporting hierarchy for these publicly reportable swap

transactions.[66]

The Commission is clarifying in § 43.3(a)(3)(iii)-(v) that, in situations where the

parties to an off-facility publicly reportable swap transaction must designate which of

them is the reporting counterparty, they must make such designation prior to the

execution of the off-facility publicly reportable swap transaction so that there is no delay

in reporting the off-facility publicly reportable swap transaction pursuant to part 43. The

Commission believes it will prevent a delay if the parties do not make such designation

until after the off-facility publicly reportable swap transaction is executed or cannot agree

on such designation.

Because the Commission is adding part 43 reporting requirements specific to

PPSs, clearing swaps, and mirror swaps, respectively, in new § 43.3(a)(4)-(6), the

Commission is introducing proposed § 43.3(a)(3) with "except as otherwise provided in

paragraphs (a)(4)-(6) of this section."

The Commission did not receive any comments on the changes to § 43.3(a)(3).

For the reasons discussed above, the Commission is adopting the changes to § 43.3(a)(3)

as proposed with non-substantive edits for clarity. Amended § 43.3(a)(3) will require

that, except as otherwise provided in § 43.3(a)(4)-(6), a reporting counterparty report all

publicly reportable swap transactions that are off-facility swaps to an SDR for the

appropriate asset class in accordance with the rules set forth in part 43 ASATP after

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[66] The Commission did not propose substantive amendments to the reporting hierarchy.

execution. Unless otherwise agreed to by the parties prior to execution, the reporting

hierarchy will remain the same as it is in existing § 43.3(a)(3).[67]

2. § 43.3(a)(4) – Post-Priced Swaps

a. Proposal

The Commission proposed new § 43.3(a)(4) to address issues market participants

face in reporting PPSs. "Post-priced swap" is a newly defined term in § 43.2 that means

an off-facility swap for which the price has not been determined at the time of execution.

Existing § 43.3(a) generally requires the reporting party for each publicly reportable swap

transaction to report certain swap terms to an SDR ASATP after execution of the

transaction. Market participants raised concerns with complying with the ASATP

requirement for a category of swaps with respect to which one or more terms are

unknown at the time the swap is executed.[68]

In the Proposal, the Commission proposed a longer deadline for reporting swap

transaction and pricing data for PPSs. Proposed § 43.3(a)(4)(i) would permit the

reporting counterparty to delay reporting a PPS to an SDR until the earlier of the price

being determined and 11:59:59 pm eastern time on the execution date. Proposed §

43.3(a)(4)(i) would further provide that, if the price of a publicly reportable swap

transaction that is a PPS is not determined by 11:59:59 pm eastern time on the execution

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[67] The hierarchy will remain: (i) if only one party is a SD or MSP, then the SD or MSP shall be the reporting counterparty; (ii) if one party is an SD and the other party is a MSP, then the SD shall be the reporting counterparty; (iii) if both parties are SDs, then prior to execution of a publicly reportable swap transaction that is an off-facility swap, the SDs shall designate which party shall be the reporting counterparty; (iv) if both parties are MSPs, then prior to execution of a publicly reportable swap transaction that is an off-facility swap, the MSPs shall designate which party shall be the reporting counterparty; and (v) if neither party is an SD or MSP, then prior to execution of a publicly reportable swap transaction that is an off-facility swap, the parties shall designate which party shall be the reporting counterparty.

[68] *See, e.g.*, ISDA Request for No-action Relief for Post-priced Swaps (Mar. 26, 2013), *available at https://www.isda.org/2013/03/26/no-action-relief-request-post-price-swaps-under-parts-43-and-45/.*

date, the reporting counterparty shall: (i) report all swap transaction and pricing data for such PPS other than the price and any other then-undetermined variable term, and (ii) report each such item of previously undetermined swap transaction and pricing data ASATP after such item is determined.[69] Proposed § 43.3(a)(4)(ii) would provide that the more lenient proposed reporting deadline in § 43.3(a)(4)(i) would not apply to publicly reportable swap transactions with respect to which the price *is* known at execution but one or more other variable terms are not yet known at the time of execution.[70]

b. Comments on the Proposal

The Commission received two comments opposing a delay from real-time reporting for PPSs. Citadel comments that instead of reducing the amount of information publicly reported in real-time, the Commission should enhance the reported data by implementing a separate flag to specifically identify PPSs.[71] Further, Citadel believes the proposal seems overly broad because it includes swaps where key economic terms are fully agreed at the time of execution (e.g., where a spread above or below a reference index price is the key economic term, but the reference index price is not published until later in the day).[72] DTCC recommends minimizing carve-outs for strict validation rules

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[69] While the proposed definition of "post-priced swap" would be a swap for which the price has not been determined at the time of execution, such a swap with *additional* terms that are also not determined at the time of execution would also fall within the proposed "post-priced swap" definition. Consequently, if a PPS also has non-price terms that are not determined at the time of execution, a value for such non-price terms must be reported ASATP after it is determined. If a placeholder value that satisfies the allowable values parameters for an unknown variable term was previously reported for such undetermined swap transaction and pricing data, then such swap transaction and pricing data must be corrected ASATP after it is determined.

[70] The Commission notes that when the price is known at execution but one or more variable terms are not yet known, the reporting counterparty must report the swap ASATP and then report the variable terms later ASATP after each item is determined.

[71] Citadel at 10.

[72] *Id.*

wherever possible to avoid deviating from standardization and creating additional complexities.[73]

Better Markets comments that any delay in public reporting would advantage certain market participants but reporting on the date of execution would be achievable for the vast majority of PPSs contingent on an independent market measure.[74] In addition, Better Markets believes delayed reporting for supposed "hedging needs" should not be accommodated until the Commission publishes additional information necessary to examine the implications of such a proposal.[75]

The Commission received six comments supporting a delay from real-time reporting for PPSs. AMG supports permitting a reporting counterparty to report PPSs at the earlier of the price being determined or 11:59:59 p.m. eastern time on the execution date.[76]

ICI comments that the proposal would provide clarity and consistency so market participants can understand when their trading information will be publicly disseminated to the market.[77] Further, ICI believes funds may enter into PPSs in the form of swaps on various well-known indices and these swaps are priced based on the relevant index, which typically is published an hour or two after the close of the relevant markets.[78] ICI states that existing SDs have inconsistent practices regarding when they report these swaps and the Commission's proposal will in most cases prevent a fund's trading

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[73] DTCC at 2.
[74] Better Markets at 8.
[75] *Id.*
[76] SIFMA AMG at 6.
[77] ICI at 8.
[78] *Id.*

information from being prematurely disseminated and used to front run the fund's trades.[79]

ISDA-SIFMA strongly agree with the proposal.[80] GFMA supports the ISDA-SIFMA response.[81]

CME believes that PPSs and other swaps with variable term(s) that are not known at the time of execution should not be reported or disseminated until such time that the price(s) and all other variable term(s) are known.[82] CME believes the proposed requirement to have PPSs reported no later than 11:59:59 p.m. eastern time on the day of execution is misplaced as it would not further price transparency without a price.[83] CME also believes the proposal to require the immediate reporting of swap transactions with respect to which the price *is* known at execution but one or more other variable terms are not yet known is similarly misplaced.[84]

FIA suggests the Commission amend the Proposal to require the reporting of a PPS only after the price is determined, regardless of whether the price is determined on or after the execution date. FIA believes there is no value in reporting swap data without a price element and that reporting only after the price has been determined should reduce the risk of front-running.[85]

The Commission received one comment maintaining that the proposal lacked needed explanation. Better Markets comments that the Commission's general description

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[79] *Id.*
[80] ISDA-SIFMA at 50.
[81] GFMA at 14.
[82] CME at 3-4.
[83] *Id.*
[84] *Id.*
[85] FIA at 11.

is undoubtedly accurate, but it does not sufficiently describe the use of PPSs for the public to determine the value, if any, of such transactions that would justify codifying a delayed public reporting timeline.[86] Further, Better Markets believes the proposal relied too heavily on only a few market participants and the Commission should instead look at common fact patterns, the identified asset classes using PPS practices, and the volume of PPSs within each asset class.[87]

The Commission received one comment regarding an alternative proposal of reporting PPSs ASATP and then updating the report after the price is determined (in response to the Commission's request for comment 2). ISDA-SIFMA oppose the alternative proposal and comment that PPSs should have a reporting delay before being publicly disseminated by the SDR.[88] ISDA-SIFMA believe the reporting of PPSs before the price is determined does not serve any price discovery function and may increase the costs of hedging by signaling to other participants that a SD will be hedging a particular large notional trade the following day.[89] Further, ISDA-SIFMA believe reporting counterparties should be able to submit data to the SDR as soon as available, and that the SDR should be permitted to delay public dissemination (similar to the process for block trades).[90]

The Commission received one comment related to the alternative of an indefinite delay for PPSs (in response to the Commission's request for comment 3). ISDA-SIFMA commented that PPS reporting under part 43 should be delayed until (a) the price is

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[86] Better Markets at 8.
[87] *Id.*
[88] ISDA-SIFMA at 50.
[89] *Id.*
[90] *Id.*

determined, or (b) 11:59:59 p.m. eastern time on the next business day following the execution date. If the price is still not yet known at 11:59:59 p.m. eastern time on the next business day following the execution date, ISDA-SIFMA commented that the reporting counterparty should then report the data elements that are known. Further, ISDA-SIFMA believe that the majority of PPSs would have the price determined prior to T+1. ISDA-SIFMA believe the reporting of PPSs before the price is determined may increase the costs of hedging by signaling to other participants that a SD will be hedging a particular large notional trade the following day.[91] As such, ISDA-SIFMA believe a T+1 cutoff will significantly reduce potential unnecessary hedging costs by reducing the number of PPSs reported without a price.[92]

The Commission received one comment regarding whether the definition of PPS should be amended to exclude swaps for which the price is not known at execution because it is contingent upon the outcome of SD hedging (in response to the Commission's request for comment 4). ISDA-SIFMA commented that swaps for which a price is not known at execution because it is contingent upon the outcome of SD hedging should benefit from a reporting delay. ISDA-SIFMA do not believe permitting such swaps to receive the reporting delay in proposed § 43.3(a)(4) would change trading behavior.[93]

The Commission received three comments addressing indicators for PPSs. ISDA-SIFMA do not support an additional indicator to identify whether the price for a PPS is not known because it is contingent on SD hedging. ISDA-SIFMA believe that an

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[91] *Id.*

[92] *Id.*

[93] *Id.* at 51.

identifier that specifies the reason the price is not known for a PPS would exacerbate the

potential for other market participants to trade ahead of SD hedging.[94] ISDA-SIFMA

believe the Commission should not modify its proposed post-priced swap indicator and

anything more granular could exacerbate the issues (e.g., front running) that the PPS

proposal intends to remedy.[95] CME opposes additional data elements related to PPSs as

they are of no value to market participants.[96] In contrast to CME, ICI supports an

additional indicator to identify whether the price for a PPS is not known because it is

contingent on SD hedging, and notes that such an indicator would provide the CFTC with

additional information regarding each PPS.[97]

The Commission received one comment regarding costs and benefits. ISDA-

SIFMA recommend that reporting for PPSs be delayed at least until 11:59:59 p.m.

eastern time on the next business day following the execution date because of the

potential cost to customers that results from the proposed 11:59:59 p.m. eastern time

cutoff for PPSs, particularly in the context of global equity index trades.[98] ISDA-SIFMA

give a cross-border example showing that a post-priced swap indicator could indicate to

other market participants that an SD will continue hedging a large notional trade on T+1,

which could hurt the client's execution.[99]

The Commission received one comment addressing an inconsistency with

proposed validations. CME comments that the proposed PPS reporting process is

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[94] *Id.*
[95] *Id.*
[96] CME at 4.
[97] *Id.*
[98] ISDA-SIFMA at 56-57.
[99] *Id.*

inconsistent with the validations proposed in the Proposal.[100] Further, CME believes

since the Commission did not specifically identify which data elements constitute "other

economic or other terms" in proposed § 43.3(a)(4)(ii), it is not clear if the proposed

validations would allow for the reporting of all these data elements.[101] However, CME

states it is clear from the variable term "quantity" that is referenced in the Proposal that §

43.3(a)(4)(ii) is not consistent with the proposed validations.[102] CME notes that many

proposed data elements relate to quantity (notional quantity, etc.), and some of these data

elements, such as quantity unit of measure and total notional quantity, are mandatory data

elements that would need to be populated to pass proposed validations.[103] CME states

that while the proposed quantity unit of measure data element allows for submission of a

dummy value, the allowable values and validations for the other proposed quantity data

elements would require the reporting party to submit an inaccurate value to comply with

proposed § 43.3(a)(4)(ii) and the proposed validations.[104] CME suggests that the

Commission identity all data elements that comprise the variable terms and elements for

any swap and either (1) open up the proposed validations to permit submission of such

transactions with one or more blank data elements; (2) establish dummy variables as

necessary for each of the variable terms such that the dummy variables could be

submitted to pass validations; or (3) open all validations for all data elements for such

swaps covered by § 43.3(a)(4)(ii).[105]

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[100] CME at 4.
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*

c. Final Rule

For reasons discussed in the Proposal and as more fully considered in light of comments, discussed below, the Commission is adopting § 43.3(a)(4) as proposed with a minor ministerial change for clarity. The Commission is modifying the swap data technical specification in response to a comment from CME that § 43.3(a)(4) was inconsistent with the swap data technical specification.

The Commission agrees with commenters that believe the reporting and public dissemination of PPSs ASATP after execution, but before the price is determined, generally does not serve a significant price discovery function. However, the Commission disagrees with CME's comment that the public dissemination of a PPS prior to the price being determined *never* provides any value to the market. The Commission believes the public dissemination of a PPS ASATP after execution with a blank price, or with a placeholder price that reflects the reporting counterparty's expectation of the future event on which pricing is contingent, would not enhance price discovery and may confuse the market. The Commission also believes, and thus agrees with Citadel, that when the price of a PPS is set as a spread above or below a referenced index that is to be published later in the day, the publishing of such spread and the reference index would serve a price discovery function. Specifically, publishing the spread above or below a referenced index that is not published until a later time would inform market participants of the current pricing formula at which specific products are being traded. Market participants could use such information for intra-day price discovery even though the referenced index is not published until later in the day.

The Commission also agrees with FIA and ICI that the publishing of swap transaction and pricing data for PPSs ASATP after execution presents unique and heightened risks of front running. Public reporting of PPSs before their prices are determined would allow market participants to transact in swaps ahead of the event on which the price is contingent, potentially disadvantaging a counterparty to the PPS and increasing its costs. The Commission believes the increase in costs could be expected to lead market participants to forego the use of such swaps, thereby materially reducing swap market liquidity.

The Commission believes proposed § 43.3(a)(4) strikes an appropriate balance between public transparency and price discovery, and concerns that immediate publication of PPSs would materially reduce market liquidity.

In permitting the delayed reporting of PPSs until the earlier of the price being determined or the end of the execution day, the Commission expects that the majority of PPSs will be publicly disseminated only *after* their price has been determined. This will allow market participants to transact those PPSs without the risk that public dissemination will negatively affect the determination of the price, and thus address the Commission's concern regarding a potential material reduction in market liquidity.

The Commission also expects the end of the day reporting deadline in § 43.3(a)(4) *will* result in some PPSs being publicly disseminated prior to their price being determined. The Commission, balancing the delayed reporting of PPSs with the potential harms to transparency that would accrue if counterparties were incentivized to structure swaps as PPSs to take advantage of a longer reporting delay, believes an end of day reporting deadline is appropriate. The Commission believes an end of day reporting

deadline for PPSs is necessary to ensure that the regulation does not inappropriately restrict public transparency and price discovery by encouraging or permitting the indefinitely delayed reporting of PPSs.

Additionally, the Commission is modifying the technical specification in response to a comment by CME. The Commission agrees with CME that the validations in the draft specification needed to be revised to ensure that swaps required to be reported pursuant to § 43.3(a)(4) would be consistent with the validations proposed in the specification. The validations in the technical specification have been revised accordingly.

The Commission agrees with DTCC that adding exceptions to the proposed validations in the technical specification, as the Commission is doing to facilitate the reporting of swaps with variable terms, should generally be avoided because it creates complexities and impedes the standardization of reporting brought about by strict validation rules. However, the Commission is cognizant of its statutory directive to make swap transaction and pricing data available as appropriate to enhance price discovery while taking into account whether the public dissemination will materially reduce market liquidity. Accordingly, the Commission does not view the benefits of simplicity and standardization available under the alternative approach of providing an indefinite delay in reporting PPSs until all variable terms are determined as sufficient reason to justify deviation from the more balanced approach that the Commission believes best suited to effectuate this statutory directive.

3. § 43.3(a)(5) – Clearing Swaps

The Commission is amending § 43.3(a) by adding DCOs to the reporting counterparty hierarchy for clearing swaps that are publicly reportable swap transactions to address the limited circumstances in which DCOs may execute clearing swaps that meet the definition of a publicly reportable swap transaction in part 43. Proposed § 43.3(a)(5) stated that notwithstanding the provisions of § 43.3(a)(1)-(3), if a clearing swap, as defined in § 45.1, is a publicly reportable swap transaction, the DCO that is a party to such swap shall be the reporting counterparty and shall fulfill all reporting counterparty obligations for such swap ASATP after execution.

The Commission received two comments on the proposed amendments to § 43.3(a)(5). ICE DCOs and CME believe that if the Commission finalizes proposed § 43.3(a)(5), the Commission should amend the definition of "publicly reportable swap transaction" in § 43.2 to exclude swaps created through DCO default management processes to avoid frustrating the default management process by allowing front-running if the processes span multiple days.[106] They also believe it would be impractical as the default management process may be achieved through the sale at the portfolio (not individual swap) level, which "does not lend itself" to part 43 reporting.[107] Also, they believe the prices disseminated with default management related swaps would not be relevant to market participants as the prices are affected by the clearing house's priority to take timely action, so mistaken reliance on these prices may lead to price dislocations and market disruption.[108]

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[106] ICE DCOs at 2; CME at 7-8.
[107] *Id.*
[108] *Id.*

The Commission agrees with ICE DCOs and CME that the Commission should amend the definition of publicly reportable swap transaction to exclude swaps created through DCO default management processes because of § 43.3(a)(5). The Commission is concerned that the new requirement could impede the efficacy or ability of DCOs to proceed with default management exercises.

As such, the Commission is adopting § 43.3(a)(5) as proposed, but as discussed above in section II.B.2, is amending the definition of "publicly reportable swap transaction" in § 43.2(a) to exclude swaps entered into by a DCO as part of managing the default of a clearing member. New § 43.3(a)(5) will require that notwithstanding the provisions of § 43.3(a)(1)-(3), if a clearing swap, as defined in § 45.1(a), is a publicly reportable swap transaction, the DCO that is a party to such swap shall be the reporting counterparty and shall fulfill all reporting counterparty obligations for such swap ASATP after execution.

4. § 43.3(a)(6) – PB Swaps

The Commission understands that prime brokerage swaps begin with a counterparty opening an account with a PB that grants limited agency powers to the counterparty. These limited powers enable the counterparty, as an agent for the PB, to enter into swaps with approved executing dealers ("ED"), subject to specific limits and parameters, such as credit limits and collateral requirements. The PB also enters into "give-up" arrangements with approved EDs in which the EDs agree to negotiate swaps with the counterparty, acting as an agent for the PB, within the specified parameters and to face the PB as counterparty for the resulting ED–PB swap ("ED–PB Swap").

The Commission understands that in a prime brokerage swap, the counterparty

seeks bids for the desired swap from one or more of the approved EDs, within the

parameters established by the PB. Once the counterparty and ED agree on the terms, the

Commission believes that both the counterparty and ED provide a notice of the terms to

the PB, and those terms constitute the ED–PB Swap, which the PB must accept if: the

swap is with an approved ED; the counterparty and ED have committed to the material

terms; and the terms are within the parameters established by the PB. Once the ED–PB

Swap is accepted by the PB, the PB enters into a mirror swap ("Mirror Swap") with the

counterparty with identical economic terms and pricing, subject to adjustment, as a result

of the prime brokerage servicing fee.

    a. Proposal

The CEA authorizes the Commission to make swap transaction and pricing data

available to the public in such form and at such times as the Commission determines

appropriate to enhance price discovery.[109] In 2017, DMO announced its intention to

review the reporting regulations addressing ongoing issues of reporting prime brokerage

transactions.[110] In response to concerns that publicly disseminating all legs of a prime

brokerage transaction incorrectly suggests the presence of more trading activity and price

discovery than actually exists, the Commission proposed to define and exempt certain

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[109] 7 U.S.C. 2(a)(13)(B).

[110] Roadmap at 11. DMO has previously provided no-action relief from the real-time public reporting requirements for swaps executed pursuant to prime brokerage arrangements in response to concerns that reporting both legs of prime brokerage transactions would incorrectly suggest the presence of more trading activity and price discovery in the market than actually exists. *See* Commission Letter No. 12-53, Time-Limited No-Action Relief from (i) Parts 43 and 45 Reporting for Prime Brokerage Transactions, and (ii) Reporting Unique Swap Identifiers in Related Trades under Part 45 by Prime Brokers (Dec. 17, 2012), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/12-53.pdf* ("NAL No. 12-53").

legs of prime brokerage transactions, defined as "mirror swaps", from public dissemination.

i. Proposed New § 43.2 Definitions Related to Mirror Swaps

As noted above at section II.C, the Commission proposed adding the following six definitions to § 43.2: "mirror swap;" "pricing event;" "prime broker;" "prime brokerage agency arrangement;" "prime brokerage agent;" and "trigger swap." Since these six proposed definitions are related to the Commission's proposal to exempt mirror swaps from public dissemination, the Commission discusses these definitions in this section.

The Commission proposed adding the term "prime brokerage agency arrangement" to § 43.2(a). "Prime brokerage agency arrangement" would mean an arrangement pursuant to which a PB authorizes one of its clients, acting as agent for such PB, to cause the execution of a particular leg of a prime brokerage transaction. The Commission's goal in proposing the "prime brokerage agency arrangement" definition and using this defined term in other definitions in proposed § 43.2(a) was to help ensure that the scope of unreported mirror swaps is limited to swaps that are, among other things, integrally related to the other leg(s) of a prime brokerage transaction that will always be required to be reported.

The Commission proposed adding the term "prime brokerage agent" to § 43.2(a) as a new definition that would mean a client of a PB who causes the execution of a particular leg(s) of a prime brokerage transaction acting pursuant to a prime brokerage agency arrangement.

The Commission also proposed adding the term "prime broker" to § 43.2(a).
"Prime broker" would mean with respect to a mirror swap and the related leg(s) of a PB
transaction that will not be required to be reported, a SD acting in the capacity of a PB
with respect to such swaps. The Commission proposed to use the term "prime broker" in
the proposed definitions of "prime brokerage agency arrangement," "prime brokerage
agent," and "trigger swap" in proposed § 43.2(a), and in proposed § 43.3(a)(6), to
establish the parameters of when a "mirror swap" would not be reportable under part 43
if it satisfied the terms of proposed § 43.3(a)(6)(i).

The Commission proposed adding the term "trigger swap" to § 43.2(a) as a new
definition that would mean a swap: (1) that is executed pursuant to one or more prime
brokerage agency arrangements;[111] (2) to which one counterparty or both counterparties
are PBs; (3) that serves as the contingency for, or triggers the execution of, one or more
corresponding mirror swaps; and (4) that is a publicly reportable swap transaction that is
required to be reported to an SDR pursuant to this part and part 45 of this chapter. The
Commission proposed to use the term "trigger swap" as an element of a "mirror swap,"
which the Commission proposed to make not reportable.

The Commission proposed adding the term "pricing event" to § 43.2(a) as a new
definition that would mean the completion of the negotiation of the material economic
terms and pricing of a trigger swap. The Commission proposed using the term "pricing
event" in proposed § 43.3(a)(6)(i) to make it clear when execution of a trigger swap,

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[111] The Commission understands that some pricing events that result in trigger swaps are negotiated by
persons that are acting pursuant to a prime brokerage agency arrangement with more than one prime
broker. The Commission understands that some pricing events that lead to trigger swaps are negotiated by
two persons that are each acting pursuant to a prime brokerage agency arrangement with its respective
prime broker.

which would be required to be reported under proposed § 43.3(a)(6)(iv) (discussed below in section II.C.4.b), occurs.

The Commission proposed adding the term "mirror swap" to § 43.2(a) to mean a swap: (1) to which a PB is a counterparty or both counterparties are PBs; (2) that is executed contemporaneously with a corresponding trigger swap; (3) that has identical terms and pricing as the contemporaneously executed trigger swap (except that a mirror swap, but not the corresponding trigger swap, may include any associated prime brokerage service fees agreed to by the parties and except as provided in the final sentence of this "mirror swap" definition); (4) with respect to which the sole price forming event is the occurrence of the contemporaneously executed trigger swap; and (5) the execution of which is contingent on, or is triggered by, the execution of the contemporaneously executed trigger swap. As further proposed, the notional amount of a mirror swap may differ from the notional amount of the corresponding trigger swap, including, but not limited to, in the case of a mirror swap that is part of a partial reverse give-up;[112] provided, however, that in such cases, (i) the aggregate notional amount of all such mirror swaps to which the PB that is a counterparty to the trigger swap is also a counterparty shall be equal to the notional amount of the corresponding trigger swap and (ii) the market risk and contractual cash flows of all such mirror swaps to which a PB that is not a counterparty to the corresponding trigger swap is a party will offset each other (and the aggregate notional amount of all such mirror swaps on one side of the market and with cash flows in one direction shall be equal to the aggregate notional amount of all

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[112] A "partial reverse give-up" is described below in section II.C.4.b.

such mirror swaps on the other side of the market and with cash flows in the opposite direction), resulting in each PB having a flat market risk position.

The Commission proposed defining the term "mirror swap" to delineate a group of swaps that do not have to be reported under part 43 if the related conditions set forth in proposed § 43.3(a)(6) are satisfied. The Commission believed that because the terms and pricing of a trigger swap and its related mirror swaps are similar, part 43 reporting of both a trigger swap and the related mirror swaps could falsely indicate the occurrence of two or more pricing events and incorrectly suggest the presence of more trading activity and price discovery than actually exist.

The Commission proposed using the word "contemporaneously" in clause (2) of the "mirror swap" definition rather than "simultaneously" to reflect the fact that it may take time for potential parties to a mirror swap to receive the terms of such mirror swap and to verify that the terms are within the parameters established by the governing prime brokerage arrangement.

The Commission proposed the language regarding associated prime brokerage service fees in clause (3) of the proposed "mirror swap" definition to reflect that a mirror swap may contain fees that a PB that is a counterparty to a mirror swap may charge as a fee for serving as a PB in such swap. The Commission understands that PBs typically charge their clients a service fee for the swap intermediation service that PBs provide. The PB service fee is meant to reflect PBs' credit intermediation costs as well as PBs' back-office and middle-office administrative services costs related to trigger swaps and mirror swaps (e.g., booking, reconciling, settling, and maintaining such trigger swaps and mirror swaps). The PB service fee is typically agreed upon by a PB and its client before

a pricing event. To be considered prime brokerage service fees for purposes of clause (3)

of the proposed "mirror swap" definition, such fees must be limited to the foregoing

purpose and cannot contain any other elements.[113]

ii. Proposed Regulations

Proposed new § 43.3(a)(6)(i) would provide that a mirror swap, which the

Commission proposed to define in § 43.2(a), as discussed above in section II.B.1, is not a

publicly reportable swap transaction. Proposed new § 43.3(a)(6)(i) would also state that,

for purposes of determining when execution occurs under § 43.3(a)(1)-(3), execution of a

trigger swap shall be deemed to occur at the time of the pricing event for such trigger

swap.

Proposed new § 43.3(a)(6)(ii) would provide parameters for determining which

counterparty is the reporting counterparty for a given trigger swap in situations where it is

unclear, with respect to a given set of swaps, which are mirror swaps and which is the

related trigger swap. More specifically, proposed new § 43.3(a)(6)(ii) would state that if,

with respect to a given set of swaps, it is unclear which are mirror swaps and which is the

related trigger swap, the PBs would be required to determine which swap is the trigger

swap and which are mirror swaps. Proposed new § 43.3(a)(6)(ii) would also specify that,

with respect to the trigger swap to which a PB is a party, the reporting counterparty shall

be determined pursuant to § 43.3(a)(3). Proposed new § 43.3(a)(6)(ii) would add that,

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[113] For example, the Commission would not consider a purported prime brokerage service fee providing the prime broker or its counterparty exposure to a commodity to be a prime brokerage service fee within the meaning of clause (3) of the proposed "mirror swap" definition, as a result of which the related "mirror swap" would not be a mirror swap, and thus would not be within the scope of proposed § 43.3(a)(6) (discussed below in section II.C.4.b), and therefore would be reportable under §§ 43.3(a)(1)-(3), as applicable, depending on the facts and circumstances.

notwithstanding the foregoing, if the counterparty to a trigger swap that is not a PB is an

SD, then that counterparty will be the reporting counterparty for the trigger swap.

Proposed new § 43.3(a)(6)(iii) would provide that, if, with respect to a given set

of swaps, it is clear which are mirror swaps and which is the related trigger swap, the

reporting counterparty for the trigger swap shall be determined pursuant to § 43.3(a)(3).

Proposed new § 43.3(a)(6)(iv) would provide that trigger swaps described in

proposed § 43.3(a)(6)(ii) and (iii) shall be reported pursuant to the requirements set out in

§ 43.3(a)(2) or (a)(3), as applicable, except that the provisions of proposed §

43.3(a)(6)(ii), rather than of proposed § 43.3(a)(3), shall govern the determination of the

reporting counterparty for purposes of the trigger swaps described in proposed §

43.3(a)(6)(ii).

The goal of proposed § 43.3(a)(6)(ii) is to have each trigger swap be reported

ASATP after its pricing event. The Commission understands that one counterparty to a

trigger swap often will have participated in negotiating the related pricing event, so

should be well-placed to report the trigger swap pursuant to part 43 in such

circumstances, particularly if that counterparty is an SD, given that most SDs are

experienced with part 43 reporting. If the PB is an SD, but its counterparty is not, the PB

would be the reporting counterparty for the trigger swap even though the PB may not

learn of the pricing event for some time. However, pursuant to proposed § 43.3(a)(7),

discussed below in section II.C.5, the PB could contract with a third-party service

provider (which could include a party to the pricing event (e.g., an executing broker)) to

handle such reporting if it believes reporting such publicly reportable swap transaction in

a timely manner (i.e., ASATP after the pricing event, per proposed § 43.3(a)(6)(i)) would

be problematic, while remaining fully responsible for such reporting. Similarly, even in circumstances in which neither counterparty to a trigger swap participated in negotiating the related pricing event (e.g., a double give-up prime brokerage swap structure), such counterparties can contract with a third-party service provider to handle such reporting if they believe that reporting such trigger swap in a timely manner (i.e., ASATP after the pricing event, per proposed § 43.3(a)(6)(i)) would be problematic for them, while remaining fully responsible for such reporting.

b. Comments on the Proposal

The Commission received one comment opposing the proposal to provide an exemption from real-time reporting for mirror swaps. Citadel comments the Commission should instead enhance swap transaction and pricing data by implementing a separate flag to specifically identify mirror swaps.[114]

The Commission received two comments supporting the proposal to provide an exemption from real-time reporting for mirror swaps. CME comments that publishing information regarding mirror swaps would not provide any information of value to market participants.[115] FXPA similarly notes their agreement with Commissioner Berkowitz's assessment that "duplicated reporting can create a false signal of swap trading volume and potentially obscure price discovery by giving the price reported for a single prime brokerage swap twice as much weight relative to other non-prime brokerage swaps."[116]

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[114] Citadel at 10.
[115] CME at 5.
[116] FXPA at 4.

The Commission received an additional two comments that support the proposal but also suggest modifications. ISDA-SIFMA support the proposed treatment of mirror swaps as non-publicly reportable swap transactions.[117] ISDA-SIFMA note that even though mirror swaps resemble hedging swaps, the key difference is that hedges occur in the market while mirror swaps are solely entered into as a function of a PB acting as a credit intermediary between parties that agreed to the terms of the relevant swap.[118]

ISDA-SIFMA also believe the current proposal could be improved by modifying obligations to report trigger swaps where the reporting obligation may fall on a prime broker. ISDA-SIFMA suggest that when an off-facility trigger swap is entered into with a SD that is not a PB with respect to such trigger swap, that SD should always report such trigger swap ASATP after such pricing event.[119] However, ISDA-SIFMA believe that when a pricing event occurs between two non-SDs, the related trigger swap should be reported ASATP upon acceptance of the prime broker.[120]

ISDA-SIFMA also note that non-SDs generally do not have the necessary systems to effectuate reporting and PBs would thus be reluctant to delegate reporting responsibility to a non-SD.[121] ISDA-SIFMA believe a PB would therefore report a trigger swap when the pricing event occurred between two non-SDs, which could only occur after the PB has accepted the trigger swap. ISDA-SIFMA believe that requiring the PB to report a trigger swap sooner than acceptance is impractical and would have the

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[117] ISDA-SIFMA at 51-53, 64-66.
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] ISDA-SIFMA at 64.

negative effect of limiting PB client access to non-SD liquidity.[122] ISDA-SIFMA believe that PB client access to non-SD liquidity would be limited under the Proposal because PBs would be concerned with their ability to comply with the reporting requirement and may restrict their PB clients from transacting with non-SDs.[123]

ISDA-SIFMA acknowledge that the suggestion that PBs be required to report trigger swaps after the PB has accepted the trigger swap may lead to a delay in the reporting of the trigger swap.[124] ISDA-SIFMA state that the extent of the delay would vary based on factors that include the sophistication of the non-SD's operational and systems capability, but that they assume reporting would be feasible within a T+1 timeline.[125] ISDA-SIFMA suggest using the proposed prime broker transaction indicator exclusively for such non-SD trigger swaps to assist in indicating to market participants that such trigger swaps may be reported later than the occurrence of the pricing event.[126]

ISDA-SIFMA do not believe additional indicators for trigger swaps are necessary because pricing data that is of interest to the public are already included in the swap transaction and pricing data for the trigger swap.[127] ISDA-SIFMA believe it is not practicable to require the potential additional reporting data elements on which the Commission sought comment because the relevant reporting counterparty may not have access to such information.[128]

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[122] *Id.*
[123] ISDA-SIFMA at 51-53, 64-66.
[124] ISDA-SIFMA at 52.
[125] ISDA-SIFMA at 66.
[126] ISDA-SIFMA at 52-53.
[127] ISDA-SIFMA at 51-53.
[128] *Id.*

GFMA supports ISDA-SIFMA's response and similarly believes that the above modifications to the proposal are necessary.[129]

The Commission received one comment addressing definitions. ISDA-SIFMA do not believe the proposed definitions need to be modified to reflect that prime brokerage fees might not be included in all mirror swaps. ISDA-SIFMA commented that clause (3) of the proposed "Mirror Swap" definition appears to adequately address such a possibility.[130]

ISDA-SIFMA support the Commission's proposed definition for "prime broker" and believes it accurately describes the term as understood in common industry practice.[131] However, ISDA-SIFMA anticipate that the related definitions for "mirror swap" and "trigger swap" would create unintended challenges and suggests revisions to those definitions that reference a newly defined term, "prime broker swap."[132] ISDA-SIFMA suggest revisions to clarify that the defined terms apply across asset classes and were not intended to imply that a prime brokerage agency arrangement is limited to the execution of the trigger swap.[133] ISDA-SIFMA also suggest a revision to the definition of trigger swap that would not, in conjunction with proposed § 43.3(a)(6)(i), require the public dissemination of a mirror swap if the associated trigger swap was exempt from public dissemination for any reason.[134]

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[129] GFMA at 1, 5-6.
[130] ISDA-SIFMA at 53.
[131] ISDA-SIFMA at 53-54.
[132] *Id.*
[133] *Id.*
[134] ISDA-SIFMA at 65.

The Commission received one comment specifically regarding costs and benefits. ISDA-SIFMA commented that adding an additional reporting data element identifying if a swap was a mirror swap or a trigger swap would only result in added costs and complexity to PB reporting, without commensurate benefit to regulatory oversight.[135] ISDA-SIFMA believe that the real-time reporting of mirror swaps would neither enhance price transparency nor serve any price discovery purpose given that there would be no new or additional pricing information released to the market and publicly disseminating mirror swaps with a mirror swap flag would only create noise on the public tape.[136] With respect to the prevalence of mirror swaps, ISDA-SIFMA note that all PB intermediated transactions have at least one mirror swap, but ISDA-SIFMA cannot speak to percentages because firms have strict internal policies on what sort of information can be shared with or amongst other firms.[137]

c. Final Rule

The Commission is adopting the proposal and the proposed new § 43.2 definitions related to mirror swaps with some modifications suggested by commenters, as discussed further below.[138]

The CEA authorizes the Commission to make swap transaction and pricing data available to the public "in such form and *at such times as the Commission determines appropriate to enhance price discovery*."[139] The Commission concludes, as informed by commenters, that price discovery will be enhanced by excluding mirror swaps from

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[135] ISDA-SIFMA at 57.
[136] *Id.*
[137] *Id.* at 58.
[138] In addition, the Commission made minor non-substantive technical edits for clarity.
[139] 7 U.S.C. 2(a)(13)(B) (emphasis added).

public dissemination. The Commission believes that price discovery will not be

enhanced because the terms and pricing of a trigger swap and its related mirror swap(s)

are the same and the current requirement to report both trigger and mirror swaps may be

falsely indicating the occurrence of two or more pricing events. The Commission

understands that such potentially false indications may also incorrectly suggest the

presence of more trading activity and price discovery in the market than actually exists.

The Commission is therefore finalizing the portions of the proposed amendments that

clarify that mirror swaps are not publicly reportable swap transactions.

The Commission disagrees with the comment that mirror swaps should continue

to be publicly disseminated. The commenter suggested that the Commission address

concerns that mirror swaps may create false signals of swap trading volume by requiring

the reporting of a new indicator for mirror swaps, but the Commission notes that none of

the other commenters assert that the public reporting of mirror swaps enhances price

discovery. The Commission believes that it would be inconsistent with Section 2(a)(13)

of the CEA for the Commission to continue to require the public dissemination of swap

transaction and pricing data that does not enhance price discovery.[140]

The Commission is also finalizing as proposed those portions of the proposal that

provide that the execution of a trigger swap, for purposes of determining when execution

occurs under §§ 43.3(a)(1)-(3), shall be deemed to occur at the time of the pricing event

for such trigger swap. Since all of the material terms of trigger swaps are determined at

the time of its related pricing event, the Commission believes it would enhance price

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[140] 7 U.S.C. 2(a)(13)(B).

discovery for swap transaction and pricing data associated with trigger swaps to be

reported in real time and disseminated, subject to any applicable time delay described in

§ 43.5, ASATP after the occurrence of the pricing event.

The Commission disagrees with the comment that a PB should be required to

report a trigger swap after the trigger swap has been accepted by the PB in circumstances

where the counterparty to the trigger swap is not an SD. The commenter acknowledges

that conditioning the requirement to report a trigger swap upon the acceptance of the

trigger swap by a PB would permit an indefinite delay in the reporting of some trigger

swaps. The Commission believes that the proposed indefinite delay is generally

inconsistent with the Section 2(a)(13) of the CEA and would have negative impacts on

transparency, price discovery, and liquidity. Since all of the material terms of trigger

swaps are determined at the time of its related pricing event, the Commission believes it

would enhance price discovery for swap transaction and pricing data associated with

trigger swaps to be reported in real time and disseminated, subject to any applicable time

delay described in § 43.5, ASATP after the occurrence of the pricing event.

The Commission is also finalizing the proposed definition of mirror swap and

trigger swap with modifications suggested by commenters.[141] The Commission believes

it is necessary to define a mirror swap and trigger swap with specificity to ensure that §

43.3(a)(6) only exempts from public reporting those legs of a prime brokerage transaction

that might incorrectly suggest the presence of more trading activity and price discovery

than actually exist.

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[141] In addition, the Commission made minor non-substantive technical edits for clarity.

The Commission agrees with comments suggesting clarifying revisions to the proposed definitions of mirror swap and trigger swap, and the creation of a newly defined term "prime broker swap." These modifications seek to clarify that such terms apply across asset classes and were not intended to imply that a prime brokerage agency arrangement is limited to the execution of the trigger swap. The Commission did not intend to imply otherwise and believes such clarifications may help market participants better understand their obligations. Accordingly, the Commission is amending proposed § 43.2(a) to define the term "Prime broker swap" as "any swap to which a SD acting in the capacity as PB is a party." Under this definition, both the trigger swap and mirror swap would be prime broker swaps. The Commission is similarly amending the proposed definitions of "Prime brokerage agency arrangement" and "Prime brokerage agent" to reference PB swaps instead of trigger swaps.

The Commission is amending the proposed definition of "Trigger swap" to clarify that a PB swap executed on or pursuant to the rules of a SEF or DCM shall be treated as the trigger swap for purposes of part 43. The Proposal did not directly address the potential fact pattern where a leg of a prime brokerage transaction is executed on a facility. In such instances, the Commission believes that it is preferable for that leg to be deemed the trigger swap so that it can be reported in real-time by the SEF or DCM.

The Commission is amending the proposed definition of "Mirror swap" to replace references to "notional" with a broader reference to "contractually agreed payment and delivery amounts." The Commission believes that use of the broader term "contractually agreed payment and delivery amounts" clarifies that the term mirror swap may apply to swaps in all asset classes, including swaps for which the term "notional" may not

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generally be used by market participants. The Commission is also amending the

proposed definition of "Mirror swap" to remove the phrase "including, but not limited to,

in the case of a mirror swap that is part of a partial reverse give-up." While the

Commission understands that the definition of "Mirror swap" may apply to swaps

associated with partial reverse give-ups, as described in the Proposal, the Commission

believes such specific reference in the text of the regulation is unnecessary.

The Commission is otherwise finalizing the proposed definitions of mirror swap

and trigger swap as proposed. The Commission believes the definitions are necessary to

ensure that § 43.3(a)(6) only exempts from public reporting those legs of a prime

brokerage transaction that might incorrectly suggest the presence of more trading activity

and price discovery than actually exist.

The Commission is therefore defining a mirror swap to mean a swap: (1) To

which (i) a PB is a counterparty or (ii) both counterparties are prime brokers; (2) that is

executed contemporaneously with a corresponding trigger swap; (3) That has identical

terms and pricing as the contemporaneously executed trigger swap (except (i) that a

mirror swap, but not the corresponding trigger swap, may include any associated prime

brokerage service fees agreed to by the parties and (ii) as provided in paragraph (5) of

this "mirror swap" definition); (4) With respect to which the sole price forming event is

the occurrence of the contemporaneously executed trigger swap; and (5) The execution of

which is contingent on, or is triggered by, the execution of the contemporaneously

executed trigger swap. The contractually agreed payments and delivery amounts under a

mirror swap may differ from those amounts of the corresponding trigger swap if: (i)

under all such mirror swaps to which the PB that is a counterparty to the trigger swap is

also a counterparty, the aggregate contractually agreed payments and delivery amounts shall be equal to the aggregate of the contractually agreed payments and delivery amounts under the corresponding trigger swap; and (ii) the market risk and contractually agreed payments and delivery amounts of all such mirror swaps to which a PB that is not a counterparty to the corresponding trigger swap is a party will offset each other, resulting in such PB having a flat market risk position at the execution of such mirror swaps.

The Commission is similarly defining a trigger swap to mean a swap: (1) That is executed pursuant to one or more prime brokerage agency arrangements; (2) To which one counterparty or both counterparties are prime brokers; (3) That serves as the contingency for, or triggers, the execution of one or more corresponding mirror swaps; and (4) That is a publicly reportable swap transaction that is required to be reported to a swap data repository pursuant to this part and part 45 of this chapter. A PB swap executed on or pursuant to the rules of a SEF or DCM shall be treated as the trigger swap for purposes of this part.

The Commission expects the parties to a trigger swap to promptly convey those terms to the relevant prime broker(s) that would be a party or parties to related mirror swaps. Any delay in conveying such terms should not be used as an opportunity to find additional counterparties to take part in unreported mirror swaps.[142] The Commission may construe any purported mirror swaps resulting from such activity as not executed contemporaneously with the related trigger swap, and thus not within the scope of the

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[142] This could include, but would not be limited to, a potential party to a mirror swap receiving the terms of a related trigger swap from one party to the trigger swap and seeking additional counterparties to a mirror swap while waiting to receive the matching terms of the trigger swap from the other party thereto.

proposed mirror swap definition or, as a result, § 43.3(a)(6), and therefore reportable under § 43.3(a)(1)-(3), as applicable, depending on the facts and circumstances.

The Commission disagrees with comments suggesting the proposed definition of trigger swap be amended to allow an exception to the requirement that such swap be a publicly reportable swap transaction reported to an SDR, where the trigger swap is otherwise exempt from public reporting. The Commission is excluding mirror swaps from public dissemination because of its concern that the public dissemination of both trigger and mirror swaps may falsely indicate the occurrence of two or more pricing events. The Commission's concern that the publication of a mirror swap may mislead the market is premised on the publication of the associated trigger swap. If the trigger swap is not publicly disseminated, this concern is moot. The Commission is therefore not amending the definition of trigger swap to allow for an exception to the requirement that a trigger swap be a publicly reportable swap transaction that is reported to a SDR.

The Commission agrees with the comment suggesting revisions to clarify and simplify reporting obligations for trigger swaps. The Commission is changing the title of § 43.6(a)(6) from "Mirror swaps" to the more general "Prime Broker swaps" as the paragraph contains reporting obligations related to trigger swaps. The Commission is modifying proposed § 43.6(a)(6)(ii) to clarify that the obligation for PBs to determine which swaps are mirror swaps and which are trigger swaps applies when the trigger swap would occur between two PBs under a prime brokerage agency arrangement. The Commission is also removing the distinction in proposed §§ 43.6(a)(6)(ii) and 43.6(a)(6)(iii) that would have created slight differences in the process for determining the reporting counterparty for certain off-facility trigger swaps.

5. § 43.3(a)(7) – Third-Party Facilitation of Data Reporting

The Commission is adding new § 43.3(a)(7) to provide for the third-party facilitation of data reporting. New § 43.3(a)(7) states that any person required by part 43 to report swap transaction and pricing data, while remaining fully responsible for reporting as required by part 43, may contract with a third-party service provider to facilitate reporting. Regulation 45.7 provides for third-party facilitation of data reporting, and the Commission believes a parallel requirement in part 43 will provide regulatory certainty by expressly permitting the same opportunity for part 43 reporting.

The Commission received one comment on the proposal. Markit comments the proposed explicit acknowledgement that third-party reporting services may be used to meet part 43 reporting requirements will encourage more firms to provide such services and will consequently result in reduced compliance costs.[143] The Commission agrees with Markit, and for the reasons discussed above, is adopting § 43.3(a)(7) as proposed.

6. § 43.3(b) – Public Dissemination of Swap Transaction and Pricing Data

The Commission is adopting changes to § 43.3(b). Existing § 43.3(b)(2)[144] states that registered SDRs shall ensure that swap transaction and pricing data is publicly disseminated ASATP after such data is received from a SEF, DCM, or reporting party, unless such publicly reportable swap transaction is subject to a time delay described in § 43.5, in which case the publicly reportable swap transaction shall be publicly disseminated in the manner described in § 43.5.

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[143] Markit at 8.
[144] As the Commission discussed above in section II.C.1, the Commission is moving the substance of existing § 43.3(b)(1) to revised § 43.3(a)(2).

The Commission is re-locating existing § 43.3(b)(2) to § 43.3(b)(1). The

Commission is replacing the language in existing § 43.3(b)(2) stating that SDRs "shall

ensure" swap transaction and pricing data is publicly disseminated with an SDR "shall

publicly disseminate" swap transaction and pricing data ASATP to clarify that SDRs

must disseminate the data, rather than ensure it is done. The Commission is also

correcting two references to "publicly reportable swap transaction" to reference "swap

transaction and pricing data."

The Commission is re-locating § 43.3(c)(1) to § 43.3(b)(2) in conjunction with the

above relocation of § 43.3(b)(2) to § 43.3(b)(1). Existing § 43.3(c)(1) states that any

SDR that accepts and publicly disseminates swap transaction and pricing data in real-time

shall comply with part 49 and shall publicly disseminate swap transaction and pricing

data in accordance with part 43 ASATP upon receipt of such data, except as otherwise

provided in part 43. Because existing § 43.3(c)(1) is an SDR obligation regarding the

public dissemination of swap transaction and pricing data, the Commission is re-locating

it to revised § 43.3(b).

The Commission is also removing the last phrase of existing § 43.3(c)(1), which

states that SDRs must publicly disseminate swap transaction and pricing data in

accordance with part 43 ASATP upon receipt of such data, except as otherwise provided

in part 43. The language is unnecessary given the similar, but more precise, reference to

§ 43.5 in existing § 43.3(b)(2) and in proposed § 43.3(b)(1).[145] Finally, the Commission

is re-designating existing § 43.3(c)(2) and (3) as § 43.3(b)(4) and (5), respectively.

The Commission did not receive any comments on the non-substantive or

structural changes to § 43.3(b). For the reasons discussed above, the Commission is

adopting the changes to § 43.3(b) as proposed. Separately, DTCC recommends deleting

the annual independent review requirements for SDRs in existing § 43.3(c)(3), re-

designated § 43.3(b)(5), because SDRs are subject to the system safeguards requirements

in § 49.24, so the requirements in § 43.3(b)(5) create unnecessary compliance costs and

burdens for SDRs.[146] To the extent the requirements overlap, the Commission clarifies

SDRs can apply the controls testing provisions in § 49.24 by their internal audit

departments to satisfy § 43.3(b)(5), but the Commission is not removing § 43.3(b)(5)

from its regulations.

7. § 43.3(c) – Availability of Swap Transaction and Pricing Data to the Public

The Commission is relocating the requirements to make swap transaction and

pricing data available to the public from existing § 43.3(d)(1) and (2) to § 43.3(c)(1) and

(2).[147] Existing § 43.3(d)(2) specifies that SDRs must make "publicly disseminated"[148]

swap transaction and pricing data "freely available and readily accessible" to the public.

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[145] The reference in § 43.3(c)(1) to "except as otherwise provided in part 43" rather than solely to § 43.5 is unnecessarily broad, given that § 43.5 currently is the only regulation in part 43 containing a delay to public dissemination.

[146] DTCC at 3.

[147] As discussed above in section II.C.6, the Commission is re-locating the text of existing § 43.3(c)(1), as the Commission is modifying it, to § 43.3(b)(2), and existing §§ 43.3(c)(2) and (3) as §§ 43.3(b)(4) and (5), respectively.

[148] Existing § 43.2 defines "publicly disseminated" to mean to publish and make available swap transaction and pricing data in a non-discriminatory manner, through the internet or other electronic data feed that is widely published and in machine readable electronic format.

The Commission is also changing existing § 43.3(d)(1) and (2), re-designated as § 43.3(c)(1) and (2) to establish requirements for SDRs to make swap transaction and pricing data available to the public on their websites. First, the Commission is specifying that SDRs must make swap transaction and pricing data available on their websites for a period of a least one year after the initial "public dissemination" of such data. Second, the Commission is moving the format requirements for SDRs in making this swap transaction and pricing data available to the revised definition of "public dissemination."

The Commission believes publishing historical data supports the fairness and efficiency of markets and increases transparency, which in turn improves price discovery and decreases risk.[149] Most SDRs currently make historical swap transaction and pricing data available on their websites for market participants to download, save, and analyze.[150] However, without clear requirements on how long SDRs must make this data available, or make instructions available, a situation could arise where swap transaction and pricing data is reported, publicly disseminated, and then quickly or unreasonably made unavailable to the public. Removing data in this fashion would deny the public a sufficient opportunity to review the data and ultimately impede the goals of increasing market transparency, improving price discovery, and mitigating risk.

The Commission received three comments supporting the proposal to require SDR's to make public data available on their websites free for one year.[151] In particular,

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[149] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1183.
[150] DTCC-SDR's historical swap transaction and pricing data is available at *https://rtdata.dtcc.com/gtr/;* CME SDR's historical swap transaction and pricing data is available at *https://www.cmegroup.com/market-data/repository/data.html*; and ICE Trade Vault's historical swap transaction and pricing data is available at *https://www.icetradevault.com/tvus-ticker/#.*
[151] Citadel at 11; CME at 8; DTCC at 3.

Citadel believes SDRs should be required to make available at least one year of historical data free of charge.[152] The Commission agrees with commenters and is adopting the changes to § 43.3(c) as proposed, with one modification described below.

DTCC recommends clarifying the connection between the fee requirement in proposed § 43.3(c)(2) and the one-year period set forth in § 43.3(c)(1) by either (i) combining the requirements in a single paragraph or (ii) changing the language under § 43.3(c)(2) from "pursuant to this part" to "pursuant to this paragraph (c)."[153] The Commission agrees with DTCC and is changing "this part" in § 43.3(c)(2) to "this paragraph" to clarify the connection.

Therefore, § 43.3(c) will state that SDRs shall make: swap transaction and pricing data available on their websites for a period of time that is at least one year after the initial public dissemination thereof; instructions freely available on their websites on how to download, save, and search such swap transaction and pricing data; and swap transaction and pricing data that is publicly disseminated pursuant to this paragraph available free of charge.

8. § 43.3(d) – Data Reported to SDRs

The Commission is adopting new § 43.3(d)(1) to require reporting counterparties, SEFs, and DCMs to report the swap transaction and pricing data as described in the elements in appendix A. The Commission provides guidance with respect to the form and manner of reporting such elements in the technical specification published by the

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[152] Citadel at 11.
[153] DTCC at 3. DTCC is concerned interpreting § 43.3(c)(2)'s fee requirement without any time limitation would mean any such previously publicly disseminated data held by an SDR must be offered free of charge in perpetuity, which could unnecessarily limit the services SDRs could provide to market participants.

Commission in place of existing § 43.3(d)(1).[154] The Commission is also adding §

43.3(d)(2) to require reporting counterparties, SEFs, and DCMs to satisfy SDR validation

procedures when reporting swap transaction and pricing data to SDRs in place of existing

§ 43.3(d)(2).[155]

The Commission is also removing existing § 43.3(d)(3). In its place, the

Commission is requiring reporting counterparties, SEFs, and DCMs to use the facilities,

methods, or data standards provided or required by the SDR to which the reporting

counterparty, SEF, or DCM, reports the data.

The Commission believes reporting counterparties will benefit from distinct

regulatory requirements in part 43 for reporting the swap transaction and pricing data as

described in the data elements in appendix A in the form and manner provided in the

technical specification published by the Commission. In addition, the Commission

believes the SDR validation procedures the Commission is adopting in § 43.3(f) will help

improve the timeliness and accuracy of data SDRs publicly disseminate. However, the

Commission believes a companion requirement to § 43.3(f) for reporting counterparties,

SEFs, and DCMs to satisfy SDR validation procedures in § 43.3(d)(2) is necessary.

Without a companion requirement, ambiguity could arise as to the responsibilities of

reporting counterparties, SEFs, and DCMs to actually satisfy the validation requirements

in § 43.3(f).

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[154] The Commission is relocating the requirement in existing § 43.3(d)(1) to the definition of "publicly
disseminate" in § 43.2.
[155] The Commission is relocating the requirement in existing § 43.3(d)(2) to § 43.3(c)(1) and (2).

The Commission received one comment[156] on the changes to § 43.3(d). DTCC

believes the revisions would benefit market participants by having publicly disseminated

swap transaction and pricing data standardized across SDRs via the requirements of the

technical specifications published by the Commission pursuant to § 43.7.[157] The

Commission agrees with DTCC. For the reasons discussed above, the Commission is

adopting the changes to existing § 43.3(d) as proposed, with a non-substantive technical

change to proposed § 43.3(d)(1) for clarity.

9. § 43.3(f) – Data Validation Acceptance Message

The Commission is adopting new regulations for SDRs to validate swap

transaction and pricing data in § 43.3(f). New § 43.3(f) will require that, in addition to

validating each swap transaction and pricing data report submitted to it, the SDR also

shall notify the reporting counterparty, SEF, or DCM submitting the report whether the

report satisfied the data validation procedures of the SDR. The SDR will have to provide

such notice ASATP after accepting the swap transaction and pricing data report. New §

43.3(f)(1) will provide that an SDR may satisfy the validation requirements by

transmitting data validation acceptance messages as required by § 49.10.[158]

New § 43.3(f)(2) will provide that if a swap transaction and pricing data report

submitted to an SDR does not satisfy the data validation procedures of the SDR, the

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[156] NFP Electric Associations also comment they read CEA section 2(a)(13)(D) as only authorizing the Commission to require registered entities to disseminate data on swaps. As such, after a non-SD/MSP/DCO reports an off-facility swap pursuant to part 43, their reporting obligations should be satisfied as there is no separate "public dissemination" requirement in the CEA that falls on such non-registered entities. The Commission agrees nothing in existing or amended § 43.3(d) imposes a public dissemination requirement on a non-registered entity, and as such, the Commission considers NFP Electric Associations' concern misplaced.

[157] DTCC at 4.

[158] The Commission is adopting new regulations for SDRs to validate swap transaction and pricing data in a separate release amending parts 45, 46, and 49.

reporting counterparty, SEF, or DCM required to submit the report has not satisfied its

obligation to report swap transaction and pricing data in the manner provided by §

43.3(d). The reporting counterparty, SEF, or DCM will not have satisfied its obligation

until it submits the swap transaction and pricing data report in the manner provided by §

43.3(d), which includes the requirement to satisfy the data validation procedures of the

SDR.

The Commission is making one change to the proposal in response to a comment

from DTCC. DTCC believes the Commission should replace the word "transmitting"

with "making available" to give market participants flexibility in using the best available

means to achieve proposed § 43.3(f)(1)'s purpose.[159] The Commission agrees

"transmitting" could limit SDRs in providing information to their customers. As a result,

the Commission is changing "transmitting" in § 43.3(f)(1) to "making available."

The Commission believes rules for validations in § 43.3(f) are critical for

ensuring accurate, high-quality swap transaction and pricing data reaches the public. The

Commission's regulations do not currently require that SDRs validate swap transaction

and pricing data. The Commission understands, however, that SDRs have implemented

validations as a best practice. As a result, each SDR runs a number of checks, or

validations, on each message prior to publicly disseminating it. A failed validation can

cause an SDR to reject the message without disseminating it to the public.

The Commission is concerned that the lack of validation requirements has

resulted in reporting counterparties, SEFs, and DCMs being unaware of, or unfamiliar

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[159] DTCC at 4. DTCC is concerned proposed § 43.3(f)(1) is silent regarding other means by which an SDR can satisfy the validation requirements and is concerned that the proposed language unnecessarily limits the means by which SDRs and their members may arrange for access to such information.

with, the existence of such validations. The Commission is concerned that the lack of awareness may be resulting in reporting counterparties, SEFs, and DCMs being unclear about their responsibilities to monitor their submissions to SDRs for errors that may result in validation failures that ultimately result in non-dissemination. As a result, the Commission is adopting § 43.3(d)(2) to require reporting counterparties, SEFs, and DCMs to satisfy SDR validation procedures when reporting swap transaction and pricing data to SDRs. The Commission is also adopting § 43.3(f) to make clear the requirement for each SDR to notify submitting parties of their failure to meet the SDR's validation procedures and that an entity's reporting obligation is not satisfied until the SDR's validation procedures have been satisfied.

The Commission received one comment opposing validations. NFP Electric Associations believe they will impose a significant additional burden on non-SD/MSP/DCO counterparties to off-facility non-financial commodity swaps and believe the Commission has not proved the validations will achieve a specific regulatory benefit to offset these burdens.[160] The Commission acknowledges the concerns raised by NFP Electric Associations, but believes that as SDRs currently validate data, the new regulations should not impose significant additional burdens on all reporting counterparties, including non-SD/MSP/DCO counterparties.

10. § 43.3(h) – Timestamp Requirements

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[160] NFP Electric Associations at 6-7.

The Commission is removing the timestamp requirements in existing §

43.3(h)(1)-(4).[161] Existing § 43.3(h)(1)-(4) sets forth timestamp requirements for

registered entities, SDs, and MSPs for all publicly reportable swap transactions.[162]

Separately, existing § 43.3(h)(4)(i) contains regulations regarding SDR fees. The

Commission is not substantively amending § 43.3(h)(4)(i), but is re-locating the

requirement to § 43.3(g) in light of the changes to § 43.3(h).

The updated list of data elements in appendix A will cover the timestamps

described in § 43.3(h).[163] Therefore, § 43.3(h)(1)-(3) requiring SEFs, DCMs, SDs,

MSPs, and SDRs to timestamp swap transaction and pricing data is now redundant. In

addition, the separate recordkeeping requirement for timestamps duplicates other

recordkeeping requirements for SEFs, DCMs, SDs, MSPs, and SDRs. SDRs must

already keep swap data for five years following the final termination of the swap and for

an additional ten years in archival storage.[164] In a separate release, the Commission is

adding part 43 swap transaction and pricing data to the recordkeeping requirement in §

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[161] The Commission proposed moving the § 43.3(g) regulations for SDR hours of operation to § 49.28 and reserving § 43.3(g). *See* 84 FR at 21064.

[162] SEFs and DCMs must timestamp swap transaction and pricing data relating to a publicly reportable swap transaction with the date and time, to the nearest second, of when such SEF or DCM receives data from a swap counterparty (if applicable), and transmits such data to an SDR for public dissemination. 17 CFR 43.3(h)(1). SDRs must timestamp swap transaction and pricing data relating to a publicly reportable swap transaction with the date and time, to the nearest second when such SDR receives data from a SEF, DCM, or reporting party, and publicly disseminates such data. 17 CFR 43.3(h)(2). SDs or MSPs must timestamp swap transaction and pricing data for off-facility swaps with the date and time, to the nearest second when such SD or MSP transmits such data to an SDR for public dissemination. 17 CFR 43.3(h)(3). Records of all timestamps required by § 43.3(h) must be maintained for a period of at least five years from the execution of the publicly reportable swap transaction. 17 CFR § 43.3(h)(4).

[163] The Commission discusses appendix A in section III below.

[164] *See* §§ 45.2(f) and (g) (containing recordkeeping requirements for SDRs); *see also* § 49.12(a) (referencing part 45 recordkeeping requirements). In the 2019 Part 49 NPRM, the Commission proposed to move the requirements in §§ 45.2(f) and (g) to § 49.12. *See* Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044, 21103-04.

49.12(b)(1) for SDRs.[165] SEFs, DCMs, SDs, and MSPs have similar recordkeeping

requirements for swaps.[166] As a result, SEFs, DCMs, SDs, MSPs, and SDRs have to

maintain timestamps they disseminate as part of recordkeeping requirements separate

from § 43.3(h)(4), making the requirement redundant as well.

The Commission did not receive any comments on the changes to § 43.3(h)(1)-

(4). For the reasons discussed above, the Commission is adopting the changes as

proposed.

D.   *§ 43.4 – Swap Transaction and Pricing Data to be Publicly Disseminated in Real-
Time*

1. § 43.4(a)-(e) – Public Dissemination, Additional Swap Information, Anonymity, and

Unique Product Identifiers

The Commission is adopting several changes to § 43.4(a)-(e). Existing § 43.4(a)

generally requires that swap transaction and pricing data be reported to an SDR so that

the SDR can publicly disseminate the data in real-time, including according to the

manner described in § 43.4 and appendix A. Existing § 43.4(b) requires that any SDR

that accepts and publicly disseminates swap transaction and pricing data in real-time

publicly disseminate the information described in appendix A, as applicable, for any

publicly reportable swap transaction. Existing § 43.4(c) states that SDRs that accept and

publicly disseminate swap transaction and pricing data in real-time may require reporting

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[165] The Commission is doing so by replacing the term "swap data" with "SDR data," which the Commission proposes to define as data required to be reported pursuant to two or more of parts 43, 45, 46, or 49 of the Commission's regulations. *See* Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044, 21103-04.

[166] Existing § 45.2(c) requires SDs, MSPs, SEFs, and DCMs to maintain records for each swap throughout the life of the swap for a period of at least five years following the final termination of the swap.

parties, SEFs, and DCMs to report to the SDR information necessary to compare the

swap transaction and pricing data that was publicly disseminated in real-time to the data

reported to an SDR pursuant to section 2(a)(13)(G) of the CEA or to confirm that parties

to a swap have reported in a timely manner pursuant to § 43.3.[167] Existing § 43.4(d)

contains regulations for maintaining the anonymity of the parties to a publicly reportable

swap transaction. Existing § 43.4(e) permits SDRs to disseminate UPIs for certain data

fields once a UPI is available.

The Commission is deleting existing § 43.4(a) as it is overly general. As a result,

the Commission is re-designating § 43.4(b)-(d) as § 43.4(a)-(c) and making minor non-

substantive changes. The Commission is also removing existing § 43.4(e), which gives

SDRs discretion regarding what fields to publicly disseminate after a UPI exists.[168] As

discussed below in section III, the UPI will be addressed in the swap transaction and

pricing data elements in Appendix A.[169]

The Commission is adopting its proposed changes to § 43.4(d)(4) with

modifications. The Commission proposed removing § 43.4(d)(4)(i)-(iii); re-designating §

43.4(d)(4) as § 43.4(c)(4); consolidating the substance of § 43.4(d)(4)(i) and (iii) in

proposed § 43.4(c)(4); and eliminating the requirement in existing § 43.4(d)(4)(ii) that

SDRs publicly disseminate the actual assets underlying certain swaps in the other

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[167] The real-time reporting requirements pursuant to Section 2(a)(13) of the CEA are separate and apart from the requirements to report swap transaction information to a registered SDR pursuant to Section 2(a)(13)(G).

[168] The Commission has not yet designated a UPI and product classification system to be used in recordkeeping and swap data reporting pursuant to § 45.7.

[169] In addition, the Commission is making technical non-substantive edits to § 43.4(a) for clarity.

commodity asset class that either reference one of the contracts described in appendix B

to part 43[170] or that are economically related to such contracts.[171]

In proposing the changes to § 43.4(d)(4), the Commission believed other

commodity swaps referencing, or economically related to, the contracts in appendix B

could still be sufficiently bespoke to warrant additional masking. Consequently, the

Commission proposed eliminating the requirement in existing § 43.4(d)(4)(ii) that

registered SDRs publicly disseminate the actual assets underlying other commodity

swaps that either reference one of the contracts described in appendix B to part 43 or that

are economically related to such contracts. Because the Commission proposed removing

that requirement from existing § 43.4(d)(4)(ii), the Commission also proposed removing

appendix B to part 43 and re-designating existing appendix E as appendix B.

The Commission is keeping the masking requirements in existing § 43.4(d)(4),

but re-locating the requirement to § 43.4(c)(4) and making minor technical edits. The

Commission has reconsidered whether expanding masking outweighs reducing

transparency, and believes the analysis that formed the basis for adopting existing §

43.4(d)(4) remains operative. As a result, the Commission is keeping appendix B as well,

as § 43.4(d)(4) references it. The Commission is leaving appendices B and E in their

current locations and making minor technical edits to appendix E to reflect the relocation

of § 43.4(d)(4) to § 43.4(c)(4).

The Commission received two comments on geographic masking of commodities

swap transactions. NFP Electric Associations strongly support the proposed additional

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[170] *See* existing § 43.4(d)(4)(ii)(A).
[171] *See* existing § 43.4(d)(4)(ii)(B).

masking of swap transactions as it will help ensure that business transactions and market

positions of counterparties are not disclosed.[172] CME, conversely, raised issues with

proposed § 43.4(c)(4). CME notes § 43.3(c)(4) would require an SDR to identify "…any

specific delivery point or pricing point associated with the underlying asset of such other

commodity swap..." and publicly disseminate it pursuant to appendix B to part 43.[173]

CME, however, cannot identify any data element(s) that would be populated with

delivery or pricing points and believes that this would render proposed § 43.4(c)(4)

unnecessary unless the Commission anticipates those data elements being part of a

uniform product identifier.[174] CME claims requiring CME to implement such masking

would require the introduction of an additional data element that would identify the

regions in proposed appendix B to which the delivery or pricing point map, since the

reporting party, not the SDR, would have that information.[175] For reasons discussed

above, the Commission is not adopting the proposed substantive changes to § 43.4(c)(4).

2. § 43.4(f) – Process to Determine Appropriate Rounded Notional or Principal Amounts

　　　The Commission is adopting non-substantive changes to existing § 43.4(f).

Existing § 43.4(f) requires reporting parties, SEFs, and DCMs to report the actual

notional or principal amount of any swap, including block trades, to an SDR that accepts

and publicly disseminates such data pursuant to part 43.[176] The Commission is re-

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[172] NFP Electric Associations at 7.
[173] CME at 10.
[174] *Id.*
[175] *Id.*
[176] *See* existing § 43.4(f)(1)-(2).

designating § 43.4(f) as § 43.4(d)[177] and making minor non-substantive changes. The

Commission received no comments on the changes.

3. § 43.4(g) – Public Dissemination of Rounded Notional or Principal Amounts

The Commission is re-designating existing § 43.4(g) as § 43.4(e).[178] The

Commission is also changing existing § 43.4(g), titled "Public dissemination of rounded

notional or principal amounts," which states "the notional or principal amount of a

publicly reportable swap transaction, as described in appendix A to this part, shall be

rounded and publicly disseminated by a registered [SDR]," and then sets out the rules for

rounding. The Commission is rephrasing § 43.4(g), re-designated as § 43.4(e), to state

"the notional or principal amount of a publicly reportable swap transaction shall be

publicly disseminated by a swap data repository subject to rounding as set forth in [§

43.4(f)] and the cap size as set forth in [§ 43.4(g)]."

The rounding rules in existing § 43.4(g) will be in § 43.4(f), titled "Process to

determine appropriate rounded notional or principal amounts." New § 43.4(f) will

contain the rounding rules set forth in existing § 43.4(g), subject to two substantive

changes explained below, among other non-substantive changes.

The Commission is changing § 43.4(g)(8) and (9), re-designated as § 43.4(f)(8)

and (9). Existing § 43.4(g)(8) requires an SDR to round the notional or principal amount

of a publicly reportable swap transaction to the nearest one billion if it is less than 100

billion but equal to or greater than one billion. The Commission is changing § 43.4(f)(8)

to require rounding to the nearest 100 million instead of one billion. Existing §

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[177] This is due to removing § 43.4(a) and (e), and re-designating § 43.4(b)-(d) as § 43.4(a)-(c).
[178] This is a result of re-designating § 43.4(f) as § 43.4(d).

43.4(g)(9) requires an SDR to round the notional or principal amount of a publicly

reportable swap transaction to the nearest 50 billion if it is greater than 100 billion. The

Commission is changing existing § 43.4(f)(9) to require rounding to the nearest 10 billion

and adding the words "equal to or" before "greater than 100 billion" to include swaps

with notional or principal amounts that are exactly 100 billion, the omission of which

from the 2012 reporting rules appears to have been an oversight.[179]

The Commission is concerned that broadly rounded notional or principal amounts

could undermine the price discovery purpose of real-time reporting. The Commission is

particularly concerned about swaps with notional or principal amounts over 1 billion

because there tend to be fewer swaps of such size relative to swaps with smaller notional

or principal amounts. The Commission believes smaller rounding increments for the

notional or principal amount of swaps covered by proposed § 43.4(f)(8) and (9) will

improve price discovery for such swaps. Rounding the notional or principal amounts in

smaller increments in § 43.4(f)(8) and (9) also would be consistent with the rounding

increments prescribed in § 43.4(g)(1)-(7) (i.e., § 43.4(f)(1)-(7)) on a percentage basis.

The Commission did not receive any comments on the proposal. For the reasons

discussed above, the Commission is adopting the changes as proposed.

4. § 43.4(h) – Process to Determine Cap Sizes

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[179] The omission of swaps with notional or principal amounts of exactly 100 billion did not change the
rounding result. Although such swaps are not presently subject to rounding due to their omission from §
43.4(g)(9), even if they were included therein, because their notional or principal amount is a round number
already, they would not have been rounded, and would not be rounded as a result of proposed § 43.4(f)(9).
However, because all swaps with notional or principal amounts of greater than 100 billion will be rounded
to the nearest 10 billion if § 43.4(f)(9) is adopted as proposed, such swaps would still obtain the
anonymizing benefits of § 43.4(f)(8) and (9) when 100 billion is the nearest number to round to pursuant to
§ 43.4(f)(8) or (9), as applicable.

In the Proposal, the Commission proposed removing the regulations for initial cap

sizes and replacing them with new regulations for cap sizes. To avoid removing

regulations that still need to be effective during the compliance period for the changes to

§ 43.4(h) (which the Commission is still re-designating § 43.4(g) as proposed), the

Commission has decided to leave the existing regulations for the initial cap sizes, while

adding the new updated regulations for cap sizes during the post-initial period that were

proposed in the Proposal. The Commission discusses the new regulations in this section.

The Commission is re-designating existing § 43.4(h) as § 43.4(g).[180] Existing §

43.4(h) requires the Commission to establish initial cap sizes[181] and post-initial cap

sizes.[182] Existing § 43.4(h)(2) requires the Commission to establish post-initial cap sizes,

according to the process in § 43.6(f)(1) using a one-year window of reliable SDR data for

each relevant swap category, recalculated no less than once each calendar year and using

the 75-percent notional amount calculation described in § 43.6(c)(3).[183] The Commission

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[180] This is a result of re-designating existing § 43.4(g) as § 43.4(e) and creating a separate section for rounding in § 43.4(f).

[181] Initial cap sizes for each swap category are the greater of the initial AMBS for the respective swap category in existing appendix F of part 43 or the respective cap sizes in § 43.4(h)(1)(i)-(v). 17 CFR 43.4(h)(1). If appendix F did not provide an initial AMBS for a particular swap category, the initial cap size for such swap category was equal to the appropriate cap size as set forth in § 43.4(h)(1)(i)-(v). Existing § 43.4(h)(1) also requires SDRs, when publicly disseminating the notional or principal amounts for each such category, to disseminate the cap size specified for a particular category rather than the actual notional or principal amount in those cases where the actual notional or principal amount of a swap is above the cap size for its category. Existing § 43.4(h) does not explicitly state that an SDR must publicly disseminate swap data subject to the cap size limit, but the Commission clarified this requirement in the preamble to the 2012 Real-Time Public Reporting Final Rule. See 2012 Real-Time Public Reporting Final Rule, 77 FR 1182, 1214.

[182] Before the Proposal, the Commission had not yet established post-initial cap sizes.

[183] 17 CFR 43.4(h)(2).

was to publish post-initial cap sizes on its website at www.cftc.gov,[184] and the caps were to be effective on the first day of the second month following the date of publication.[185]

The Commission is keeping the substance of existing § 43.4(h)(1), while also publishing post-initial cap sizes using the 75-percent notional calculation as required by § 43.4(h)(2)-(4). As discussed above, to avoid removing regualtions during the compliance period for new § 43.4(h)(2), the Commission is retaining § 43.4(h)(1) in its regulations.

The Commission is establishing cap sizes for each of the proposed swap categories set forth in proposed § 43.6(c)(1)(i) (interest rate ("IRS")), (c)(2)(i)-(xii) (credit ("CDS")), (c)(4)(i) (foreign exchange ("FX")), and (c)(5)(i) (other commodity) using the 75-percent notional amount calculation.[186] The Commission is setting the cap sizes for those swap categories containing swaps with limited trading activity in the IRS, CDS, FX, and other commodity asset class at United States dollar ("USD") 100 million, USD 400 million, USD 150 million, and USD 100 million, respectively.[187] The Commission is also setting the cap size for all swaps in the equity asset class at USD 250 million. As indicated by the proposed cap size tables published by the Commission, the 75-percent notional amount calculation does not result in a cap size for certain IRS

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[184] 17 CFR 43.4(h)(3).

[185] 17 CFRC 43.4(h)(4).

[186] *See* section II.F.4 below for a discussion of the process to determine AMBS. As mentioned above, using the 75% notional amount calculation would be consistent with what the Commission had intended when it adopted the Block Trade Rule. *See* 17 CFR 43.4(h)(2).

[187] Proposed § 43.4(g) would reference the regulations containing the categories for swaps with limited trading activity: § 43.6(b)(1)(ii) (IRS); § 43.6(b)(2)(xiii) (CDS); § 43.6(b)(4)(iii) (FX); § 43.6(b)(5)(ii) (other commodity). The Commission's process for determining these categories is discussed in section II.F.2 below.

categories set forth in proposed § 43.6(c)(1)(i).[188] The Commission is setting the cap

sizes for such IRS categories at USD 100 million, the cap size being assigned to other

IRS with limited trading activity.

The Commission received several comments on its proposal to implement post-

initial cap sizes using the 75-percent notional calculation. Most commenters combined

their comments on raising cap sizes with the Commission's proposal to raise the block

threshold in § 43.6. As such, the Commission discusses these comments together, along

with the Commission's decision to raise the cap sizes and block thresholds, in section

II.F.4 below.

Existing § 43.4(h)(2)(i) requires the Commission to recalculate cap sizes no less

than once each calendar year. The Commission proposed replacing existing §

43.4(h)(2)(i), re-designated as § 43.4(g)(2)(i), with a flexible approach permitting the

Commission to recalculate cap sizes when it determined necessary. The Commission is

not adopting these changes. Most commenters combined their comments on the flexible

approach for determining cap sizes with the Commission's proposal to adopt a flexible

approach for determining block thresholds. The Commission discusses these comments

together, along with the Commission's decision to keep the current requirements, in

section II.F.1 below.

The Commission separately requested comment on whether it should require

SDRs to remove any caps applied pursuant to § 43.4(h) after six months to reveal the

actual notional amount after six months of anonymity and whether six months was long

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[188] The proposed cap size tables indicated that the 75-percent notional amount calculation did not result in a cap size for 15 IRS categories. There was insufficient swap transaction and pricing data for the Commission to determine a cap size for such swap categories.

enough to mitigate anonymity concerns. The Commission received two general comments on the topic. DTCC suggests the Commission carefully consider the costs and burdens associated with removing cap sizes as it would deviate from current market practice and would likely lead to significant operational complexity for implementation.[189] MFA supports the public dissemination of the full, uncapped notional amount of block trades and believes a shorter delay than six months could be appropriate, but notes that a six-month delay would harmonize the Commission's rules with similar reporting in the fixed income market on the Financial Industry Regulatory Authority's ("FINRA") Trade Reporting and Compliance Engine.[190]

The Commission received two comments requesting faster removal. Citadel recommends the Commission consider publishing full, uncapped notionals of block trades three months after execution.[191] Clarus believes SDRs should remove caps by T+1, as SEFs already publish part 16 data T+1, to introduce consistency for on-SEF and off-SEF transactions and promote SEF execution.[192]

The Commission received one comment opposing SDR removal of caps. GFMA believes caps protect the ability of liquidity providers to manage and hedge any risk exposure without compromising anonymity.[193] GFMA notes large trades, such as those facilitating merger and acquisition transactions, are illiquid and potentially sensitive in

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[189] DTCC at 4.
[190] MFA at 3.
[191] Citadel at 8.
[192] Clarus at 2.
[193] GFMA at 8.

nature, and the ability to successfully manage risk could be compromised if a cap is removed, even after time.[194]

Despite some commenters supporting such a proposal, the Commission is concerned about revealing information that could enable market participants to identify trading patterns or open positions of swap counterparties. The CEA requires the Commission ensure swap transaction and pricing data disseminated by SDRs does not identify the transaction's participants.[195] The Commission is concerned removing the caps from this data after six months could comprise the required anonymity by allowing the public to associate certain pricing and quantity data with trading patterns. In addition, the Commission shares GFMA's concerns about revealing information about certain large trades that could be sensitive given certain circumstances, like corporate events like mergers and acquisitions. Therefore, the Commission is declining to adopt new rules requiring SDRs remove cap sizes at this time.

E.   § 43.5 – Time Delays for Public Dissemination of Swap Transaction and Pricing Data

1. § 43.5(a) and (b) – General Rule and Public Dissemination of Publicly Reportable Swap Transactions Subject to a Time Delay

The Commission proposed many technical changes to § 43.5(a) and (b). The Commission proposed one substantive change to remove references to LNOFS

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[194] *Id.*
[195] 7 USC 2(a)(13)(E)(i).

transactions in § 43.5(a), and throughout part 43, to reflect proposed changes to § 43.5(c) for a single time delay for block trade delays.[196]

The Commission proposed removing the requirements of § 43.5(b)(1) and (2) that SDRs must disseminate the specified swap transaction and pricing data no sooner than, and no later than the prescribed time delay period and to retain the requirement of § 43.5(b)(3) that SDRs must disseminate the specified swap transaction and pricing data precisely upon the expiration of the time delay period. The Commission also proposed ministerial rephrasing amendments to § 43.5(b). The Commission believed that together, the proposed amendments to § 43.5(b) would improve the clarity of the provision.

The Commission is keeping § 45.3(a) and (b) without any changes because the Commission is not adopting a single time delay for public dissemination of block trades. The Commission discusses the decision to keep different time delays in § 43.5 in the following section. Since the changes to § 43.5(a) and (b) would have conformed to changes the Commission is not adopting, adopting the changes would make § 43.5(a) and (b) inconsistent with the rest of part 43. As a result, the Commission is not adopting any of the changes to § 43.5(a) and (b).

2. § 43.5(c)-(h) – Removal of Certain Regulations Related to Time Delays

a. Proposal

The Commission proposed removing existing § 43.5(c)-(h) and adding a new § 43.5(c) that would require SDRs to implement a time delay of 48 hours for disseminating swap transaction and pricing data for each applicable swap transaction with a notional or

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[196] The Commission discusses the definition of "large notional off-facility swap" in section II.B.2 above.

principal amount above the corresponding AMBS, if the parties to the swap have elected

block treatment. Because the time delays in proposed § 43.5(c) would replace the time

delays in existing appendix C, the Commission also proposed removing appendix C.

Existing § 43.5(c) provides interim time delays for each publicly reportable swap

transaction, not just block trades and LNOFSs, until an AMBS is established for such

publicly reportable swap transaction. The Commission adopted § 43.5(c) in case

compliance with part 43 was required before the establishment of AMBSs.[197] Because

the Commission has now established AMBSs by swap category,[198] existing § 43.5(c) is

technically no longer applicable.

Existing § 43.5(d)-(h) phased in the various time delays for the dissemination of

swap block trades and LNOFSs over a one- to two-year period. The Commission

believed when it adopted those regulations that "providing longer time delays for public

dissemination during the first year or years of real-time reporting [would] enable market

participants to perfect and develop technology and to adjust hedging and trading

strategies in connection with the introduction of post-trade transparency."[199] Since the

phasing in of the time delays in existing § 43.5(d)-(h) is complete, the Commission

proposed to remove the text remaining from the phase-in concept.

Existing § 43.5(d)-(h) provides specific time delays for the public dissemination

of swap transaction and pricing data by an SDR. As background, CEA section

2(a)(13)(E)(iv) directs the Commission to take into account whether public disclosure of

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[197] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217 (stating "it is possible that compliance with part 43 may be required before the establishment of [AMBSs] for certain asset classes and/ or groupings of swaps within an asset class").

[198] *See* § 43.6 (setting forth the block sizes for various swap categories).

[199] Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217.

swap transaction and pricing data "will materially reduce market liquidity." When the Commission adopted the Block Trade Rule in 2013, the Commission understood that the publication of detailed information regarding "outsize swap transactions" (i.e., block trades and LNOFSs) could expose swap counterparties to higher trading costs.[200] In this regard, the publication of detailed information about an outsize swap transaction could alert the market to the possibility that the original liquidity provider to the outsize swap transaction will be re-entering the market to offset that transaction. Other market participants, alerted to the liquidity provider's large unhedged position, would have a strong incentive to exact a premium from the liquidity provider when the liquidity provider seeks to enter into offsetting trades to hedge this risk. As a result, liquidity providers may be deterred from becoming counterparties to outsize swap transactions if swap transaction and pricing data is publicly disseminated before liquidity providers can adequately offset their positions.

If a liquidity provider agrees to execute an outsize swap transaction, it likely will charge the counterparty the additional cost associated with hedging this transaction. In consideration of these potential outcomes, the Commission established the time delays for block trades and LNOFSs to balance public transparency and the concerns that post-trade reporting would reduce market liquidity.[201] The Commission did so in furtherance

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[200] *See* Block Trade Rule at 32871 n.44 (stating that an "outsize swap transaction" is a transaction that, as a function of its size and the depth of the liquidity of the relevant market (and equivalent markets), leaves one or both parties to such transaction unlikely to transact at a competitive price).

[201] *Cf.* Federal Reserve Bank of New York Staff Reports, An Analysis of OTC Interest Rate Derivatives Transactions: Implications for Public Reporting (Mar. 2012, revised Oct. 2012) at 3 (explaining that most post-trade reporting regimes allow for reduced reporting requirements for large transactions since immediate reporting of trade sizes has the potential to disrupt market functioning, deter market-making activity, and increase trading costs).

of its stated policy goal "to provide maximum public transparency, while taking into account the concerns of liquidity providers regarding possible reductions in market liquidity."[202] The time delays established by the Commission currently range from 15 minutes to 24 business hours, depending upon the type of market participant, method of execution, and asset class.

When the Commission adopted the time delays for block trades and LNOFSs in 2012, it noted that commenters to the proposal recommended a range of time delays for public dissemination of block trades and LNOFSs, including end-of-day, 24 hours, T+1, T+2, a minimum of four hours, and 180 days.[203] In the Roadmap, DMO stated an intention to evaluate real-time reporting regulations in light of goals of liquidity, transparency, and price discovery in the swaps market.[204] In response, the Commission received comments on the time delays for block trades and LNOFSs.

In response to the Roadmap comments, the Commission proposed significant changes to the time delays for block trades and LNOFSs. In place of the current time delays ranging between 15 minutes to 24 business hours, depending upon the type of market participant, method of execution and asset class, the Commission proposed a single 48 hour time delay for all block trades and LNOFSs. The Commission sought comment on whether a single 48 hour time delay was necessary to account for potential situations when a market participant requires additional time to place a hedge position without significant unfavorable price movement and to create some consistency with the disclosure requirements of other authorities for non-liquid swaps.

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[202] 77 FR 32870.

[203] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1216.

[204] Roadmap at 11.

b. Comments on the Proposal

The Commission received three comments supporting, and 15 comments

opposing, the proposed 48 hour time delay for block trades and LNOFSs.

FXPA and GFMA support the proposed delay for FX swaps because it would

assist market participants conducting hedging activities.[205] ACLI similarly supports the

proposed 48 hour delay, but comments that it can take days or weeks to execute large

hedging programs.[206] ACLI believes the need for price transparency in the swaps market

is not as compelling as it is in other markets and that public dissemination sooner than the

time it takes to execute hedging programs causes costs to end-users that outweigh any

benefits to the market.[207]

Other commenters express concern that the proposed delay would have negative

impacts on transparency, price discovery, and liquidity.[208]

Citadel expresses concern that counterparties to a block trade or LNOFS would

have significantly more information regarding the fair value of a particular instrument

than the rest of the market, which could advantage them when negotiating additional

transactions in both that and similar instruments during the 48 hour period.[209] FIA PTG

similarly believes this information asymmetry created by the proposal would be

significant and impact related futures, options, and cash products.[210] Healthy Markets,

SMU, and TRP believe the information asymmetry would benefit large liquidity

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[205] FXPA at 2-3; GFMA at 1,8-9.
[206] ACLI at 2.
[207] *Id.* at 2-3.
[208] Better Markets, Carnegie Mellon, Chris Barnard, CHS, Citadel, Clarus, FIA PTG, Healthy Markets, ICI, MFA, MIT, SIFMA AMG, SMU, TRP, and Vanguard.
[209] Citadel at 6.
[210] FIA at 2.

providers at the expense of other market participants.[211] Citadel believes the information

asymmetry also benefits current liquidity providers by increasing barriers to entry for

potential new liquidity providers.[212]

CHS, Citadel, and FIA PTG contrast the proposed 48-hour time delay to time

delays in futures markets. Citadel notes the five-minute deferral for block trades in U.S.

Treasury futures, a primary hedging tool for the USD IRS.[213] FIA PTG notes the

same.[214] CHS believes the difference between block futures reporting deferrals and the

proposed time delay would impact futures market participants and potentially result in

regulatory arbitrage.[215]

Better Markets, Carnegie Mellon, Citadel, MIT, and SMU comment that the

Proposal is inconsistent with research indicating that post-trade transparency improves

liquidity while reducing transaction costs in financial markets, including the swaps

market.[216] These commenters, as well as FIA PTG and Healthy Markets, note that such

information was recently submitted to FINRA as it considered a similar proposal.[217][218]

Carnegie Mellon notes the lack of academic studies or evidence to support substantial

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[211] Healthy Markets at 2,7; SMU at 3; TRP at 2-3.

[212] Citadel at 7-8.

[213] Citadel at 3.

[214] FIA PTG at 2-3.

[203] CHS at 2.

[216] Better Markets at 5; Carnegie Mellon at 2-4; Citadel at 5; MIT at 1-2; SMU at 4-5.

[217] Better Markets at 5; Carnegie Mellon at 2-4; Citadel at 3; FIA PTG at 1; Healthy Markets at 7.

[218] As background, FINRA requested comment on a proposed pilot program to study changes to corporate bond block trade dissemination based on recommendations of the Securities and Exchange Commission's Fixed Income Market Structure Advisory Committee. Specifically, the proposed pilot was designed to study: an increase to the current dissemination caps for corporate bond trades, and delayed dissemination of any information about trades above the proposed dissemination caps for 48 hours. *See* FINRA Regulatory Notice 19-12, *available at https://www.finra.org/rules-guidance/notices/19-12*. FINRA's comment period closed in June 2019.

dissemination delays.[219] SMU similarly notes the lack of research indicating that SDs

lose significant sums to frontrunners and their belief that SDs regularly oppose timely

reporting of blocks across financial markets because it reduces their pricing power.[220]

Commenters urge the Commission to not adopt the proposal and to retain the

current reporting delays because the current reporting delays have been effective in

supporting liquidity and risk transfer.[221] Other commenters urge the Commission to not

change the current delays until the necessity of such changes are more clearly supported

by a data analysis of market liquidity conditions.[222] Vanguard believes a 48-hour delay is

unwarranted based upon current market liquidity, at least for IRS in the most liquid

currencies.[223] ICI similarly comments that a "one size fits all" delay does not reflect

differences in liquidity among different types of swaps.[224] TRP does not think an

additional delay is necessary because indicators of a well-functioning market, especially

on SEFs, have constantly increased since the implementation of the current reporting

deferrals for block trades.[225] FIA PTG believes any perceived difficulty in hedging large

swap transactions is more likely due to other elements of market structure, like an

incomplete transition to electronic trading (including all-to-all platforms) and limited

competition among liquidity providers.[226]

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[219] Carnegie Mellon at 3.
[220] SMU at 4-7.
[221] Clarus at 2; MFA at 2; TRP at 3.
[222] Citadel at 4; ICI at 7; Vanguard at 5-6.
[223] Vanguard at 6.
[224] ICI at 7.
[225] TRP at 2.
[226] FIA PTG at 2.

Clarus presents a methodology for measuring liquidity using data publicly disseminated by SDRs and comments that because liquidity is currently identical for swaps above and below the AMBS, it does not appear that the proposed substantial delay is necessary.[227] Better Markets and Citadel cite swaps data maintained by Clarus for their assertions that all market risks are adequately hedged within current deferral periods.[228] TRP similarly comments that there is no indication that liquidity providers are unwilling to make markets because the current reporting delays are too short.[229] TRP notes studies indicating that market liquidity, especially for on-SEF transactions, has been consistently improving.[230] Citadel and Clarus further note that more block trades were executed in March 2020 than any prior month.[231] Citadel believes current liquidity levels support reducing the current 15 minute deferral for block trades in standardized and liquid instruments subject to mandatory clearing and on-venue trading requirements.[232]

The Commission also received comments asserting that a 48-hour delay would impair risk management functions. Commenters note that the Proposal would restrict access to current prices, which would make it more difficult for market participants to correctly value transactions to support end-of-day valuations and margin calculations. Commenters believe such difficulties would be particularly pronounced during periods of

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[227] Clarus at 6.
[228] Better Markets at 6; Citadel at 4.
[229] TRP at 2.
[230] *Id.*
[231] Citadel at 4; Clarus at 6.
[232] Citadel at 8.

market volatility.[233] Healthy Markets comments the proposed delay would similarly hamper efforts to comply with best execution obligations.[234]

CME did not comment on whether 48 hours is an appropriate delay, but supports the simplified approach of a single time delay set forth in the Proposal because it would be less costly for SDRs to implement.[235]

The Commission received six comments regarding the Commission's stated goal of harmonization. Better Markets comments that harmonization should not be used as pretext for deregulatory initiatives contravening statutory objectives, but acknowledged harmonization of an appropriately balanced regulatory framework that is consistent with Congress' instructions and intent would be sensible and statutorily commanded.[236] Chris Barnard comments that harmonization should be reversed, with other authorities shortening their public reporting delays.[237]

FXPA comments that a 48-hour delay would better align with MiFID II requirements.[238] In contrast, Citadel comments that almost all European ("EU") swaps transactions receiving a deferral are deferred four weeks and that a 48 hour delay with capped notionals would not increase harmonization with an EU regime that provides a four-week delay and does not cap notionals.[239] Citadel and Clarus comment that there is insufficient post-trade transparency in Europe, and thus harmonization with European

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[233] Better Markets at 2; Citadel at 6,7; Healthy Markets at 4;MFA at 2.
[234] Healthy Markets at 4.
[235] CME at 11.
[236] Better Markets at 7.
[237] Chris Barnard at 2.
[238] FXPA at 2-3.
[239] Citadel at 6-7.

regulations regarding transparency is not desirable.[240] SIFMA AMG comments that the

European Securities and Markets Authority ("ESMA") recently both (i) adopted

regulations requiring certain products be reported in 15 minutes or less and (ii) released a

consultation paper questioning whether prior ESMA reporting requirements achieved

greater market transparency.[241]

   The Commission also received three comments asserting that the Commission did

not put forward legally sufficient support for the proposed 48-hour delay. Healthy

Markets comments that the proposed reporting delay is insufficiently supported to fulfill

the Commission's obligations under the APA.[242] TRP comments that the Commission

did not allege any "material reduction in market liquidity," as required by the CEA, to

justify the proposed 19,200% increase in the time delay for SEF-executed block trades.[243]

Better Markets comments that the proposal should be withdrawn in the absence of data to

reasonably support the conclusion that a uniform 48-hour block trade reporting delay is

necessary across markets and asset classes.[244]

c. Final Rule

   For reasons discussed below, the Commission is not adopting proposed § 43.5(c),

which would have required SDRs to implement a time delay of 48 hours for

disseminating swap transaction and pricing data for each block trade or LNOFS, if the

parties to those swaps elected such treatment. The Commission is also not removing the

existing regulatory text in § 43.5(d)-(h) and appendix C that provides for potential block

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[240] Citadel at 6-7; Clarus at 8.
[241] SIFMA AMG at 5.
[242] Healthy Markets at 6.
[243] TRP at 2.
[244] Better Markets at 3.

and LNOFS time delays ranging between 15 minutes to 24 business hours, depending upon the type of market participant, method of execution and asset class. The Commission is removing and reserving existing § 43.5(c) and paragraphs within 43.5(d), 43.5(e), 43.5(f), 43.5(g) and 43.5(h) as described further below. The regulatory text being removed is technically no longer applicable. The Commission is also making non-substantive ministerial and conforming edits to align the text with other changes being made throughout this part.

The majority of commenters oppose the proposed 48-hour delay and expressed concern that such a delay would have negative impacts on transparency, price discovery, and liquidity. Several commenters believe that, particularly for the most liquid products that are currently eligible for a 15-minute delay, there is no evidence that current post-trade reporting requirements have reduced market liquidity. The Commission recognizes the merit in those concerns. Taking into account the comments and data submitted by commenters regarding the liquidity of, and necessary time to hedge, US dollar IRS swaps, the Commission concludes that a 48 hour delay would be particularly inappropriate for those products and would unnecessarily restrict transparency and price discovery.

Existing § 43.5(d)-(h) establish time delays for block trades and LNOFSs that vary based upon the type of market participant, method of execution, and asset class, an approach the Commission saw as appropriate to balance public transparency and price discovery against the concerns that post-trade reporting would reduce market liquidity. Several commenters referenced and supported this prior determination by the Commission. These commenters believe that the current varying time delays are

preferable to the proposed 48-hour delay that did not distinguish transactions according to the type of market participant, method of execution, and asset class. Informed by commenters, the Commission agrees.

The Commission reiterates its stated policy goal "to provide maximum public transparency, while taking into account the concerns of liquidity providers regarding possible reductions in market liquidity."[245] The Commission does not believe that this policy goal is furthered by a universal 48 hour delay for all block and LNOFSs. The Commission concludes, as informed by comments opposing the proposal, that this policy goal is better served by the current, transaction specific reporting delays that make block and LNOFS swap transaction and pricing data available quickly for more liquid markets, with longer time delays for less liquid markets.

The Commission believes the transparency currently provided by the dissemination of swap transaction data promotes confidence in the fairness and integrity of swaps markets. This transparency increases participation in the swaps markets and provides enhanced price discovery that is of particular value to buy-side participants and end-users.

The Commission agrees with one commenter that the proposed simplified approach of a 48-hour time delay for all block and LNOFSs may have reduced operational costs compared to the current approach of varying time delays. However, the Commission is cognizant of its statutory directive to make swap transaction and pricing data available as appropriate to enhance price discovery while taking into account

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[245] 77 FR 32870.

whether the public dissemination will materially reduce market liquidity. Accordingly,

the Commission does not view operational cost savings potentially available under an

alternative simplified time-delay regime sufficient reason to justify deviation from the

current varied-time delay approach that the Commission believes best suited to effectuate

this statutory directive.

The Commission also agrees with commenters that EU and CFTC regulations

requiring the public dissemination of swap transaction and pricing data differ

significantly, particularly with respect to the duration of deferrals from public

dissemination. Since the Commission is not changing the dissemination delays available

to block trades or LNOFSs, differences with respect to the duration of deferrals are not

being harmonized at this time. The Commission understands that EU authorities are

currently examining potential changes to their public dissemination rules, leading the

Commission to conclude that it is premature to attempt harmonization with respect to the

duration of deferrals at this time.

The Commission is removing and reserving existing § 43.5(c). Existing § 43.5(c)

provides interim time delays for each publicly reportable swap transaction, not just block

trades and LNOFSs, until an AMBS is established for such publicly reportable swap

transaction. The Commission adopted § 43.5(c) in case compliance with part 43 was

required before the establishment of AMBSs.[246] Because the Commission has now

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[246] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217 (stating "it is possible that compliance with part 43 may be required before the establishment of [AMBSs] for certain asset classes and/ or groupings of swaps within an asset class").

established AMBSs by swap category,[247] existing § 43.5(c) is technically no longer applicable.

The Commission is also removing and reserving existing § 43.5(d)(1), 43.5(e)(2)(i), 43.5(e)(3)(i), 43.5(e)(3)(ii), 43.5(f)(1), 43.5(f)(2), 43.5(g)(1), 43.5(g)(2), 43.5(h)(1), and 43.5(h)(2). These sections phased in the various time delays for the dissemination of swap block trades and LNOFSs after the existing rules came into effect. Since the phasing in of the time delays in existing § 43.5(d)-(h) is complete, the Commission is removing the text remaining from the phase-in concept.

F.   *§ 43.6 – Block Trades and Large Notional Off-Facility Swaps*[248]

In the Proposal, the Commission proposed removing the regulations for initial appropriate minimum block sizes and replacing them with new regulations for appropriate minimum block sizes. To avoid removing regulations that still need to be effective during the compliance period for the changes to § 43.6, the Commission has decided to leave the existing regulations for the initial appropriate minimum block sizes, while adding the new updated regulations for appropriate minimum block sizes during the post-initial period that were proposed in the Proposal. The Commission discusses the new regulations in this section.

1. § 43.6(a)

Existing § 43.6(a) states that the Commission shall establish the AMBS for publicly reportable swap transactions based on the swap categories in existing § 43.6(b) in accordance with the provisions set forth in paragraphs (c), (d), (e), (f) or (h) of § 43.6,

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[247] *See* § 43.6 (setting forth the block sizes for various swap categories).
[248] Existing § 43.6 was adopted in the Block Trade Rule.

as applicable. Existing § 43.6(f) contains requirements for the Commission to update the

block thresholds annually. Existing § 43.6(f)(1)-(3) requires the Commission to establish

post-initial AMBS using a one-year window of reliable SDR data recalculated no less

than once each calendar year using the 67-percent notional amount calculation for most

swap categories. Existing § 43.6(f)(4) requires the Commission to publish post-initial

AMBS on its website. Existing § 43.6(f)(5) specifies that unless otherwise indicated on

the Commission's website, the post-initial AMBS shall be effective on the first day of the

second month following the date of publication.

Similarly, § 43.4(h) contains analogous requirements for the Commission to

update the cap sizes annually. Existing § 43.4(h)(2) requires the Commission to establish

post-initial cap sizes using a one-year window of reliable SDR data recalculated no less

than once each calendar year using the 75-percent notional amount calculation. Existing

§ 43.4(h)(3) requires the Commission to publish post-initial cap sizes on its website.

Existing § 43.4(h)(4) specifies that unless otherwise indicated on the Commission's

website, the post-initial cap sizes shall be effective on the first day of the second month

following the date of publication.

To implement a more flexible approach than this current regime provides, the

Commission proposed amending existing § 43.6(a) to instead provide that the

Commission would establish AMBS "at such times the Commission determines

necessary." Since the processes for updating cap sizes and block thresholds are

analogous, the Commission discusses these changes together in this section.

The Commission only proposed changing the requirement to recalculate the block

thresholds and cap sizes annually. The Commission proposed keeping the requirement to

post new cap sizes and block thresholds on its website in new § 43.4(g)(9) and §

43.6(e)(5), respectively. The Commission also proposed keeping the requirement for

revised cap sizes to be effective on the first day of the second month following

publication, unless otherwise indicated by the Commission, in new § 43.4(g)(10), but

omitted the effective date of any AMBS in error.

The Commission received two general comments on the proposed flexible

approach. GFMA believes the flexible approach to updating cap sizes and block

thresholds will create operational burdens with limited benefits.[249] GFMA believes the

flexible approach will be difficult to implement and operationalize and suggests the

Commission assess cap sizes annually but not look to change the cap sizes more than

once per year.[250] CME, alternatively, supports no longer requiring the Commission to

update cap sizes and block thresholds annually as frequent changes to cap sizes will

require frequent SDR system updates at unnecessary costs.[251]

As it expressed in the Proposal, the Commission believed the flexible approach

would avoid frequent updates to SDR systems without a clear benefit to the real-time

public tape.[252] However, the Commission explained it instead expected to evaluate the

cap sizes and block thresholds on an ongoing basis to update cap sizes and block

thresholds when doing so would benefit the public tape.[253] The Commission recognizes

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[249] GFMA at 7, 10.

[250] *Id.* GFMA also believes if an FX product is considered for a future MAT determination, the Commission should revisit the block thresholds to ensure any determinations do not have a detrimental impact on FX markets. The Commission is unaware of any FX MAT determinations and notes that any determinations would follow the MAT process, which is separate from part 43 reporting.

[251] CME at 9-10.

[252] Proposal at 21532.

[253] *See id.*

the tension that creates, as it suggests the Commission would review the data more

frequently than once each calendar year, with market participants unable to anticipate

updates.

As a result, the Commission finds GFMA's point that the proposal would be

difficult to implement and operationalize persuasive and significant enough to reconsider

the proposed flexible approach. While CME supports the Commission's expectation that

the flexible approach would avoid frequent updates, the Commission's concerns about

creating uncertainty override the anticipated benefits of the proposal and the Commission

is declining to adopt the proposal to amend § 43.6(a). Instead, the Commission is

maintaining the current requirement to establish cap sizes using a one-year window of

reliable SDR data according to the 75-percent notional amount calculation recalculated

no less than once each calendar year in § 43.4(g)(2). Similarly, the Commission is

maintaining the current requirement to establish AMBS using a one-year window of

reliable SDR data according to the 67-percent notional amount calculation no less than

once each calendar year in § 43.6(e)(1)-(2).[254]

The Commission received two comments on the effective date requirements.

CME believes the effective date should instead be the date determined by the

Commission in consultation with the SDRs.[255] The Commission is declining to adopt

this approach as it would create uncertainty for market participants outside of SDRs.

Similarly, DTCC believes the effective date should instead be not less than 90 days

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[254] The Commission discusses the renumbering changes to § 43.6 throughout the following sections.
[255] *Id.* CME notes if the implementation date fell on a weekday rather than a weekend when CME implements changes, CME would need to develop a new process, which would be a complex undertaking and reduce the amount of testing that could occur.

following publication, given the highly technical nature of the changes, that AMBS is

delegated to Commission staff, and that implementation could require a longer amount of

time.[256] The Commission is declining to adopt this change because the regulations the

Commission is keeping give the Commission discretion to determine a different effective

date if necessary. The Commission expects to work with SDRs to help ensure

appropriate effective dates to accommodate any technological changes.

The Commission received three comments on the publication requirement. CME

requests the Commission explain whether the cap thresholds or the actual methodology or

swap categories will change on an ongoing basis without a rulemaking, and how the

Commission would notify the public about changes to cap sizes so SDRs do not have to

establish programs to monitor the Commission's website.[257] ISDA-SIFMA (Blocks)

believe block and cap threshold changes should go through notice and comment,

regardless of changes to the categories or methodologies.[258] SIFMA AMG requests the

Commission adopt a 30-day notice and public comment period and a three month

implementation period following any AMBS or cap size changes.[259]

As the existing rules provide, the Commission updates the cap sizes and block

thresholds on its website, but modifies the categories and methodologies through

rulemaking.[260] The Commission did not propose any changes to the current process as

the Commission believes notification on the Commission's website provides sufficient

notice to market participants. The Commission will continue calculating block thresholds

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[256] DTCC at 5-6.
[257] *Id.*
[258] ISDA-SIFMA (Blocks) at 7-8.
[259] SIFMA AMG at 4.
[260] *See also* Block Trade Rule at 32903.

and cap sizes for swap categories set forth in the Final Rules using methodologies set forth in the rules, but the application of regulations does not require additional notice and comment. The Commission is concerned opening the results of applying the methodologies to data would suggest the methodologies are open to public comment annually, when opening the rules for public comment each year would be an inefficient use of Commission resources.

The Commission received one comment on temporary changes to the block thresholds and cap sizes. Citing March 2020 volatility, ISDA-SIFMA (Blocks) suggest the Commission create a formal adjustment mechanism to allow market participants to petition the Commission to temporarily change block and cap thresholds based on observed market conditions, or enable the Commission to do so subject to a public comment process.[261] The Commission considered comments raising this issue in the Block Trade Rule, and ultimately decided the requirement to analyze the thresholds no less than once each calendar year gives the Commission the authority to update AMBS when warranted and as necessary to respond to such circumstances.[262] In light of the Commission's observations and oversight of the markets during periods of high volatility, including March 2020, the Commission believes this authority continues to give the Commission sufficient authority to respond to changing conditions. As a result, the Commission is declining to adopt ISDA-SIFMA's suggestion for a mechanism beyond the current rule.

2. § 43.6(b) – Swap Categories

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[261] ISDA-SIFMA (Blocks) at 7-8.
[262] Block Trade Rule at 32903.

Existing § 43.6(b) delineates the swap categories referenced in § 43.6(a) by five asset classes: IRS, CDS, equity, FX, and other commodity. It then subdivides these asset classes into various swap categories. The categories group together swaps with similar quantitative or qualitative characteristics that warrant being subject to the same AMBS.[263]

The Commission is concerned the existing swap categories disparately impact different swap transaction types. For instance, the existing swap categories group together economically distinct swaps, such as IRS denominated in U.S. dollars ("USD IRS") and IRS denominated in Japanese yen ("JPY IRS"). Because the notional amounts of USD IRS transactions are, on average, higher than the notional amounts of JPY IRS transactions, the current IRS AMBS, which includes transactions from a group of currencies, is too high for some products, like JPY IRS, and too low for others, like USD IRS. In other words, USD IRSs are eligible for a dissemination delay, even though a delay may be unnecessary for a counterparty to hedge the trade at minimal additional cost due to the trade size, and JPY IRS are ineligible for a dissemination delay even though a delay may be necessary for a counterparty to hedge the trade without incurring material costs due to the trade size.

The Commission analyzed 2018-2019 part 43 SDR data for each asset class to evaluate the sufficiency of the existing swap categories. The Commission reviewed all products within each asset class, but removed certain swaps from the data sets: duplicate swap reports, indicated by swaps having the same unique swap identifier; terminated

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[263] *See* Block Trade Rule at 32872.

swaps; cancelled swap reports; modifications to existing swap reports; and swaps with notional values of zero. The Commission removed FX swaps with blank currency fields.

In addition, the Commission removed CDS trades around the time the index rolls twice a year. As new CDS indexes are introduced each March and September, many market participants "roll" their positions from the old "off-the-run" index into the new "on-the-run" index. These trades are often done as spread trades, similar to how futures positions are rolled using calendar spread trades during the expiration cycle. As discussed below, commenters raised including CDS roll days in the CDS data set would result in significantly larger thresholds for non-roll swaps. For almost all indices, the Commission found there was a substantial increase in daily notional on those days in a way that could skew the block thresholds.[264] For example, on September 27, 2018, CDXHY showed a notional amount over 11 times the annual daily sample average. The Commission removed these swaps to avoid significantly larger thresholds for non-roll swaps.

The Commission proposed new swap categories in § 43.6(c) for swaps in the IRS, CDS, FX, and other commodity asset classes. The Commission discusses comments on the specific swap categories in the sections below. The Commission received one comment generally supporting new swap categories. ICI believes the new categories will be better calibrated to the relative liquidity of the swap categories in each asset class.[265] The Commission agrees with ICI and, for the reasons the Commission discusses

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[264] The analysis did not show similar patterns in the option swap categories, and the Commission is not adjusting options thresholds for roll periods.
[265] ICI at 4-5.

generally above and specifically below for each asset class, is adopting the new swap

categories, with some modifications.

The Commission received one comment generally opposing the new swap

categories. Citadel believes the new categories significantly increase operational

complexity for market participants and trading venues, as each threshold must be

separately implemented, monitored, and surveilled.[266] Citadel further believes new

categories would reduce market transparency as the Commission proposed setting the

block threshold at zero for certain newly-created categories that have smaller trading

volumes, including instruments subject to mandatory clearing, which would result in a

reporting delay for swaps that are currently reported in real time.[267]

As explained above, the Commission believes the new swap categories are better

calibrated and will result in more reliable AMBSs. As explained below, the Commission

believes setting the block size to zero is appropriate for swaps with a low level of trading

activity for which the Commission cannot determine a robust and reliable AMBS. In

response to Citadel's comment that the rule could reduce transparency for certain newly-

created categories that have smaller trading volumes, the Commission has assessed the

impact that the new categories could have on transparency as part of its review of the

2018-2019 data but nonetheless found that block treatment was appropriate given low

liquidity. The Commission finds that the block sizes for certain swaps will increase thus

leading to real-time reporting for swaps that had previously received block treatment and

thereby increased transparency. For these reasons, the Commission is adopting the new

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[266] Citadel at 9.
[267] *Id.*

swap categories subject to the modifications to the categories the Commission describes below.

In addition, as mentioned above, in the Proposal, the Commission proposed removing the regulations for initial appropriate minimum block sizes and replacing them with new regulations for appropriate minimum block sizes. As part of this, the Commission proposed removing the existing swap categories. To avoid removing regulations that still need to be effective during the compliance period for the changes to § 43.6, the Commission has decided to leave the existing swap categories in § 43.6(b), while adding the new updated swap categories for appropriate minimum block sizes during the post-initial period that were proposed in the Proposal in § 43.6(c). The Commission discusses the new regulations in this section.

a. Interest Rate Asset Class

Existing § 43.6(b)(1) sets forth the IRS categories. The Commission based the existing IRS categories on a unique combination of three currency groups and nine tenor ranges, for a total of 27 categories.

The Commission proposed new swap categories for each combination of the top 15 different currencies[268] and nine tenor ranges,[269] for a total of 135 swap categories. The proposed nine tenor ranges were the same nine tenor ranges in existing § 43.6(b)(1)(ii)(A)-(I). The proposed top 15 currencies added the currencies of Brazil, Chile, the Czech Republic, India and Mexico and removed the currencies of Switzerland

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[268] *See* proposed § 43.6(b)(1)(i)(A)(1)-(15). These 15 currencies are the currencies of Australia, Brazil, Canada, Chile, Czech Republic, the European Union, Great Britain, India, Japan, Mexico, New Zealand, South Africa, South Korea, Sweden, or the United States.
[269] *See* proposed § 43.6(b)(1)(i)(B)(1)-(9).

and Norway from the currencies in existing § 43.6(b)(1)(i)(A). The Commission

proposed a 136th swap category in § 43.6(b)(1)(ii) for IRS other than those of the top 15

currencies and the nine tenors. The Commission proposed grouping these swaps with

low activity together and setting the block size to zero to make each transaction eligible

for delayed dissemination.[270]

The Commission is adopting the new IRS categories as proposed. For IRS, the

Commission believes new swap categories referencing the top 15 currencies, which make

up 96% of the total population of IRS trades, will have AMBSs that better fit these swaps

by grouping IRS into more discrete categories. A 136th category for swaps in currencies

outside of the top 15 currencies that will have a block size of zero will address the swaps

for which there is not enough activity for the Commission to compute a reliable and

robust AMBS.

The Commission received three comments on the new IRS categories. SIFMA

AMG believes the 135 new IRS categories will burden market participants with

complicated reporting that may not provide meaningful transparency or price discovery

for numerous IRS categories.[271] ISDA-SIFMA (Blocks) are concerned the scope of data

was overly inclusive and not representative of all swaps in a particular swap category,

especially with CDS and IRS.[272] ACLI requests that interest rate products with a tenor of

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[270] *See* proposed § 43.6(e)(4), discussed below in section II.F.4.
[271] SIFMA AMG at 6.
[272] ISDA-SIFMA (Blocks) at 6-7. The Commission discusses the ISDA-SIFMA (Blocks) comment with respect to CDS in the following section.

10 years and greater be made into a separate category because they have a different sensitivity to risks than shorter-dated interest rate products.[273]

When the Commission formulated the proposed categories it recognized, as SIFMA AMG comments, that increasing the number of categories could increase operational and reporting costs. The Commission also recognized the concern expressed by ISDA-SIFMA (Blocks) that there must be enough categories so that the categories are not overly inclusive. The Commission believes the new IRS categories balance these concerns. As described in the Proposal, the new swap categories address the following two policy objectives: (1) categorizing together swaps with similar quantitative or qualitative characteristics that warrant being subject to the same AMBS; and (2) minimizing the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[274] The Commission has determined that increasing the number of categories from the current level is necessary to group swaps with a similar economic impact and better ensure that the AMBS for each swap is appropriate.

The Commission is not persuaded by ACLI's recommendation. To be consistent, the Commission could not just create a new interest rate category based on risk sensitivity. The Commission would have to adopt an entirely new block regime based on risk – it would have to establish new categories and develop new block sizes on the basis of risk. As explained fully in its § 43.6(e) discussion, the Commission believes its approach is superior to a risk-based approach as the ultimate goal in establishing

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[273] ACLI at 3-4.
[274] Proposal at 21534.

thresholds is to focus on liquidity differences across swap categories, not risk-transfer *per se*.

b. Credit Asset Class

Existing § 43.6(b)(2) sets forth the CDS swap categories. The Commission based the current CDS swap categories on combinations of three conventional spread levels and six tenor ranges, for a total of 18 swap categories. The Commission proposed replacing the current spreads and tenor ranges in § 43.6(b)(2)(i) and (ii) with seven product types and four to six year tenor ranges. The Commission proposed setting the new CDS categories in § 43.6(b)(2) as: (i) based on the CDXHY product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (ii) based on the iTraxx Europe product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (iii) based on the iTraxx Crossover product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (iv) based on the iTraxx Senior Financials product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (v) based on the CDXIG product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (vi) based on the CDXEmergingMarkets product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; and (vii) based on the CMBX product type. The Commission proposed a new swap category in § 43.6(b)(2)(viii) for CDS with low activity and setting the block size to zero to make them eligible for delayed dissemination.[275]

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[275] *See* proposed § 43.6(e)(4), discussed below in section II.F.4.

The Commission is adopting the new CDS categories with modifications. For CDS, the Commission believes spreads may not be a consistent measure for the swap categories. Specifically, the Commission is concerned products with similar spreads are not necessarily economically similar because all market participants may not calculate the same spread for a given product. In addition, a product's spread range can change, making it difficult for parties to be certain that they are eligible for block treatment. Instead, the Commission finds most market participants trade specific credit products within specific tenor ranges. The Commission finds the most-traded CDS products are: (i) the CDXHY; (ii) iTraxx Europe, Crossover, and Senior Financials indexes; (iii) CDXIG; (iv) CDXEmergingMarkets; and (v) CMBX.[276] For each CDS product except for CMBX, the Commission finds the four to six year tenors, or greater than 1,477 days and less than or equal to 2,207 days, make up around 90% of all CDS trades. The Commission believes a separate category for CDS outside the products and/or tenor ranges above that will have a block size of zero will address these swaps for which there is not enough activity for the Commission to compute a reliable and robust AMBS.

The Commission received one comment on the scope of data used to create the CDS categories. In response, the Commission is adopting § 43.6(c)(2) with additional swap categories for CDS with optionality. ISDA-SIFMA (Blocks) are concerned the

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[276] The Markit CDX family of indices is the standard North American CDS family of indices, with the primary corporate indices being the CDX North American Investment Grade (consisting of 125 investment grade corporate reference entities) (CDX.NA.IG) and the CDX North American High Yield (consisting of 100 high yield corporate reference entities) (CDX.NA.HY). The Markit CDX Emerging Markets Index (CDX.EM) is composed of 15 sovereign reference entities that trade in the CDS market. The Markit CMBX index is a synthetic tradable index referencing a basket of 25 commercial mortgage-backed securities. Markit iTraxx indices are a family of European, Asian and Emerging Market tradable CDS indices.

scope of data was overly inclusive and not representative of all swaps in a particular swap category, especially with CDS.[277] First, ISDA-SIFMA (Blocks) believe including swaps with optionality skewed block and cap sizes because non-delta-1 products[278] trade in higher notional amounts than delta-1 products and do not represent the underlying products (i.e., the delta-1 products) that make up the rest of the swap category.[279] ISDA-SIFMA (Blocks) believe this is shown by, for example, the proposed block size for CDXIG being $550 million notional, while the proposed block size for CDXEM, whose markets have very little option activity, as $51 million notional.[280] ISDA-SIFMA (Blocks) also believe the data set inappropriately included CDS rolls.[281] Separately, ISDA-SIFMA (Blocks) believe the data sets should capture calm and stressed market conditions. ISDA-SIFMA (Blocks) recommend the Commission either: (1) recalibrate the proposed block sizes by excluding such products from its data sets; or (2) create new categories that would distinguish between these products.[282]

In response to the ISDA-SIFMA (Blocks) comment that it may be inappropriate when determining the block and cap thresholds to include swap products with optionality in particular swap categories, the Commission examined non-option and option products separately. The Commission determined there is a substantial difference in the

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[277] ISDA-SIFMA (Blocks) at 6-7.
[278] Delta-1 products refer to derivatives that have no optionality (i.e., for a given instantaneous move in the price of the underlying asset there is expected to be an identical move in the price of the derivative).
[279] ISDA-SIFMA (Blocks) at 6-7.
[280] *Id.*
[281] *Id.*
[282] *Id.* at 7.

distribution of trade sizes between non-option and option CDS products.[283] During 2018

to 2019 the notional values of swaps with optionality were approximately three to six

larger than non-option swaps. As a consequence, for many swaps categories, excluding

options had an economically meaningful effect on the calculated block and cap

thresholds. Accordingly, the Commission is separating the option activity into distinct

swap categories for some indices, and there will now be a swap category for CDXIG and

one for CDXIG-options.

In response to the ISDA-SIFMA (Blocks) comment that the data sets used to

determine block sizes should capture calm and stressed market conditions, the

Commission notes the current data set includes data from the fourth quarter of 2018 when

markets were stressed and data from the third quarter of 2018 and the first quarter of

2019 when the markets were calm. The Commission understands that basing block sizes

primarily on periods of high or low volatility would lead to block sizes that are

inappropriate under most market conditions; thus, the adopted block sizes are based on a

sample that is representative of market activity in a range of market conditions.

The Commission also has determined that it will not establish block sizes for

stressed market conditions. By their nature, markets may be stressed for different reasons

and to different levels, and thus, the appropriate block sizes cannot be determined in

advance.

c. Equity Asset Class

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[283] Similar analysis of IRS and FX trading shows that the differences between the size distributions of option and non-option swaps was sufficiently small that the Commission concluded block and cap sizes in IRS and FX should be the same for option and non-option swaps.

Existing § 43.6(b)(3) specifies that there shall be one swap category consisting of all swaps in the equity asset class. The Commission did not propose changing the equity asset class in § 43.6(b)(3).

The Commission received one comment on the equity asset class. ICI requests the Commission consider whether to include AMBS for equity swaps because the assumption that a highly liquid underlying cash market negates the need for an AMBS does not hold true.[284] The Commission considered whether equity swaps should be eligible for block treatment but continues to believe that there is a highly liquid underlying cash market for equities and that the equity index swaps market is not small relative to the futures, options, and cash equity index markets. The Commission declines to adopt ICI's suggestion at this time, but will continue to assess the equity asset class when it recalculates the block levels every year.

d. Foreign Exchange Asset Class

Existing § 43.6(b)(4) sets forth the FX swap categories. The Commission grouped the existing FX swap categories by: (i) the unique currency combinations of one super-major currency[285] paired with another super major currency, a major currency,[286] or a currency of Brazil, China, Czech Republic, Hungary, Israel, Mexico, Poland, Russia,

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[284] ICI at 5.

[285] § 43.2 defines "Super-major currencies" as the currencies of the European Monetary Union (i.e., the euro), Japan (i.e., the yen), the United Kingdom (i.e., the pound sterling), and the United States (i.e., the U.S. dollar).

[286] § 43.2 defines "Major currencies" as the currencies, and the cross-rates between the currencies, of Australia (i.e., the Australian dollar), Canada (i.e., the Canadian dollar), Denmark (i.e., the Danish krone), New Zealand (i.e., the New Zealand dollar), Norway (i.e., the Norwegian krone), South Africa (i.e., the South African rand), South Korea (i.e., the South Korean won), Sweden (i.e., the Swedish krona), and Switzerland (i.e., the Swiss franc).

and Turkey; or (ii) unique currency combinations not included in § 43.6(b)(4)(i).[287]

The Commission proposed replacing the FX swap categories in § 43.6(b)(4) with new swap categories by currency pair. The new FX categories would be comprised of FX swaps with one currency of the currency pair being USD, paired with another currency from one of the following: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan.

The Commission proposed creating a new category for FX swaps in § 43.6(b)(4)(ii) (re-designated as § 43.6(c)(4)(ii)) where neither currency in the currency pair is USD. Proposed § 43.6(c)(4)(ii) would be comprised of swaps with currencies from Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan. Parties to these FX swaps could elect block treatment if the notional amount of either currency in the currency exchange is greater than the minimum block size for a FX swap between the respective currencies, in the same amount, and USD described in § 43.6(c)(4)(i). The Commission proposed adding a swap category in § 43.6(b)(4)(iii) (re-designated as § 43.6(c)(4)(iii)) for FX swaps that trade with relatively low activity and setting the block size to zero to make these swaps eligible for delayed dissemination.[288]

The Commission is adopting the new FX swap categories as proposed, with technical modifications to re-designate/re-number certain requirements. For FX, the

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[287] *See* 17 CFR 43.6(b)(4).

[288] *See* proposed § 43.6(e)(4) (re-designated as § 43.6(f)(4)), discussed below in section II.F.4.

Commission finds that almost 94% of the over 7 million FX swaps included USD as one currency in each swap's currency pair. Of these swaps, the top-20 currencies paired with USD were currencies from Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan. The Commission believes a separate category for FX swaps outside the above currency pairs that will have a block size of zero will address these swaps for which there is not enough activity for the Commission to compute a reliable and robust AMBS.

The Commission received two comments on the new FX swap categories. The FXPA believes the Commission's reliance on market data has led to an appropriate outcome and the Commission's empirical analysis supports the conclusions set forth in the proposal and encourages the Commission to commit to periodic reviews of FX asset class categories on a regular basis.[289]

GFMA, conversely, believes significant changes have occurred to the FX market and the Commission should consider the impact of changes in FX market conditions, including changes to the number and size of transactions, since the 2018-2019 time period for which data was analyzed.[290] GFMA also believes notional may not be a good proxy for liquidity of some products and suggests the Commission not aggregate notionals for non-deliverable forwards and FX options and instead consider them as distinct categories.[291] GFMA notes that several currencies—such as Swiss francs ("CHF")—that are currently in the block/cap tables are not in the proposed tables and

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[289] FXPA at 2.
[290] GFMA at 9.
[291] GFMA at 7, 10.

these currencies would now fall into the "limited trading activity" bucket, which GFMA believes is surprising.[292] GFMA also notes that the proposed block and cap tables have added several new currencies, some of which are emerging market currencies that are more volatile.[293]

The Commission acknowledges GFMA's comment that market conditions may have changed since the proposed categories were created, creating potential that the categories may be a looser fit today than when designed. However, the Commission believes that the swap categories are appropriately based on an analysis of SDR swap data, discussions with market participants, as well as information from commenters, including FXPA which concurs with the outcome. The Commission does not agree that the block and cap sizes of certain currencies are too high. The block size of an FX product is determined by the FX category to which the FX product belongs. The Commission utilized 2018-2019 part 43 SDR data to construct the FX categories. The Commission believes the FX categories are appropriate as they advance the Commission's policy objectives of (1) categorizing swaps with similar quantitative or qualitative characteristics that warrant being subject to the same AMBS and (2) minimizing the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[294]

Per GFMA's comment, the Commission reviewed whether FX non-deliverable forwards and FX options should be aggregated. The Commission determined that aggregating the two types of swaps is appropriate for achieving its policy goals, and is

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[292] *Id.*
[293] *Id.*
[294] *See* Block Trade Rule at 32872.

concerned treating them separately would complicate the categories without a commensurate benefit to transparency.

e. Other Commodity Asset Class

Existing § 43.6(b)(5) sets forth the other commodity swap categories. The Commission grouped the existing other commodity swap categories by either (1) the relevant contract referenced in existing appendix B of part 43[295] for swaps that are economically related to a contract in appendix B, or (2) futures-related swaps for swaps that are not economically related to contracts in appendix B.[296] Swaps outside of § 43.6(b)(5)(i) and § 43.6(b)(5)(ii) are categorized according to the relevant product type referenced in appendix D of part 43.[297]

The Commission proposed new swap categories for the other commodity asset class based on the list of underliers in existing appendix D to part 43. The Commission also proposed modifying the list of underliers in existing appendix D and re-designating it as appendix A.[298] For swaps with a physical commodity underlier listed in appendix A, proposed § 43.6(b)(5)(i) would group swaps in the other commodity asset class by the relevant physical commodity underlier. The proposed list of underliers in appendix A

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[295] Appendix B to part 43 lists 42 swap categories based on such contracts.

[296] These swaps are: CME Cheese; CBOT Distillers' Dried Grain; CBOT Dow Jones-UBS Commodity Index; CBOT Ethanol; CME Frost Index; CME Goldman Sachs Commodity Index (GSCI), (GSCI Excess Return Index); NYMEX Gulf Coast Sour Crude Oil; CME Hurricane Index; CME Rainfall Index; CME Snowfall Index; CME Temperature Index; or CME U.S. Dollar Cash Settled Crude Palm Oil. The 18 swap categories in § 43.6(b)(5)(ii) are based on futures contracts to which swaps in these categories are economically related.

[297] *See* § 43.6(b)(5)(iii). Appendix D establishes "other" commodity groups and individual other commodities within these groups for swaps that are not economically related to any of the contracts listed in appendix B or any of the contracts listed in § 43.6(b)(5)(ii). If there is an individual other commodity listed, the Commission would deem it a separate swap category, and thereafter set an AMBS for each such swap category. If a swap is unrelated to a specific other commodity listed in the other commodity group in appendix D, the Commission would categorize such swap as falling under the relevant other swap category. *See* Block Trade Rule at 32888.

[298] This was a structural change to reflect the proposed removal of existing appendices A through C.

would be based on broad commodity categories the Commission has identified from its review of the swap data from SDRs, rather than references to specific futures contracts.

For other commodity swaps outside of those based on the underliers in proposed appendix A, the Commission found the trade count was not high enough to compute a robust and reliable AMBS. The Commission proposed adding a swap category in § 43.6(b)(5)(ii) for relatively illiquid other commodity swaps and setting the block size for these swaps at zero.[299]

The Commission is adopting the new other commodity swap categories as proposed in § 43.6(c). The Commission believes the new other commodity swap categories advance the Commission's policy objectives of (1) categorizing swaps with similar quantitative or qualitative characteristics that warrant being subject to the same AMBS and (2) minimizing the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[300] However, the Commission is not adopting the proposal to re-designate appendix D to appendix A. The Commission had proposed to re-designate the appendix as a result of the proposed removal of other appendices. As the Commission is not removing all of the other appendices as proposed, appendix D will remain where it is.

The Commission received one comment on the commodity asset class. ICE SDR recommends the Commission provide additional clarity on the block sizes in the other commodity asset class table, as, for example, electricity and natural gas references do not specify whether they apply to North America only or apply to all global gas and

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[299] *See* proposed § 43.6(e)(4), discussed below in section II.F.4.
[300] *See* Block Trade Rule at 32872.

electricity products.[301] ICE SDR notes commodity index trades are not referenced and

oil should be clarified as to whether it only applies to crude oil only or other refined

products.[302]

Based on the reasons above concerning the Commission's policy objectives to

maintain a reasonable number of categories with adequate breadth, the Commission

declines to create additional categories. Thus, the categories will continue to cover all

products with the referenced underlier regardless of geographic location. Similarly,

commodity index swaps comprised of underliers that span multiple categories will

continue to be in the other commodity swaps category under 43.6(c)(5)(ii) and other

refined oil products without their own category will continue to be the broad oil category.

3. § 43.6(c) – Methodologies to Determine Appropriate Minimum Block Sizes and Cap

Sizes

Existing § 43.6(c) sets forth the methodologies the Commission must use to

determine AMBSs and cap sizes in the § 43.6(b) swap categories. These methodologies

are: a 50-percent notional amount calculation; a 67-percent notional amount calculation;

and a 75-percent notional amount calculation.[303]

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[301] ICE SDR at 8.

[302] *Id.*

[303] *See* § 43.6(c)(1), (2), and (3), respectively. Each methodology ensures that within a swap category, the stated percentage of the sum of the notional amounts of all swap transactions in that category are disseminated on a real-time basis. The instructions for each of the calculations require the Commission to select all reliable publicly reportable swap transactions within a swap category using one year's worth of data, converting them to the same currency and, using a trimmed data set, determine the sum of the notional amounts of swaps in the trimmed data set, multiply the sum of the notional amounts by 50, 67, or 75 percent, rank the results from least to greatest, calculate the cumulative sum of the observations until it is equal to or greater than the 50, 67, or 75-percent notional amount, select and round the notional amount, and set the AMBS equal to that amount.

For the initial period,[304] the Commission used the 50-percent notional amount calculation to determine the AMBS.[305] For the post-initial period, existing § 43.6(f)(2) required the Commission to use the 67-percent notional amount calculation.[306] For the initial period, the Commission set the initial cap sizes as the greater of the interim cap sizes (the time before the initial period) in all five asset classes and the AMBS calculated using the 50-percent notional amount calculation.[307] For post-initial cap sizes, existing § 43.4(h) required the Commission to use the 75-percent notional amount calculation for all swap categories.[308]

Prior to the Proposal the Commission had not calculated the post-initial block sizes or cap sizes, although the condition specified in § 43.6(f)(1) for moving to the post-initial period had been met, *i.e.*, SDR collection of at least one year's worth of reliable data for the particular asset classes. As a result, the AMBS and cap sizes have remained at lower thresholds than the Commission intended when it adopted the Block Trade Rule. In practice, this results in more swaps qualifying for block treatment and capping, at the expense of more swaps being available to the public without a delay or fewer swaps capped to mask their notional value

In the Proposal, the Commission proposed removing the 50-percent notional amount calculation in § 43.6(c)(1) and re-designating § 43.6(c)(2) and (3) as § 43.6(c)(1)

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[304] The initial period refers to the period of no less than one year after an SDR started collecting reliable data for a particular asset class as determined by the Commission and prior to the effective date of a Commission determination to establish applicable post-initial cap sizes.

[305] *See* § 43.6(e).

[306] *See* § 43.6(f)(2).

[307] *See* § 43.4(h)(1).

[308] *See* § 43.4(h)(2)(ii). As discussed above in section II.D.4, the Commission is changing the process to determine cap sizes in § 43.4(g), re-designated from § 43.4(h), but is continuing to use the 75-percent notional amount calculation for cap sizes.

and (2), respectively. However, as discussed above, to avoid removing regulations that still need to be effective during the compliance period for the changes to § 43.6, the Commission has decided to leave the existing regulations for the 50-percent notional amount calculation, while adding the new updated regulations for appropriate minimum block sizes during the post-initial period that were proposed in the Proposal. Therefore, the Commission is not removing the reference to the 50-percent notional calculation, but is moving it to § 43.6(d)(3).

The Commission is also adopting minor changes to the 50-percent, 67-percent and 75-percent notional amount calculations. The Commission is updating certain steps of the statistical calculations set forth in existing § 43.6(c)(2)(i)-(ix) to improve clarity and sharpen their application. Existing § 43.6(c)(2)(i) requires the Commission to select all publicly reportable swap transactions within a specific swap category using a one-year window of data. As re-designated, § 43.6(d)(1)(i) will require the Commission to select all reliable SDR data for at least a one-year period for each relevant swap category to simplify the language and clarify that the Commission would be using SDR data in its calculations.

Existing § 43.6(c)(2)(ii) requires the Commission to convert to the same currency or units and use a trimmed data set, but does not specify what is being converted. As re-designated, § 43.6(d)(1)(ii) will clarify the Commission will convert the notional amount to the same currency or units and use a trimmed data set to improve readability.

The Commission is updating the definition of "trimmed data set" in § 43.2 to mean a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of 10, computing the mean, and

excluding transactions that are beyond two standard deviations above the mean for the

other commodity asset class and three standard deviations above the mean for all other

asset classes. The Commission explains the change in this section because the trimmed

data set is used in § 43.6(d)(2)(ii).

Trimming the data set avoids having outliers skew the data set, which could lead

to inappropriately high block sizes.[309] In applying the existing methodologies to update

to the block thresholds and cap sizes, Commission staff found that excluding commodity

transactions beyond four standard deviations above the mean led to including

extraordinarily large notional transactions that could skew results. With commodity

swaps in particular, the Commission is concerned that the wide variation in how reporting

counterparties report notional amounts led to more outliers that should be excluded from

the trimmed data set. Commission staff has found a similar issue with four standard

deviations for the other asset classes, but to a lesser extent than commodities, that the

Commission believes will be addressed by moving from four standard deviations to three.

The Commission is also changing the rounding rules in the methodology.

Existing § 43.6(d)(2)(viii) directs the Commission to round the notional amount of the

observation discussed in § 43.6(d)(2)(vii) "to" two significant digits,[310] or if the notional

amount is already significant "to" two digits, increase the notional amount to the next

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[309] *See* Block Trade Rule at 32895.
[310] Significant digits means the number of digits in a figure that express the precision of a measurement instead of its magnitude. In a measurement, commonly the in-between or embedded zeros are included but leading and trailing zeros are ignored. Non-zero digits, and leading zeros to the right of a decimal point, are always significant.

highest rounding point of two significant digits.[311] The Commission is revising §

43.6(d)(2)(viii) to specify that the Commission rounds the notional amount of the

observation "up to" two significant digits, or if it is already significant "to only" two

digits, increase the notional amount to the next highest rounding point of two significant

digits. The Commission believes changing "to" to "up to" and "to only," respectively, in

§ 43.6(d)(2)(viii) clarifies the Commission's intent consistent with the above example.

Finally, the Commission is replacing the individual instructions for the 75-percent

and 50-percent notional amount calculations contained in existing § 43.6(c)(1) and (3)

with a cross-reference to the procedures set out in § 43.6(d)(1). Since the steps for the

calculations are the same, cross-referencing the procedures in proposed § 43.6(d)(1) will

reflect the calculation steps are the same.

The Commission did not receive any comments on the changes to § 43.6(d). For

the reasons discussed above, the Commission is adopting the changes as proposed.

4. § 43.6(e) – Process to Determine Appropriate Minimum Block Sizes

Existing § 43.6(e) and (f) set forth the processes for the Commission to set AMBS

in the initial[312] and post-initial period. Existing § 43.6(f) directs the Commission to

establish the post-initial AMBS by swap categories.[313] The regulation directs the

Commission to update those AMBSs no less than once each calendar year thereafter.[314]

For the swap categories listed in existing § 43.6(e)(1), § 43.6(f)(2) requires the

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[311] *See* Block Trade Rule at 32892, n. 241, which provided the following example to explain the rounding instructions in § 43.6(c)(2)(viii): "if the observed notional amount is $1,250,000, the amount should be increased to $1,300,000. This adjustment is made to assure that at least 67 percent of the total notional amount of transactions in a trimmed data set is publicly disseminated in real time."

[312] The initial period ended April 10, 2014 when SDRs had collected one year's worth of reliable data.

[313] *See* § 43.6(f)(1).

[314] *Id.*

Commission to apply the 67-percent notional amount calculation.[315] Swaps in the FX

category in existing § 43.6(b)(4)(ii) are to be eligible for block trade or LNOFS

treatment, as applicable.[316] Existing § 43.6(f)(4) directs the Commission to publish the

post-initial AMBSs on its website and states the AMBSs will be effective on the first day

of the second month following the date of publication.[317]

Prior to the Proposal, the Commission had not published any post-initial AMBSs.

As the condition specified in § 43.6(f)(1) has been met, *i.e.*, more than one year's worth

of reliable SDR data has been collected for the particular asset classes, the Commission is

moving to the post-initial period and raising the block threshold to 67% and the cap sizes

to 75%.

However, in the Proposal, the Commission proposed removing the regulations for

initial appropriate minimum block sizes in § 43.6(e) and replacing them with new

regulations for appropriate minimum block sizes in the post-initial period. To avoid

removing regulations that still need to be effective during the compliance period for the

changes to § 43.6, the Commission has decided to leave the substance of the existing

regulations for the initial appropriate minimum block sizes in § 43.6(e) but move it to §

43.6(f), while updating the regulations for appropriate minimum block sizes during the

post-initial period that were proposed in the Proposal in § 43.6(g). The Commission

discusses the new regulations in § 43.6(g) in this section.

Re-designated § 43.6(g)(1) will state the Commission shall establish AMBS, by

swap categories, as described in § 43.6(g)(2)-(6). Re-designated § 43.6(g)(2) states the

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[315] *See* § 43.6(f)(2).
[316] *See* § 43.6(f)(3).
[317] *See* § 43.6(f)(5).

Commission shall determine the AMBS for the swap categories described in §

43.6(c)(1)(i), (c)(2)(i)-(xii), (c)(4)(i), and (c)(5)(i) by applying the 67-percent notional

amount methodology in proposed § 43.6(d)(1). Re-designated § 43.6(g)(2) also clarifies

that if the Commission is unable to determine an AMBS for any swap category described

in § 43.6(c)(1)(i), the Commission shall assign an AMBS of zero to such category.[318]

The Commission is keeping the requirement for the Commission to recalculate the cap

size no less than once each calendar year in re-designated § 43.6(g)(1).[319]

New § 43.6(g)(3) sets forth the method for determining block sizes for FX swaps.

New § 43.6(g)(3) specifies that the parties to an FX swap described in § 43.6(g)(4)(ii)

may elect to receive block treatment if the notional amount of either currency would

receive block treatment if the currency were paired with USD. In other words, for each

currency underlying the FX swap, the counterparties will determine whether the notional

amount of either currency will be above the block threshold if paired with USD, as

described in § 43.6(g)(4)(i). If either notional amount paired with USD is greater than

the block threshold, the swap described in § 43.6(g)(4)(ii) will qualify for block

treatment.

As discussed above in section II.F.2, the Commission is setting the block size of

all swaps in certain swap categories[320] at zero and treating them as block trades in

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[318] The proposed AMBS tables published by the Commission indicated that the 67-percent notional amount calculation does not result in an AMBS for 15 IRS categories. There was insufficient swap transaction and pricing data for the Commission to determine an AMBS for those 15 IRS categories. The Commission is setting the AMBS for such IRS categories at zero, the same AMBS being assigned to other IRS with limited trading activity.

[319] The Commission discusses this decision in section II.F.1 above.

[320] These categories of swaps are in § 43.6(c)(1)(ii), (c)(2)(xiii), (c)(4)(iii), and (c)(5)(ii).

proposed § 43.6(e)(4). Finally, the Commission is keeping existing § 43.6(f)(5), which provides the effective date of post-initial AMBSs.

Aside from the new swap categories, the substantive import of § 43.6(g) is the Commission's move to the post-initial block threshold prescribed in the Block Trade Rule; raising thresholds is not implementing novel thresholds. More specifically, the Commission is implementing thresholds adopted in 2013 after notice and comment and that, by regulation, were to be implemented after an SDR had collected data for a year, a threshold that has been met and surpassed since April 2014.

These amendments thus reflect a policy continuation that effectuates the essential substance of what the Commission deemed appropriate in originally promulgating § 43.6. As supported by a refreshed analysis described below—including information not available to the Commission in 2013—the Commission continues to view the fundamental policy judgments that supported its 2013 decision to prescribe a 67-percent notional amount calculation after an initial introductory phase in period (now elapsed) as sound. For reasons discussed below, the Commission does not find comments to the contrary to be persuasive.

When it promulgated the requirement in 2013 that the notional amount calculation be raised from 50-percent to 67-percent, the Commission's goal was to increase market transparency by decreasing the portion of swaps within a category that qualified for block treatment and thus increasing the number of trades reported in real time.[321] The Commission anticipated that this enhanced transparency would improve market integrity

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[321] 78 FR 32893, 32894.

and price discovery, while reducing information asymmetries enjoyed by market makers

in predominately opaque swap markets.[322] The Commission also anticipated that

enhanced price transparency would encourage market participants to provide liquidity

(*e.g.,* through the posting of bids and offers), particularly when transaction prices move

away from the competitive price.[323] In the Commission's view, using the 67-percent

notional amount calculation in the post-initial period also would minimize the potential

impact of real time public reporting on liquidity risk.[324]

The Commission continues to believe that transparency will increase liquidity,

improve market integrity and price discovery, while reducing information asymmetries

enjoyed by market makers. As explained in section V.C. below, this belief is supported

by an extensive review of the academic literature. In addition, the Commission received

a number of comments noting the importance of transparency in regard to lowering

trading costs and pointing to a significant body of academic literature that empirically

demonstrated this effect.[325]

When the Commission promulgated existing § 43.6(f)(2), it recognized that

increasing the AMBS notional amount calculation from 50-percent to 67-percent could

make it more difficult for SDs to hedge the exposure created by trading a large swap

because real time reporting and public dissemination will be required.[326] Without a 15-

minute pause before a large trade is revealed, other market participants could potentially

anticipate the trades of the SD trying to hedge its position and act accordingly to their

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[322] *Id.* at 32894.
[323] *Id.*
[324] *Id.*
[325] *See*, *e.g*., MIT at 1-2; Carnegie Mellon at 2-4; SMU at 4-5; and Citadel at 5.
[326] 78 FR 32919-20

own advantage, and this could increase costs to SDs and other market participants.

However, the Commission finalized existing § 43.6(f)(2) given the significant benefits of

market transparency.

Notably, when § 43.6(f)(2) was finalized, the Commission determined that the 67-

percent was appropriate.[327] However, in response to comments advocating for a gradual

phase-in for attaining that threshold, the Commission adopted the 50-percent threshold as

a temporary bridge measure.[328] The Commission believed this allowed for a more

gradual phase-in of the 67 percent notional amount calculation for determining block

thresholds in the post-initial period than what had been proposed.[329]

The Commission continues to believe that raising the notional amount calculation

from 50-percent to 67-percent strikes an appropriate balance between the benefits of

transparency and the costs to SDs and other market participants. Further, the

Commission believes that the cost of raising the threshold is more limited today than it

was in 2013. The ability of traders to profitably anticipate the hedging demands resulting

from large notional swaps (which in turn, discourages market making) is inversely related

to market liquidity. The 67-percent calculation will be applied to categories of swaps

which the Commission has determined are relatively liquid. As noted above, the

Commission has moved some illiquid swaps from the categories that were established in

2013 into more appropriate categories.

However, as discussed in the Compliance section, the Commission recognizes it

would be challenging for market participants to come into compliance with the post-

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[327] *Id*. at 32920.
[328] *Id*.
[329] *Id.*

initial AMBS at the same time they have to come into compliance with additional,

significant aspects of some of the additional changes § 43.6, including the new swap

categories. As a result, the Commission is adopting a compliance period of 18-months

for the changes to the part 43 rules except for § 43.4(g) and § 43.6. In the Proposal, the

Commission proposed removing the regulations for initial appropriate minimum block

sizes and replacing them with new regulations for appropriate minimum block sizes. To

avoid removing regulations that still need to be effective during the compliance period

for the changes to § 43.4(g) and § 43.6, the Commission has decided to leave the existing

regulations for the initial appropriate minimum block sizes in § 43.6, while adding the

new updated regulations for appropriate minimum block sizes during the post-initial

period that were proposed in the Proposal.

As shown below, the Commission carefully reviewed the comments opposed to

the higher notional amount calculations and does not find them to be persuasive. The

Commission discusses the comments received on the changes to § 43.6(g) thematically in

the following sections.

a. Increase in Block Trade Thresholds.

The Commission received four comments supporting raising the block threshold

to 67%. Better Markets believes the proposed increase is overdue and should be

adopted.[330] Chris Barnard supports raising the thresholds from 50% notional to a

minimum of 67% notional based on updated analysis.[331] Citadel supports the move from

50% to 67% to balance market transparency and information leakage risks, unlike the

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[330] Better Markets at 2.
[331] Chris Barnard at 1.

current approach, where one-half of trading activity (by notional) is eligible for a public

reporting deferral.[332] Citadel further notes this approach is more consistent with the

European approach.[333] Clarus believes the proposal will remove information

asymmetries from the markets.[334]

Two commenters raised concerns about the March 2020 volatility as a basis for

their opposition to raising the block thresholds. PIMCO believes their counterparties

were simply unable to quote markets for block trades in otherwise liquid products, in

part, based on their own inability to efficiently manage the risks associated with

transacting in larger sizes in a volatile market.[335] In other cases, the bid-ask spreads grew

sufficiently large so as to render the block trades economically unfavorable and PIMCO

believes the dissemination of pre-trade information in this manner further exacerbated the

winning counterparty's ability to efficiently hedge its risk in an illiquid market.[336]

SIFMA AMG believes the 67% block test and the 75% cap test are each substantially too

high and would adversely affect markets during periods of high volatility or lower

liquidity and respectfully requests the Commission to include data from the recent

COVID-19 downturn in their review and analysis to determine whether the higher limits

are indeed advisable.[337]

The Commission is not persuaded by PIMCO's and SIFMA AMG's comments

that the threshold should not be raised because it would be inappropriate in periods of

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[332] Citadel at 9.
[333] *Id.*
[334] Clarus at 2.
[335] PIMCO at 3-4.
[336] *Id.*
[337] SIFMA AMG at 2-4.

extreme volatility, such as those experienced in March 2020. The block trade levels are not designed to address periods of extreme volatility. Moreover, in March 2020, Commission staff heard opposing views from market participants, some of whom believed the block thresholds did not need to be lowered during the period of volatility.[338] As noted above, the Commission also determined that it will not establish block sizes for stressed market conditions. By their nature, markets may be stressed for different reasons and to different levels, and thus, the appropriate block sizes cannot be determined in advance.

Three commenters raised concerns about the Commission's analysis as a basis for their opposition. Vanguard believes changing the thresholds needs to be supported by data to confirm that a change in the block size is now justified, or, if justified, what percentage change is justified.[339] ISDA-SIFMA (Blocks) have previously stated the 67% calculation is arbitrary because it focuses on sorting swaps in a particular market by their notional amount and determining (without providing any economic analysis) that a certain percentage of the largest notional trades should be blocks.[340] ICI believes the Commission should have done a fresh evaluation of the 67% and 75% calculations, given the passage of time since 2013, and the Commission does not quantify the costs and benefits associated with the trading impacts.[341]

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[338] The Commission notes there were also public reports about transparency helping during the March volatility. *See, e.g.*, Chris Barnes, Is transparency helping markets function?, Clarus Financial Technology Blog, (Mar. 2020), *available at https://www.clarusft.com/is-transparency-helping-markets-function/*.
[339] Vanguard at 3.
[340] ISDA-SIFMA (Blocks) at 3-4.
[341] ICI at 6-7.

The Commission does not believe that the threshold is arbitrary and is not based

on a data-driven analysis. Under the current 50-percent threshold, while the number of

swap reported in real-time is large (87 and 82 percent for IRS and CDS, respectively),

this accounts for less than half of total notional traded (46 and 39 percent for IRS and

CDS, respectively).[342] For IRS, under the 67% threshold, the Commission estimates 94%

of trades, or 65% of IRS notional, would be reported in real-time. For CDS, under the

67% threshold, the Commission estimates 95% of trades, or 62% of CDS notional, would

be reported in real-time. The Commission is implementing the 67-percent threshold, as

required by existing § 43.6(f)(2), based on its determination that the higher threshold

properly balances the benefits of increased transparency with costs to SDs and their

customers. The threshold is applied to categories that comprise liquid swaps as

determined by an analysis based on recent data.

Four commenters raised concerns about SEF execution methods as a basis for

their opposition. SIFMA AMG and ISDA-SIFMA (Blocks) are concerned that large

trades that fall between the current block trade thresholds and the newer, larger proposed

block trade thresholds may now be subject to the risk of information leakage as such

trades, to the extent they are subject to the trade execution requirement, will now be

subject to the RFQ-to-three process.[343] Vanguard contends that for most product types,

the magnitude of the proposed increase in block size would have an adverse impact on

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[342] Percentages computed using the set of transactions for IRS and CDS from May 1, 2018 to April 30, 2019. This is the same information used to study the swap categories and compute block and cap thresholds.

[343] SIFMA AMG at 3 and ISDA-SIFMA (Blocks) at 5. RFQ-to-three is the requirement for a market participant to transmit a request for a bid or offer to no less than three market participants who are not affiliates of, or controlled by, the requester or each other. *See* 17 CFR § 37.9(a)(2)(B) and (3).

liquidity with respect to existing block trades, which would no longer benefit from RFQ-to-one[344] and delayed reporting.[345] ICI believes subjecting more large transactions to a higher level of transparency through the RFQ-to-three requirement may significantly impair liquidity for funds and other buy-side participants in stressed market conditions and may increase the risk of pre-trade leakage of valuable information about a fund's holdings and trading strategy.[346]

The Commission recognizes the potential that some degree of information leakage and liquidity impairment could result from market participants now being required to execute some large-notional MAT swap transactions—i.e., transactions that fall within the window between the prior and now-implemented thresholds (50 percent to 67 percent) that could previously be executed as blocks and through non-competitive means of execution–on a SEF or DCM through competitive means of execution. However, more compelling in the Commission's view is the likelihood that the bids and offers associated with these large-notional MAT swap transactions could, through increased transparency and competition, stimulate more trading and thereby enhance liquidity and pricing. Further, the Commission expects that commenters' concern regarding information leakage and liquidity impairment resulting from being required to execute some large-notional MAT swap transactions on a SEF or DCM through competitive means of execution will be mitigated by the fact that the block size is being raised for relatively liquid products.

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[344] RFQ-to-one allows counterparties to bilaterally negotiate a block trade between two potential counterparties, without requiring disclosure of the potential trade to other market participants on a pre-trade basis.
[345] Vanguard at 3-4.
[346] ICI at 7.

One commenter raised concerns about putting SEFs at a competitive disadvantage as a basis for their opposition. ISDA-SIFMA (Blocks) believe unattainably high block thresholds will put SEFs at a competitive disadvantage with non-U.S. trading platforms and shift execution (and trading business) away from the U.S.[347] Further, ISDA-SIFMA (Blocks) believe the Commission could calculate separate and distinct block sizes for the SEF requirements, using only MAT instruments where the impacts of high thresholds are particularly detrimental.[348]

In response to the ISDA-SIFMA (Blocks) comment that higher block sizes will put SEFs at a competitive disadvantage with non-U.S. trading platforms,[349] the Commission recognizes that there is a possibility that some SDs could choose to execute MAT swap transactions that will no longer receive block treatment on a European trading facility through a non-competitive means of execution in order to avoid executing the swap on a SEF or DCM through a competitive means of execution. However, the prospect of transaction migration from the US to Europe is entirely speculative, and one for which ISDA-SIFMA provide no estimate or data (e.g., the number of transactions likely to migrate offshore) to gauge its likelihood or severity. The Commission believes that most SDs will continue to utilize U.S. markets which have substantial liquidity and other benefits that outweigh the information leakage cost of executing a swap RFQ-to-3 as opposed to RFQ-to-1. The Commission does not intend to create opportunities for regulatory arbitrage that could impair liquidity or transparency in U.S. markets or

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[347] ISDA-SIFMA (Blocks) at 5.
[348] *Id.*
[349] *Id.*

competitively disadvantage U.S. SEFs. The Commission will monitor trading in the

markets affected by the final rule for any such migration or arbitrage.

Four commenters raised concerns about using risk metrics for block sizes as a

basis for their opposition. ISDA-SIFMA (Blocks) believe the proposed thresholds do not

properly account for risk sensitivity and if the Commission needs to pursue a notional-

based framework, the levels should be established through a risk-based approach by

using risk metrics such as DV01 to account for the fact that they are only proxies for true

risk.[350] SIFMA AMG states that rather than adopting a 67% test for all products, the

Commission should analyze whether a dollar value change test (a "DV01 Test") would

be a more appropriate standard for interest rate products.[351] ISDA-SIFMA (Blocks)

believe the number of true block trades in a given swap category should depend on the

relevant level of liquidity and risk.[352] Credit Suisse supports ISDA-SIFMA (Block)'s

concerns around changes to the block thresholds, including relying on notional amounts

may not sufficiently account for risk sensitivity.[353] ALCI recommends that the

Commission apply a risk-based analysis to interest rate products with a tenor of 10 years

and greater and, based on this analysis, reduce the block size for such swaps.[354]

The Commission is neither persuaded by comments that block sizes should be

linked to risk by metrics such as DV01, nor suggestions that the number of true block

trades in a given swap category should depend on the relevant level of liquidity and risk.

Although basing block size on DV01 theoretically might be appropriate, the commenters

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[350] *Id.* at 4.
[351] SIFMA AMG at 4.
[352] ISDA-SIFMA (Blocks) at 4.
[353] Credit Suisse at 3.
[354] ACLI at 3-4.

have not explained how this could be accomplished in practice, nor are the means for doing so apparent to the Commission. For example, the commenters have not explained whether DV01 would be the only criteria, or if other factors would be utilized. In addition, DV01 changes daily and there is no guidance on how often thresholds should be adjusted. Most significantly, the commenters have not demonstrated that the block sizes that would result from their risk-based approach would be more appropriate than those that result from the Commission's approach, nor that their approach would be less costly to implement. Rather, as explained in section V.C., the Commission believes its approach is superior as the ultimate goal in establishing thresholds is to focus on liquidity differences across swap categories, not risk-transfer *per se.*

One commenter raised concerns specifically about FX swaps as a basis for their opposition. GFMA was not expecting such significant changes between existing and proposed FX block and cap sizes.[355] For the "other currency bucket," GFMA believes that the $150 million cap size, which is higher than the cap for more liquid currencies, listed in the table will result in the illogical outcome of more transparency for less liquid currency pairs.[356] GFMA believes more transparency for these less liquid currencies will create challenges for market participants to hedge in these currencies.[357]

The Commission disagrees with GFMA's comment because the category includes less liquid currency pairs.[358] Categories of swaps will necessarily combine more and less liquid swaps. As discussed above in II.F, the Commission arrived at the number of swap

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[355] GFMA at 7, 10.
[356] GFMA at 7-8.
[357] *Id.*
[358] GFMA at 7-8.

categories by balancing the increased cost of additional categories with the more finely

tuned block and cap sizes. Further, simply comparing the cap sizes for different currency

pairs, as GFMA does, may be inappropriate as the underlying distribution of currency

pairs may be different.

One commenter raised concerns the block threshold should be higher than 67% as

a basis for their opposition. Clarus believes the AMBS levels should be set at 75%-90%

and that the current 50% level confers an unfair information asymmetry to large SD

banks who act as liquidity providers for these large swaps.[359] Clarus states that, given

that there is strong evidence that block trades have had no more market impact in 2020

than smaller trades, it seems to provide an unfair advantage to large liquidity

providers.[360] Clarus also believes that adding extra transparency for large trades would

provide market participants with clearer signs of liquidity and reduce information

asymmetry, which, during crisis times, provides even greater reassurance that markets are

not "seizing up."[361]

At this time, given the data available to it, the Commission disagrees with Clarus

that the AMBS levels should be set at 75% to 90%. The Commission agrees that adding

extra transparency for large trades would provide market participants with clearer signs

of liquidity and reduce information asymmetry, which, during crisis times, provides even

greater reassurance that markets are not "seizing up." However, the Commission

believes that the adverse impact on SDs and their customers of setting the threshold at 75

to 90% may be too significant to justify setting the threshold at this level.

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[359] Clarus at 8-9.

[360] *Id.*

[361] *Id.*

PIMCO is concerned the premature dissemination of block trade details transmits sensitive proprietary information to short-term speculators before SDs are able to hedge and otherwise manage their risk and could lead to market liquidity decreases, bid-ask spreads widening, and costs to PIMCO's clients.[362]

As explained above in the introduction to the 43.6(e) discussion, the Commission specifically considered PIMCO's concerns that raising the notional amount calculation from 50-percent to 67-percent could adversely impact SDs and their clients because the swaps would no longer benefit from delayed reporting both in the 2013 rulemaking and in the current rulemaking. The Commission has determined to raise the notional amount calculation to obtain the benefits of increased transparency.

b. Block size of zero.

The Commission received three comments related to block sizes of zero. Clarus strongly opposes the Commission's proposal to set the block threshold at zero for any instrument that the Commission currently considers "relatively illiquid."[363] Clarus believes that price discovery is just as important for minor currencies as for major currencies—possibly more so given the fragmented nature of less liquid markets— for example, IRS denominated in CHF, on the grounds that instruments must be closely monitored during the planned transition away from London Interbank Offered Rate ("LIBOR") to risk-free rates.[364] GFMA believes the proposed zero block size for the

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[362] PIMCO at 2.
[363] Clarus at 9.
[364] *Id.*

other currency bucket is "not unwelcome."[365] FXPA supports the creation of a category

for relatively low liquidity FX swaps that will benefit from a block size of zero.[366]

With respect to the proposed zero block sizes, the Commission agrees with Clarus

that price discovery is important for illiquid products. However, the Commission must

weigh the goal of public transparency against the concern that post-trade reporting would

reduce market liquidity. In illiquid markets, transactions occur infrequently and the

benefit of real-time information is limited. For example, if transactions occur throughout

the day and less than every ten minutes on average, knowing the price of a swap

immediately after execution will provide little additional benefit than knowing the price

of a swap fifteen minutes after execution. However, other market participants could

potentially anticipate the trades of the SD trying to hedge its position and act accordingly

to their own advantage, and this could increase costs to SDs and other market

participants. Accordingly, the Commission has determined that zero block sizes are

appropriate for the swap categories with illiquid swaps.

c. Cross-Border Concerns.

The Commission received one comment addressing cross-border concerns.

GFMA believes the Commission needs to coordinate with its foreign regulator peers

regarding block and cap thresholds.[367] GFMA notes data that may be deemed market-

sensitive in one jurisdiction should not be made public in another, especially for FX,

which is a global market.[368]

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[365] GFMA at 7.
[366] FXPA at 2.
[367] GFMA at 9.
[368] *Id.*

In response to cross-border concerns raised by GFMA, the Commission
anticipates that it will address the cross-border application of the reporting rules in a
separate rulemaking.

5. § 43.6(f) – Required Notification

The Commission is re-designating existing § 43.6(g) as § 43.6(h) to reflect the
Commission's decision to retain § 43.6(e) and (f) but add new (c). Existing § 43.6(g) sets
forth the requirements for parties to notify their execution venue (i.e., SEF or DCM) of
the parties' block trade election or notify their SDR of the parties' LNOFS election.

Existing § 43.6(g)(1)(i) requires the parties to a publicly reportable swap
transaction with a notional amount at or above the AMBS to notify the SEF or DCM of
their election to have the publicly reportable swap transaction treated as a block trade.
The current phrasing suggests parties must elect to have a qualifying publicly reportable
swap transaction treated as a block trade, instead of letting parties choose. The
Commission believes having the option is important, as some counterparties may not
object to having their block trade disseminated in real-time. To give them the option, the
Commission is changing § 43.6(f)(1)(i) to state if the parties make such an election, the
reporting counterparty must notify the SEF or DCM.[369]

Existing § 43.6(g)(1)(ii) requires the SEF or DCM to notify the SDR of a block
trade election when transmitting swap transaction and pricing data to the SDR in
accordance with § 43.3(b)(1). The Commission is retaining the substance of existing §
43.6(g)(1)(ii) in re-designated § 43.6(h)(1)(ii), but is removing the specific reference to §

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[369] The Commission is also making minor non-substantive technical edits for clarity.

43.3(b)(1) and streamlining the language to state the SEF or DCM, as applicable, shall

notify the SDR of a block trade election when reporting the swap transaction and pricing

data to such SDR in accordance with part 43.

The Commission is adding new § 43.6(h)(1)(iii) to clarify that SEFs and DCMs

may not disclose block trades prior to the expiration of the applicable dissemination delay

in § 43.5(c) to avoid ambiguity.

Existing § 43.6(g)(2) states that reporting parties executing an off-facility swap

with a notional amount at or above the AMBS shall notify the applicable registered SDR

that such swap transaction qualifies as an LNOFS concurrently with the transmission of

swap transaction and pricing data in accordance with part 43. The Commission is

clarifying in § 43.6(g)(2), re-designated as § 43.6(h)(2), that the parties to a publicly

reportable swap transaction that is an off-facility swap with a notional at or above the

AMBS can elect to have the publicly reportable swap transaction treated as a LNOFS. If

the parties make such an election, the reporting counterparty will notify the SDR.

However, because the Commission is keeping the term "large notional off-facility swap"

in § 43.2, the Commission is keeping the reference to "large notional off-facility swap" in

the rule.

The Commission received one comment on the proposed amendments to block

trade notifications. Chatham believes they provide more clarity to reporting

counterparties for how such trades should be reported. Chatham believes confusion

currently exists regarding whether the SDR may make the calculation or whether the

reporting counterparty must do so. If the Commission does not adopt this change,

Chatham encourages the Commission to further clarify the SDRs also make the block

trade calculations.[370] The Commission agrees with Chatham that the amendments will

address ambiguity around electing block treatment.

6. § 43.6(h) – Special Provisions Relating to Appropriate Minimum Block Sizes and Cap

Sizes

The Commission is re-designating existing § 43.6(h) as § 43.6(i) in response to

keeping of § 43.6(e) and (f).[371] The Commission is also not adopting the proposal to

remove existing § 43.6(h)(5), which contains a provision for determining the appropriate

currency classification for currencies that succeed super-major currencies. Existing §

43.6(h)(5) is still necessary due to the need to retain § 43.6(b) during the compliance

period. As a result of keeping § 43.6(h)(5), the Commission is keeping existing §

43.6(h)(6) as § 43.6(h)(6) and making substantive changes.

Existing § 43.6(h)(6) generally prohibits the aggregation of orders for different

accounts to satisfy minimum block trade size or cap size requirements but contains an

exception for orders on SEFs and DCMs by certain commodity trading advisors

("CTAs"), investment advisers, and foreign persons performing a similar role or function.

The Commission believed such a prohibition was necessary to ensure the integrity of

block trade principles and preserve the basis for the anonymity associated with

establishing cap sizes.[372]

While the aggregation prohibition in existing § 43.6(h)(6) is intended to

incentivize trading on SEFs and DCMs, this incentive is nonexistent for swaps that are

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[370] Chatham at 2.
[371] In the Proposal, the Commission proposed a related conforming change in § 43.6(a). Currently, that paragraph cross-references § 43.6(h). The Commission is updating that provision so it cross-references § 43.6(g) to reflect the re-designation.
[372] *See* Block Trade Rule at 32904.

not listed or offered for trading on a SEF or DCM.[373] The Commission is therefore

amending the aggregation prohibition to provide for swaps not listed or offered for

trading on a SEF or DCM.

Existing § 43.6(h)(6)(ii) conditions the exception from the aggregation prohibition

on a CTA, investment adviser, or foreign person having more than $25 million in assets

under management. In adopting this condition, the Commission explained that the $25

million threshold would help ensure that persons allowed to aggregate orders were

appropriately sophisticated, while at the same time not excluding an unreasonable

number of CTAs, investment advisers, and similar foreign persons.[374]

However, the Commission has come to believe the $25 million threshold may be

excluding more participants from taking advantage of the exception than initially

expected.[375] Therefore, the Commission is removing the $25 million threshold in

existing § 43.6(h)(6)(ii), even though the threshold was a condition of DMO relief in

NAL No. 13-48.

Finally, the Commission is making several non-substantive changes throughout §

43.6(i)(5) for clarity, updating cross-references, and specifying the aggregated transaction

is reported as a block trade or LNOFS, as applicable, and the aggregated orders are

executed as one swap transaction.

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[373] In 2013, DMO granted indefinite no-action relief extending the exception to swaps that are not listed or offered for trading on a SEF or a DCM. *See* No-Action Relief For Certain Commodity Trading Advisors and Investment Advisors From the Prohibition of Aggregation Under Regulation 43.6(h)(6) for Large Notional Off-Facility Swaps, Commission Staff Letter No. 13-48 (Amended), (Aug. 6, 2013), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/13-48.pdf* ("NAL No. 13-48"). The Commission is incorporating this no-action relief, along with its related conditions (with one exception discussed below), into § 43.6(g)(5).

[374] Block Trade Rule at 32905.

[375] Proposal at 21540.

The Commission received one comment on the proposed amendments to §

43.6(h). ICI agrees with the Commission's policy goal behind removing the aggregation

prohibition in § 43.6(h)(6), because the exception to the prohibition does not exist for

swaps that are not listed or offered for trading on a SEF or DCM.[376] In addition, ICI

strongly supports removing the $25 million aggregation threshold as advisers with less

than $25 million in assets under management have a valid need to engage in block trades

on behalf of the funds they manage.[377]

The Commission has determined removing the $25 million aggregation threshold

is appropriate because the existing rule excludes appropriately sophisticated CTAs,

investment advisers, or foreign persons from aggregating trades and is adopting § 43.6(h)

as proposed. As noted above, the Commission intended to change existing § 43.6(h) to

permit aggregation for swaps not listed on a SEF or DCM, but continue to require

aggregation on a SEF or DCM if the swap is listed on a SEF or DCM. The Proposal

inadvertently eliminated the existing requirement aggregation occur on a SEF or DCM if

the swap is listed on a SEF or DCM. Accordingly, the Commission is adding a condition

to final § 43.6(i)(5) to clarify aggregation must occur on a SEF or DCM if the swap is

listed on a SEF or DCM.

7. § 43.6(i) – Eligible Block Trade Parties

The Commission is re-designating § 43.6(i) as § 43.6(j) in response to the changes

above. In addition, to conform to the proposed revisions to § 43.6(i)—specifically the

removal of the $25 million threshold in existing § 43.6(i)(6)(ii)—the Commission is

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[376] ICI at 9.
[377] *Id.*

removing the $25 million threshold in existing § 43.6(i)(1)(iii) (i.e., § 43.6(j)(1)(iii), as

re-designated). The Commission is also making several non-substantive ministerial

changes, such as correcting cross-references and capitalization.

As discussed above, ICI supports removing the $25 million threshold requirement

to engage in block trades and removing the condition requiring that orders be on SEFs

and DCMs.[378] The Commission agrees with ICI and for above-described reasons

discussed in the Proposal, the Commission is adopting § 43.6(j) as proposed.

G.   § 43.7 – Delegation of Authority

The Commission is adopting several changes to § 43.7, which governs

Commission delegation of certain authority to the DMO Director or such other employee

or employees as the DMO Director may designate from time to time ("DMO staff"). The

Commission is adding new (a)(1) to delegate the authority to publish the technical

specification providing the form and manner for reporting and publicly disseminating the

swap transaction and pricing data elements in appendix A as described in §§ 43.3(d)(1)

and 43.4(a). If it chooses to, the Commission may, pursuant to § 43.7(c), which the

Commission did not propose to amend, exercise any authority delegated pursuant to

proposed § 43.7(a)(1) (or any other authority delegated pursuant to § 43.7(a)) rather than

permit the DMO Director or DMO staff to exercise such authority.

Because there currently is a § 43.7(a)(1), the Commission is renumbering existing

§ 43.7(a)(1) as § 43.7(a)(3). The Commission is further renumbering existing §

43.7(a)(2) as § 43.7(a)(4) and replacing the reference to § 43.6(f) with a reference to §

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[378] *See id.*

43.6(e).[379] However, the Commission is retaining the references to the initial and post-

initial periods, to avoid removing regulations in effect during the compliance period.

Additionally, the Commission is renumbering existing § 43.7(a)(3) as § 43.7(a)(2).[380]

The Commission did not receive any comments on the changes to § 43.7. For

reasons discussed above, the Commission is adopting the changes as proposed.

III.   Swap Transaction and Pricing Data Reported to and Publicly Disseminated by Swap Data Repositories

The Commission is revising the list of swap transaction and pricing data elements

in appendix A to part 43 to update it[381] to further standardize the swap transaction and

pricing data being reported to, and publicly disseminated by, SDRs. The swap

transaction and pricing data elements are currently found in appendix A, which states

that, among other things, SDRs must publicly disseminate the information in appendix A

in a "consistent form and manner" for swaps within the same asset class.

Existing appendix A includes a description of each field, in most cases phrased in

terms of "an indication" of the data that must be reported and disseminated and an

example illustrating how the field could be populated. For example, the description of

the "Asset class" field in table A1 of appendix A calls for an indication of one of the

broad categories as described in § 43.2(e), and the example provided states IR (e.g., IRS

asset class).

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[379] The Commission discusses the changes to post-initial AMBSs above in section II.F.3.

[380] The Commission discusses the changes to post-initial cap sizes above in section II.D.4.

[381] The Commission proposed deleting appendix C and updating the list of swap transaction and pricing data elements in existing appendix A and moving them to appendix C. The Commission is not adopting that proposal. Instead, the Commission is revising the list of swap transaction and pricing data elements in appendix A, and leaving appendix C as it is.

In adopting appendix A to part 43, the Commission believed consistency could be achieved in the data, but intentionally avoided prescriptive requirements in favor of flexibility in reporting the various types of swaps.[382] The Commission recognizes that over the years each SDR has increasingly standardized the swap transaction and pricing data reported and disseminated. However, SDRs have implemented the field list in appendix A in different ways, causing publicly disseminated messages to appear differently depending on the SDR. As such, the Commission believes a significant effort must be made to standardize swap transaction and pricing data across SDRs.

The Commission has reviewed the data fields in appendix A to update the existing list and provide further specifications on reporting and public dissemination. This assessment was part of a larger review of the parts 43 and 45 data the Commission requires to be reported to, and publicly disseminated by, SDRs. The Commission reviewed the swap transaction and pricing data data fields in appendix A and the swap data elements in appendix 1 to part 45 to determine if any currently required data elements should be eliminated and if any data elements should be added. As part of this process, the Commission also reviewed the part 45 swap data elements to determine whether any differences could be reconciled across parts 45 and 43.[383] The Commission proposed the swap transaction and pricing data elements to be publicly disseminated

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[382] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1224.

[383] The Commission had intended that the data elements in appendix A to part 43 would be harmonized with the data elements required to be reported to an SDR for regulatory purposes pursuant to part 45. *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1226 (noting that it is important that the data fields for both the real-time and regulatory reporting requirements work together). However, the Commission did not require linking the two sets of data elements.

would be a subset of the part 45 swap data elements required to be reported in appendix 1

to part 45.

After determining the set of swap data and swap transaction and pricing data

elements, the Commission reviewed the CDE Technical Guidance to determine which

data elements the Commission could adopt according to the CDE Technical Guidance.[384]

From there, the Commission set out to establish definitions, formats, standards, allowable

values, and conditions. After completing this assessment, the Commission proposed to

list the swap transaction and pricing data elements required to be publicly disseminated

by SDRs pursuant to part 43 in appendix C. In a separate proposal for part 45, the

Commission proposed to list the swap data elements required to be reported to SDRs

pursuant to part 45 in appendix 1 to part 45.

DMO also published a draft technical specification, along with validation

conditions, on the Commission's website at www.cftc.gov contemporaneously with the

publication of the Proposal so market participants could comment on the Proposal and

technical specification at the same time.

The Commission proposed appendix C would contain the list of swap transaction

and pricing data elements required to be publicly disseminated by SDRs, but the

Commission recognized that SDRs would need additional part 45 swap data elements

reported along with these swap transaction and pricing data elements. These swap data

elements include identifying information like the identity of the reporting counterparty,

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[384] *See* Committee on Payments and Market Infrastructures ("CPMI") and the International Organization of Securities Commissions ("IOSCO"), Technical Guidance, Harmonization of Critical OTC Derivatives Data Elements (other than UTI and UPI) (Apr. 2018) ("CDE Technical Guidance"). The Commission discusses the CDE Technical Guidance, and the Commission's role in its development, in the 2020 Part 45 NPRM.

the unique swap identifier ("USI") or unique transaction identifier ("UTI"), and the

submitter. However, DMO noted these swap data elements separately in the technical

specification published on *www.cftc.gov* to simplify the list of publicly disseminated

swap transaction and pricing data elements in appendix A.

The Commission discusses comments received on the swap transaction and

pricing data elements in appendix A[385] to part 43 required to be publicly disseminated by

SDRs below. As the part 43 swap transaction and pricing data elements will be a subset

of the part 45 swap data elements, most of these data elements are discussed in more

depth in the related part 45 adopting release.

A.   *Swap Transaction and Pricing Data Elements*

As a preliminary matter, the swap transaction and pricing data elements in

appendix A do not include swap transaction and pricing data elements specific to swap

product terms. The Commission is heavily involved in separate international efforts to

introduce UPIs.[386] The Commission expects UPIs will be available within the next two

years.[387] Until the Commission designates a UPI pursuant to § 45.7, the Commission

proposed SDRs continue to accept and disseminate, and reporting counterparties continue

to report, the product-related data elements unique to each SDR. The Commission

believes this temporary solution would have SDRs change their systems only once when

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[385] The Commission is not adopting the proposal to move the part 43 swap transaction and pricing data elements to appendix C. Instead, the Commission is updating the data elements in existing appendix A. The Commission will only reference appendix A in the rest of this discussion.

[386] *See* FSB, Governance arrangements for the UPI: Conclusions, implementation plan and next steps to establish the International Governance Body (Oct. 9, 2019), *available at https://www.fsb.org/2019/10/governance-arrangements-for-the-upi/.*

[387] *See id.* The FSB recommends that jurisdictions undertake necessary actions to implement the UPI Technical Guidance and that these take effect no later than the third quarter of 2022.

UPI becomes available, instead of twice if the Commission adopted standardized product data elements before UPIs are available.

In addition, the Commission notes that it has adopted the CDE Technical Guidance data elements as closely as possible. This means that some terms may be different for certain concepts. For instance, "derivatives clearing organization" is the Commission's term for registered entities that clear swap transactions, but the CDE Technical Guidance uses the term central counterparty.

To help clarify, DMO has placed footnotes in the technical specification to explain these differences in at least four terms as well as provide examples and jurisdiction-specific requirements. However, the Commission is not including these footnotes in appendix A. In addition, the definitions from CDE Technical Guidance data elements included in appendix A sometimes reference allowable values in the CDE Technical Guidance, which may not be included in appendix A but can be found in DMO's technical specification.

Finally, the CDE Technical Guidance did not harmonize many data elements that would be particularly relevant for commodity and equity swap asset classes (e.g., unit of measurement for commodity swaps). CPMI and IOSCO have set out governance arrangements for CDE data elements ("CDE Governance Arrangements").[388] The CDE Governance Arrangements address both implementation and maintenance of CDE, together with their oversight. One area of the CDE Governance Arrangements includes updating the CDE Technical Guidance, including the harmonization of certain data

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[388] CPMI and IOSCO, Governance Arrangements for critical OTC derivatives data elements (other than UTI and UPI), (Oct. 2019), *available at*: *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD642.pdf.*

elements and allowable values that were not included in the CDE Technical Guidance

(e.g., data elements related to events, and allowable values for the following data

elements: Price unit of measure and Quantity unit of measure).

The Commission invited comment on all of the swap transaction and pricing data

elements proposed in appendix A. The Commission discusses the swap transaction and

pricing data elements below by category to simplify the organization of comments

received. To the extent any comment involved data elements adopted according to the

CDE Technical Guidance, however, the Commission anticipates raising issues according

to the CDE Governance Arrangements procedures to help ensure that authorities follow

the established processes for doing so. In addition, the Commission anticipates updating

its rules to adopt any new or updated CDE Technical Guidance.

1. Category: Clearing

The Commission proposed requiring SDRs to publicly disseminate one data

element related to clearing: Cleared (1). This data element is currently being publicly

disseminated by SDRs according to the field in existing appendix A "Cleared or

uncleared."

The Commission received four comments on clearing data elements. Clarus and

Citadel believe the name of the DCO (or exempt DCO) where the transaction is cleared

should be publicly disclosed given that this is a key data element that affects transaction

pricing.[389] CME is unaware of any challenges market participants would face in

reporting additional clearing data elements like the identity of the DCO but believes it is

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[389] Citadel at 10; Clarus at 10.

unclear how any additional clearing data elements would enhance transparency and price discovery.[390] ISDA-SIFMA commented that reporting terminated alpha swaps on the public tape would create a certain level of "noise" on the public tape with little incremental value.[391]

The Commission is adopting the clearing data element in appendix A as proposed. The Commission is not adopting an additional data element identifying the DCO at which the swap would be cleared. Most publicly reportable swap transactions are original swaps, which means they are swaps that the counterparties or exchange will submit for clearing. In many instances, the counterparties may not yet know the DCO to which they will submit the original swap for clearing. As a result, the Commission is concerned this ambiguity could either encourage counterparties to report unreliable data or generally inconsistent reporting.

2. Category: Custom Baskets

The Commission proposed requiring SDRs to publicly disseminate a custom basket indicator.[392] The Commission believes this data element would help market participants identify that a disseminated price is associated with a custom basket. The Commission clarified that this data element is not a field to indicate an otherwise exotic swap.

The Commission did not receive any comments on the custom basket indicator data element in appendix A and for reasons articulated in the Proposal and reiterated above, is adopting the data element as proposed.

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[390] CME at 11.
[391] ISDA-SIFMA at 54.
[392] This data element is Custom basket indicator (25) in appendix A.

3. Category: Events

The Commission proposed requiring SDRs to publicly disseminate four data elements related to events.[393] Reporting counterparties currently report this information to SDRs, but the Commission proposed further standardizing how this information is reported across SDRs. The existing event fields in appendix A include cancellation and correction. The Commission believes more specific event information would help market participants understand why certain swap changes to publicly reportable swap transactions are being publicly disseminated.

The Commission received two comments on the events data elements. Citadel supports the Commission adding a flag to identify swaps that result from risk reduction services, given that these may be publicly reported with off-market prices.[394] Clarus believes providers of any compression-type activity should report trade level details to SDRs and mark them on the public tape as compressions or risk-reduction exercises.[395] As explained in section II.B.2, the Commission is clarifying swaps resulting from post-trade, risk reduction exercises performed by automated systems that are market risk neutral are not publicly reportable swap transactions. As these swaps will no longer appear on the public tape, a flag to identify such swaps is not necessary.

The Commission is adopting the events data elements in appendix A as proposed, with a modification. The Commission is adding an amendment indicator data element to flag changes to a previously submitted transaction.

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[393] In appendix A, these data elements are: Action type (26); Event type (27); Event identifier (29); and Event timestamp (30).
[394] *Id.*
[395] Clarus at 2.

4. Category: Notional Amounts and Quantities

The Commission proposed requiring SDRs publicly disseminate eleven data elements related to notional amounts and quantities.[396] SDRs are currently publicly disseminating information related to notional amounts, but the Commission proposed standardizing how this information is reported across SDRs. The notional data elements in existing appendix A include notional currency and rounded notional. SDRs would continue to cap and round the notional amounts as required by § 43.4.

The Commission did not receive any comments on adding or removing notional amounts and quantities data elements in appendix A and for reasons articulated in the Proposal and reiterated above, is adopting the notional amounts and quantities data elements in appendix A as proposed, with the addition of three notional amount schedule data elements to appendix A.[397]

5. Category: Packages

The Commission proposed requiring SDRs to publicly disseminate four data elements related to package transactions.[398] The Commission received four comments related to package transactions. Citadel supports the "package identifier" data element, but recommends the Commission clarify that the definition of a package includes

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[396] In appendix A, these data elements are: Notional amount (31); Notional currency (32); Call amount (36); Call currency (37); Put amount (38); Put currency (39); Notional quantity (40); Quantity frequency (41); Quantity frequency multiplier (42); Quantity unit of measure (43); and Total notional quantity (44).
[397] Notional amount schedule is three data elements in the CDE Technical Guidance.
[398] In appendix A, these data elements are: Package identifier (46); Package transaction price (47); Package transaction price currency (48); and Package transaction price notation (49).

transactions that are executed using "list" functionality offered by a SEF, where several

transactions are grouped together for pricing and execution purposes.[399]

ISDA-SIFMA do not support additional package related data elements being

disseminated on the public tape because they are exceptionally complex.[400] Further,

ISDA-SIFMA believe reporting package transactions to the tape can result in

fingerprinting since definitions of "package" vary across firms and there is no consistent

approach for industry participants.[401] CME also does not support additional package

related data elements because although they would not create implementation challenges

for SDRs, it is unclear how doing so would enhance transparency and price discovery.[402]

FXPA encourages the Commission to provide examples with respect to package data

elements to facilitate compliance, including a particular example for reporting data

element Package transaction price notation.[403]

The Commission is adopting the package data elements in appendix A as

proposed, but is declining to require the package identifier for part 43 reporting. Further,

the Commission is adding three package transaction swap data elements to appendix A

from the CDE Technical Guidance: Package transaction spread; Package transaction

spread currency; and Package transaction spread notation. The Commission will also add

a package indicator data element to appendix A.

The Commission believes Citadel's recommendation should be addressed through

the CDE governance process to ensure jurisdictions adopt the data element consistently.

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[399] Citadel at 10.
[400] ISDA-SIFMA at 55.
[401] *Id.*
[402] CME at 11.
[403] FXPA at 3.

Finally, the Commission does not believe the package data elements require examples, but DMO will monitor their implementation and add examples to the technical specification if they would be beneficial in the future.

6. Category: Payments

The Commission proposed requiring SDRs to publicly disseminate eight data elements related to payments.[404] SDRs are currently publicly disseminating information related to payments, but the Commission proposed further standardizing how this information is reported across SDRs. The payment fields in existing appendix A include payment frequency and reset frequency, and day count convention.

The Commission did not receive any comments on the payments data elements in appendix A and for reasons articulated in the Proposal and reiterated above, is adopting the data elements as proposed.

7. Category: Prices

The Commission proposed requiring reporting counterparties to report seventeen data elements related to swap prices for SDRs to publicly disseminate.[405] SDRs are currently publicly disseminating information related to prices, but the Commission proposed further standardizing how this information is reported across SDRs. The

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[404] In appendix A, these data elements are: Day count convention (53); Floating rate reset frequency period (55); Floating rate reset frequency period multiplier (56); Other payment type (57); Other payment amount (58); Other payment currency (59); Payment frequency period (63); and Payment frequency period multiplier (64).

[405] In appendix A, these data elements are: Exchange rate (65); Exchange rate basis (66); Fixed rate (67); Post-priced swap indicator (68); Price (69); Price currency (70); Price notation (71); Price unit of measure (72); Spread (73); Spread currency (74); Spread notation (75); Strike price (76); Strike price currency/currency pair (77); Strike price notation (78); Option premium amount (79); Option premium currency (80); and First exercise date (82).

payment fields in existing appendix A include payment price, price notation, and

additional price notation.

In the price category, the Commission proposed a Post-priced swap indicator (68),

in connection with the proposed rules permitting a delay for reporting PPS.[406]

The Commission did not receive any comments on the price data elements in

appendix A and for reasons articulated in the Proposal and reiterated above, is adopting

the data elements as proposed.

8. Category: Product

The Commission proposed requiring SDRs publicly disseminate two data

elements relating to products, and has included a placeholder data element for the UPI.[407]

As discussed above, the Commission believed that SDRs should continue publicly

disseminating any product fields they are currently publicly disseminating until the

Commission designates a UPI according to § 45.7. Existing appendix A includes a

similar placeholder field for UPI.

The Commission received one comment on the UPI. FXPA believes the

Commission should carefully review, or consider guidance with respect to, the unique

product identifier data element (87) as there are several related product taxonomies in use

today.[408]

The Commission is adopting the products data elements in appendix A as

proposed. As explained above, the placeholder reflects the Commission's decision for

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[406] The Commission discusses PPS, including the indicator, in section II.C.2 above.
[407] In appendix A, these data elements are: Index factor (85); Embedded option type (86); and Unique product identifier (87).
[408] FXPA at 3.

reporting counterparties to continue to report product-related data elements as they currently do until the Commission designates a UPI in the next two years.

9. Category: Settlement

The Commission proposed requiring SDRs to publicly disseminate one data element related to settlement: Settlement currency (89). Existing appendix A contains a field for settlement currency.

The Commission did not receive any comments on the settlement data element in appendix A and for reasons articulated in the Proposal and reiterated above, is adopting the data element as proposed, with the addition of the CDE Technical Guidance data element for Settlement location to appendix A. This would help the Commission collect information on trades involving offshore currencies.

10. Category: Transaction-Related

The Commission proposed requiring SDRs to publicly disseminate seven transaction-related data elements.[409] The transaction-related fields in existing appendix A include execution timestamp, indication of other price affecting term, block trade indicator, execution venue, and start and end date. The Commission proposed one new indicator, Prime brokerage transaction indicator, in connection with the proposed rules for reporting mirror swaps.[410]

The Commission received one comment on the Prime broker transaction indicator data element. ISDA-SIFMA believe the prime broker transaction indicator should not be

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[409] In appendix A, these data elements are: Non-standardized term indicator (92); Block trade election indicator (93); Effective date (94); Expiration date (95); Execution timestamp (96); Platform identifier (98); and Prime brokerage transaction indicator (99).

[410] The Commission discusses mirror swaps in section II.C.4 above.

subject to public dissemination if a trigger swap is reported upon the occurrence of the pricing event because the public receives the pricing data in real time like for any other part 43 reportable trade.[411]

The Commission received one comment related to Platform identifier. Citadel believes the MIC code of the venue should be publicly disclosed to assist market participants in understanding current market dynamics and locating active liquidity pools.[412] Further, Citadel believes transactions on EU MTFs and OTFs that the Commission has deemed equivalent should not be considered "off-facility transactions" since it would allow CFTC and market participants to assess the impact of equivalence assessments.[413]

The Commission is adopting the transaction-related date elements in appendix A as proposed. With respect to ISDA-SIFMA's comment on Prime brokerage indicator, the Commission believes that the data element provides appropriate notice to the public about transactions that may not be reported because they are part of a prime brokerage arrangement. With respect to Citadel's comment, the Commission notes that it adopting Platform identifier according to the CDE Technical Guidance. Any comments on the data element should be addressed through the CDE governance process.

IV.   Compliance Date

A. General

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[411] ISDA-SIFMA at 54.
[412] Citadel at 11.
[413] *Id.*

In the Proposal, the Commission suggested that the compliance date would be at least one year from the date that the last one of such final Roadmap rulemakings was published in the *Federal Register*.

The Commission received two comments regarding the compliance date. ICE DCOs believes the Commission should adopt a "realistic compliance implementation period that allows for industry-wide coordination and roll-out."[414] GFMA believes twelve months from publication of the Final Rules should be the minimum implementation period and changes to part 43 technical specification should be implemented for some period of time before validations on such fields are implemented.[415]

The Commission also received many comments related to the compliance date in response to the other Roadmap proposals. Those comments are discussed in the *Federal Register* releases for the Roadmap proposals as they were received, but the Commission considered the comments for all three Roadmap proposals together. The Commission discusses the compliance date comments at greater length in the *Federal Register* release for the part 45 rules.

The Commission appreciates the comments received on the compliance date for the Proposal and for all of the Roadmap proposals. Based on the many comments that requested one compliance date for all aspects of the Roadmap proposals and the many comments that requested a compliance date that is more than one year from the date the Roadmap proposals are finalized, the Commission will, except as discussed below,

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[414] ICE DCOs at 1-2.
[415] GFMA at 12.

extend a unified compliance date for this Final Rule that is 18 months from the date of

finalization, which matches the compliance date for all three Roadmap proposals.

B. *Changes to the Appropriate Minimum Block Sizes and Cap Sizes*

The Commission will extend the compliance date for the block thresholds and cap

sizes separate from those of the rest of the part 43 rules for an additional twelve months.

In this instance, the Commission believes market participants should have the chance to

adapt to the changes to part 43, including the new swap categories and capping and

rounding rules, before having to comply with new block and cap sizes.

In addition, the Commission recognizes the changes to its part 43 rules in this

release, along with the changes to the part 45 rules in a separate release, will provide the

Commission with an enhanced, standardized data set that will help the Commission best

calibrate the AMBSs when applying the 67-percent and 75-percent thresholds. Given the

robust improvements to swap data the Commission expects to realize from the part 45

reforms and the intervening period in which market participants will need to update their

systems to comply with aspects such as the new swap categories, the Commission

expects to use the new and improved data to analyze the best way to apply the thresholds

and make any adjustments as appropriate.

Since the Commission has to recalculate the AMBSs and cap sizes no less than

once each calendar year, the additional twelve months will give the Commission the

opportunity to recalculate the AMBSs and cap sizes using the publicly reportable swap

transactions in the new part 45 data to help ensure the levels are appropriately calibrated.

The Commission intends to take action, as necessary, to ensure the AMBSs and cap sizes

are appropriately tailored. Moreover, the additional time avoids creating additional

operational or compliance challenges at the end of the 18-month compliance period when

market participants begin compliance with the updated part 43 rules.

Therefore, while the changes to the rest of part 43 rules will have a compliance

period of 18 months, new §§ 43.4(g) and 43.6 and the new block and cap sizes, calculated

according to the 67-percent and 75-percent notional amount calculations, will have a

compliance date of one year after the 18-month compliance period for the rest of the part

43 rule changes.

V.   Related Matters

A.   *Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA") requires federal agencies, in

promulgating rules, to consider the impact of those rules on small entities.[416] The

Commission has previously established certain definitions of "small entities" to be used

by the Commission in evaluating the impact of its rules on small entities in accordance

with the RFA.[417] The changes to part 43 adopted herein will have had a direct effect on

the operations of DCMs, DCOs, MSPs, PBs,[418] reporting counterparties, SDs, SDRs, and

SEFs. The Commission has previously certified that DCMs,[419] DCOs,[420] MSPs,[421]

SDs,[422] SDRs[423], and SEFs[424] are not small entities for purpose of the RFA.

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[416] *See* 5 U.S.C. 601 et seq.

[417] *See* Policy Statement and Establishment of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) ("1982 RFA Release").

[418] The Commission understands that all PBs currently acting as such in connection with swaps are SDs. Consequently, the RFA analysis applicable to SDs applies equally to PBs.

[419] *See* 1982 RFA Release.

[420] The Commission has previously certified that DCOs are not small entities for purposes of the RFA. *See* DCO General Provisions and Core Principles, 76 FR 69334, 69428 (Nov. 8, 2011).

[421] *See* SD and MSP Recordkeeping, Reporting, and Duties Rules, 77 FR 20128, 20194 (Apr. 3, 2012) (basing determination in part on minimum capital requirements).

[422] *See id.*

Various changes to part 43 would have a direct impact on all reporting

counterparties. These reporting counterparties may include SDs, MSPs, DCOs, and non-

SD/MSP/DCO counterparties. Regarding whether non-SD/MSP/DCO reporting

counterparties are small entities for RFA purposes, the Commission notes that section 2I

of the CEA prohibits a person from entering into a swap unless the person is an eligible

contract participant ("ECP"), except for swaps executed on or pursuant to the rules of a

DCM.[425] The Commission has previously certified that ECPs are not small entities for

purposes of the RFA.[426]

The Commission has analyzed swap data reported to each SDR[427] across all five

asset classes to determine the number and identities of non-SD/MSP/DCOs that are

reporting counterparties to swaps under the Commission's jurisdiction. A recent

Commission staff review of swap data, including swaps executed on or pursuant to the

rules of a DCM, identified nearly 1,600 non-SD/MSP/DCO reporting counterparties.

Based on its review of publicly available data, the Commission believes that the

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[423] *See* Swap Data Repositories, 75 FR 80898, 80926 (Dec. 23, 2010) (basing determination in part on the central role of SDRs in swaps reporting regime, and on the financial resource obligations imposed on SDRs).

[424] *See* Core Principles and Other Requirements for SEFs, 78 FR 33476, 33548 (June 4, 2013).

[425] *See* 7 U.S.C. 2(e).

[426] *See* Opting Out of Segregation, 66 FR 20740, 20743 (Apr. 25, 2001). The Commission also notes that this determination was based on the definition of ECP as provided in the Commodity Futures Modernization Act of 2000. The Dodd-Frank Act amended the definition of ECP by modifying the threshold for individuals to qualify as ECPs, changing an individual who has total assets in an amount in excess of to an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of. Therefore, the threshold for ECP status is currently more restrictive than it was when the Commission certified that ECPs are not small entities for RFA purposes, meaning that there are likely fewer entities that could qualify as ECPs today than could qualify when the Commission first made the determination.

[427] The sample data sets varied across SDRs and asset classes based on relative trade volumes. The sample represents data available to the Commission for swaps executed over a period of one month. These sample data sets captured 2,551,907 FX swaps, 603,864 equity swaps, 357,851 other commodity swaps, 276,052 IRS, and 98,145 CDS.

overwhelming majority of these non-SD/MSP/DCO reporting counterparties are either

ECPs or do not meet the definition of "small entity" established in the RFA.

Accordingly, the Commission does not believe the Final Rule will affect a substantial

number of small entities.

Based on the above analysis, the Commission does not believe that this Final Rule

will have a significant economic impact on a substantial number of small entities.

Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b),

hereby certifies that the Final Rules will not have a significant economic impact on a

substantial number of small entities.

B.   *Paperwork Reduction Act*

The PRA of 1995[428] imposes certain requirements on federal agencies, including

the Commission, in connection with their conducting or sponsoring any collection of

information, as defined by the PRA. The rule amendments adopted herein would result

in the revision of a collection of information for which the Commission has previously

received a control number from the Office of Management and Budget ("OMB"): OMB

Control Number 3038-0070 (relating to real-time swap transaction and pricing data).

The Commission did not receive any comments regarding its PRA burden

analysis in the preamble to the Proposal. The Commission is revising the information

collection to reflect the adoption of amendments to part 43, as discussed below, including

changes to reflect adjustments that were made to the Final Rules in response to comments

on the Proposal (not relating to PRA). In the Proposal, the Commission omitted the

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[428] *See* 44 U.S.C. 3501.

aggregate reporting burden for proposed § 43.3 and § 43.4 in the preamble and instead provided PRA estimates for all of part 43. The Commission is now including PRA estimates for final § 43.3 and § 43.4 below.[429] In addition, the Commission is revising the information collection to include burden estimates for one-time costs that SDRs, SEFs, DCMs, and reporting counterparties could incur to modify their systems to adopt the changes to part 43, as well as burden estimates for these entities to perform any annual maintenance or adjustments to reporting systems related to the changes. The Commission does not believe the rule amendments as adopted impose any other new collections of information that require approval of OMB under the PRA.

Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they collect or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the Federal Register for each proposed collection of information before submitting the collection to OMB for approval. The Commission is publishing a 60-day notice ("60-day Notice") in the Federal Register concurrently with the publication of this Final Rule in order to solicit comment on burden estimates for part 43 that were not included in the Proposal.

1.   Swap Transaction and Pricing Data Reports to SDRs – § 43.3

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[429] PRA estimates for all of part 43 are included in the supporting statement being filed with OMB. The Commission is not including PRA estimates for all of part 43 below as the Final Rule affects PRA estimates for § 43.3 and § 43.4.

Existing § 43.3 requires reporting counterparties, SEFs, and DCMs to send swap reports to SDRs ASATP after execution of a publicly reportable swap transaction. The Commission is adopting changes that would add new § 43.3(a)(4) to give reporting counterparties more time to report PPS to SDRs. Currently, some entities report PPS using a placeholder price, and then send a swap report later amending the price. Those entities would experience a reduction in the number of swap reports they are required to send pursuant to § 43.3 under the Final Rules. The Commission estimates 50 SD/MSP reporting counterparties would reduce the number of PPS reports they report to SDRs by 100 reports per respondent annually or 5,000 reports in the aggregate.

The Commission is also amending § 43.3 to establish new requirements for reporting prime brokerage swaps in § 43.3(a)(6). New § 43.3(a)(6) will not require SDRs to publicly disseminate "mirror swaps." Reporting counterparties will continue to report mirror swaps to SDRs pursuant to part 45, but the amendment to § 43.3 will reduce the number of reports SDRs are required to publicly disseminate pursuant to § 43.4. The amendment to the requirement for SDRs in § 43.4 is discussed in the next section below.

The Commission is also adding a new requirement in new § 43.3(a)(5) for DCOs to report swap transaction and pricing data for clearing swaps that are publicly reportable swap transactions. Currently, § 43.3 does not account for DCOs in the hierarchy of entities required to report to SDRs. This would be a new requirement for DCOs to send swap transaction and pricing data reports to SDRs, to the extent they are not currently required to do so. DCOs would only be required to do so when reporting swaps associated with clearing member defaults. However, the Commission, recognizing the importance of the DCO clearing member default process, decided to exempt these swaps

from the definition of "publicly reportable swap transaction," with the result being there

will be no reporting requirement for DCOs. As such, there is now no PRA burden.

Existing § 43.3(h) requires timestamping by multiple entities.[430] The

Commission is removing § 43.3(h). Removing § 43.3(h)(1) would reduce the amount of

time SDs, MSPs, and registered entities spend reporting swap reports to SDRs, but would

not amend the number of reports they send. Removing § 43.3(h)(2) would reduce the

amount of time SDRs spend publicly disseminating swap reports, but would not amend

the number of reports they send. Removing § 43.3(h)(3) would reduce the amount of

time SDs and MSPs spend reporting off-facility swaps to SDRs, but would not reduce the

amount of reports they send. Finally, removing § 43.3(h)(4) would remove the

recordkeeping burden for these entities.

As a result of the removal of § 43.3(h), the Commission is removing the current

recordkeeping burden of 5,854 hours from the collection. The estimated aggregate

reporting burden for § 43.3 is as follows:

Estimated number of respondents: 1,729 SEFs, DCMs, and reporting

counterparties.

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[430] Existing § 43.4(h)(1) requires registered entities, SDs, and MSPs to timestamp real-time swap reports
with the time they receive the data from counterparties, as applicable, and the time at which they transmit
the report to an SDR. Registered entities, SDs, and MSPs then send these timestamps to the SDR. Existing
§ 43.3(h)(2) requires SDRs to timestamp the swap reports they receive from SEFs, DCMs, and reporting
parties, and then timestamp the report with the time they publicly disseminate it. SDRs then place these
timestamps on the reports they publicly disseminate. Existing § 43.3(h)(3) requires SDs and MSPs to
timestamp all off-facility swaps they report to SDRs. SDs and MSPs then report these timestamps to
SDRs. Existing § 43.3(h)(4) requires that records of all timestamps required by § 43.3(h) be maintained for
a period of at least five years from the execution of the publicly reportable swap transaction. The
Commission is adopting changes to eliminate the recordkeeping requirements in § 43.3(h)(4). This would
result in the removal of the recordkeeping burden from collection 3038-0070, which is currently 5,854
hours in the aggregate.

Estimated number of reports per respondent: 2,998

Average number of hours per report: .067

Estimated gross annual reporting burden: 725,696

The Commission did not include any burden estimates in the 2020 Part 43 NPRM related to the modification or maintenance of systems in order to be in compliance with the proposed amendments to § 43.3. The Commission estimates that 1,729 SEFs, DCMs, and reporting counterparties will incur a one-time initial burden of 10 hours per entity to modify their systems to adopt the changes being adopted in § 43.3 of the Final Rule, for a total estimated hours burden of 17,290 hours. The Commission estimates the cost of these updates will be $722 per entity, or $1,248,338 in the aggregate. The Commission additionally estimates 5 hours per entity annually to perform any needed maintenance or adjustments to reporting systems, at a cost of $361 per entity, or $624,169 in the aggregate. As noted above, the Commission is soliciting comments on the revised burden estimates for part 43, including the estimated costs related to the modification or maintenance of systems in order to be in compliance with the amendments to § 43.3 that are being adopted in the Final Rule.

2.   Swap Transaction and Pricing Data Reports Disseminated to the Public by SDRs

As discussed above, existing § 43.3 requires reporting counterparties to send swap reports to SDRs ASATP after execution. The Commission is adopting changes to § 43.3 to establish new requirements for reporting prime brokerage swaps in § 43.3(a)(6). The amended rules would establish that "mirror swaps" would not need to be publicly disseminated by SDRs. Reporting counterparties would continue to report mirror swaps

to SDRs pursuant to part 45, but the amendment to § 43.3 would reduce the number of

reports SDRs would be required to publicly disseminate according to § 43.4.

The Commission estimates that the amendments would reduce the number of

mirror swaps SDRs would need to publicly disseminate by 100 reports per each SDR, for

an aggregate burden hour reduction of 20.10 hours.

The estimated aggregate reporting burden total for § 43.4, as adjusted for the

reduction in reporting by SDRs of mirror swaps, is as follows:

Estimated number of respondents: 3

Estimated number of reports per respondent: 1,499,900

Average number of hours per report: .009

Estimated gross annual reporting burden: 40,497

The Commission did not include any burden estimates in the 2020 Part 43 NPRM

related to the modification or maintenance of systems in order to be in compliance with

the proposed amendments to § 43.4. These modifications could include any updates to

the data elements disseminated by SDRs, to the extent the updated data elements in

appendix A require changes by the SDRs. The Commission expects the SDRs are

already publicly disseminating most of this information currently. Nonetheless, the

Commission estimates that SDRs will incur a one-time initial burden of 100 hours per

entity to modify their systems to adopt the changes described for § 43.4, for a total

estimated hours burden of 300 hours. The Commission estimates the cost of these

updates will be $21,669 per SDR, or $65,007 in the aggregate. The Commission

additionally estimates 50 hours per entity annually to perform any needed maintenance or

adjustments to reporting systems. The Commission estimates this will result in a cost of

$3,611 per entity, or $10,833 in the aggregate. As noted above, the Commission is soliciting comments on the revised burden estimates for part 43, including the estimated costs related to the modification or maintenance of systems in order to be in compliance with the amendments to § 43.4 that are being adopted in the Final Rule.

C.   Cost-Benefit Considerations

1. Statutory and Regulatory Background

Section 15(a)[431] of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of 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) factors.

Generally, the Commission expects that, taken together, the revisions and additions to part 43 will improve the real-time public reporting regime for reporting counterparties, SEFs, DCMs, SDRs, and market participants that use real-time public data, with some attendant costs. The discussion below considers the costs and benefits the Commission—informed by commenters—foresees resulting from the particular substantive amendments it is adopting.[432] Specifically, these are the amendments to: §

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[431] 7 U.S.C. 19(a).
[432] Because the Commission does not foresee material cost-benefit impact resulting from the non-substantive amendments it is also adopting, these amendments are not discussed. Also, the proposed, but

43.3(a)(4) (post-priced swaps); § 43.3(a)(5) (clearing swaps); § 43.3(a)(6) (prime broker

swaps); § 43.3(c) (availability of swap transaction and pricing data to the public); §

43.3(a)(4); § 43.3(f) (data validation acceptance message); § 43.4(f) (process to

determine appropriate rounded notional or principal amounts); and §§ 43.4(h) and 43.6

(cap sizes and block trades). The Commission considers these costs and benefits relative

to the baseline established by the requirements of its existing regulations, or, where there

are none, relative to the baseline of current industry practice.

The Commission lacks precise cost data to quantify the costs and benefits

considered below.[433] The Commission provides a range estimate where feasible,

including programming costs associated with the rule changes, for instance. The

Commission requested comments to help refine its estimates for quantifiable costs and

benefits, but received no comments providing specific data or information regarding how

to quantify costs. Regarding changes requiring technical updates to reporting systems,

where significant, Commission staff estimated the hourly wages market participants will

likely pay software developers to implement each change to be between $48 and $101 per

hour.[434] Relevant amendments below will list a low-to-high range of potential costs as

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not adopted, changes to the block delays provided in § 43.5 are not discussed, since there is no resultant change relative to the status quo baseline.

[433] As explained in the Proposal, many of the rule changes will likely affect a wide variety of proprietary reporting systems developed by SDRs and reporting entities, putting SDRs and industry participants in the best position to estimate computer programming costs of changing the reporting requirements.

[434] The Commission estimated hourly wage rates from the Software Developers and Programmers category of the May 2019 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, *available at https://www.bls.gov/oes/current/oes_nat.htm*. The 25th percentile was used for the low range and the 90th percentile was used for the upper range ($36.89 and $78.06, respectively). Each number was multiplied by an adjustment factor of 1.3 for overhead and benefits (rounded to the nearest whole dollar) which is in line with adjustment factors the Commission has used for similar purposes in other final rules. *See, e.g.*, 77 FR at 2173 (using an adjustment factor of 1.3 for overhead and other benefits). These estimates are intended to reflect U.S. developer hourly rates market

determined by the number of developer hours estimated by technical subject matter experts ("SMEs") in the Commission's Office of Data and Technology ("ODT"). Quantifying other costs and benefits, such as liquidity impacts and price spread variances resulting from changes in price transparency from a rule change, are inherently harder to measure, rendering quantification infeasible in many cases. In addition, quantification of effects relative to current market practice may not fully represent future activity if participants change their trading behavior in response to rule changes. Again, while the Commission requested comments to help it quantify these impacts, it did not receive any responsive comments. Accordingly, the Commission discusses costs and benefits qualitatively when quantification remains infeasible, after taking into account relevant input of commenters, or the lack thereof.

The discussion in this section is based on the understanding that swap markets often extend across geographical regions. Many swap transactions involving U.S. firms occur across international borders. Some Commission registrants are headquartered outside of the U.S., with the most active participants often conducting operations both within and outside the U.S. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits refers to the rules' effects on all swaps activity, whether by virtue of the activity's physical location in the U.S. or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).[435]

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participants are likely to pay when complying with the adopted changes. Individual entities may, based on their circumstances, incur costs substantially greater or less than the estimated averages.

[435] *See* 7 U.S.C. 2(i). CEA section 2(i) limits the applicability of the CEA provisions enacted by the Dodd-Frank Act, and Commission regulations promulgated under those provisions, to activities within the U.S., unless the activities have a direct and significant connection with activities in, or effect on, commerce of the U.S.; or contravene such rules or regulations as the Commission may prescribe or promulgate as are

2. Costs and Benefits

a. § 43.3 – Method and Timing for Real-Time Public Reporting

i. § 43.3(a)(4) – Post-Priced Swaps

New § 43.3(a)(4) establishes requirements for reporting PPSs, which the

Commission defines as off-facility swaps for which the price has not been determined at

the time of execution. [436] New § 43.3(a)(4)(i) permits reporting counterparties to delay

reporting trades identified as PPSs to SDRs until the earlier of: (i) the price being

determined; and (ii) 11:59:59 PM eastern time on the execution date.[437] For swaps for

which the price is known at execution but some other term is left for future determination

(e.g., quantity), reporting parties remain obligated to report the swap ASATP after

execution, even absent the as-yet undetermined terms.

The new requirements help address a challenge reporting counterparties face, and,

in doing so, remedy an impediment to the quality of the real-time tape. Under existing

regulations, reporting parties must report all trades ASATP after execution. Existing

rules do not address how reporting parties represent unknown trade terms in swap reports

to SDRs or whether SDRs must accept trade reports missing values or with zero values in

fields. SDRs often reject these trades, which means reporting counterparties cannot

necessary or appropriate to prevent the evasion of any provision of the CEA enacted by the Dodd-Frank
Act. Application of section 2(i)(1) to the existing part 43 regulations with respect to SDs/MSPs and non-
SD/MSP counterparties is discussed in the Commission's Interpretive Guidance and Policy Statement
Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (July 26, 2013).
[436] The Commission discusses PPSs further in section II.C.2 above.
[437] The Commission understands that PPSs can arise in a variety of settings. One such setting is where the
price of the swap is tied to a reference price that is not yet determined at the time of the trade. Examples of
this could include the daily settlement price of a stock index or crude oil futures or a benchmark such as the
Argus WTI Midland price.

accurately report PPSs in real time. The current lack of specific requirements creates

inconsistencies in how and when reporting counterparties report PPSs.

As expressed in the Proposal—and undisputed by commenters—the Commission

believes that while some variable term swaps, including PPS, are reported shortly after

execution, these swaps also account for a significant but unknown percentage of swaps

not reported to SDRs in a timely manner.[438] While the Commission understands

anecdotally that untimely PPS reporting is occurring, it cannot clearly identify which

swaps reported to date would be classified as PPSs under the current regulations.[439]

Consequently, the Commission cannot reliably estimate the magnitude of the new

requirements' impact with a reasonable degree of certainty. However, under the updated

list of data elements in appendix A, reporting parties will have to indicate that a swap is a

PPS, which will give the Commission and the public a clearer view of PPS activity.[440]

As discussed in section II.D.2, above, and incorporated by reference for purposes

of the Commission's consideration of costs and benefits here, the Commission received a

number of comments concerning new § 43.3(a)(4). Some commenters oppose delaying

PPS reporting. For example, Citadel suggests the Commission instead require real-time

reporting and dissemination of PPSs with an identifier for PPSs on the public tape.[441]

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[438] 85 FR at 21522.

[439] It may be possible to identify PPSs by searching part 43 data to determine how many swaps are reported with a missing price with a reporting time close to execution time. However, the Commission understands not all reporting counterparties report PPSs close to execution and instead wait until determining a price. It may also be possible to assume swaps with a price but a large difference between reporting time and execution time are PPSs, but this may include swaps with other non-price varying terms, such as quantity. Finally, it may be possible to check parts 43 and 45 data for differences in the reported price. Since all of these options are potentially over- or under-inclusive, the Commission is currently unable to reliably identify PPSs.

[440] The Commission discusses the data element for "post-priced swap indicator" in section III.

[441] Citadel at 10.

Citadel believes an identifier would address the concern that the real-time publication of PPSs confuses market participants.[442]

Other commenters believe the Commission should delay PPS reporting by a day or more. For example, ISDA-SIFMA suggest delaying PPS reporting until the earlier of (a) the price being determined, or (b) 11:59:59 p.m. eastern time on the next business day following the execution date.[443] ISDA-SIFMA believe reporting PPSs earlier may increase the costs of hedging by signaling to other participants that a SD will be hedging a particular large notional trade the following day.[444] ISDA-SIFMA believe a T+1 cutoff will significantly reduce potential unnecessary hedging costs by reducing the number of PPSs reported without a price.[445]

The Commission considered the costs and benefits of delaying PPS reporting. The Commission agrees that dissemination of swap transaction and pricing data immediately after execution increases price transparency. But this benefit is limited where the price of a swap is not known.

The Commission also believes that, because the PPS price is determined after execution, SDs face unique risks hedging a PPS. For example, the price of some PPSs is tied to a reference price that is not determined until the end of the trading day. Publishing swap transaction data before the price is determined presents unique and heightened risks of front running, as market participants will be able to transact in swaps ahead of the event on which the price is contingent. This could increase hedging costs,

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[442] Id.
[443] ISDA-SIFMA at 50.
[444] *Id.*
[445] *Id.*

disadvantaging the SD and the counterparty to the PPS, and potentially cause market

participants to forego the use of such swaps, thereby materially reducing swap market

liquidity. Thus, there is significant benefit delaying reporting until after price has been

determined.

The Commission has determined that the final rules provide an appropriate

balance. Citadel's faster reporting could have a significant impact on the ability of SDs

to hedge their position, while ISDA-SIFMA's delayed reporting would have a significant

negative effect on price transparency.

CME and FIA opposed reporting and disseminating PPSs until all terms are

known, not only price.[446] CME believes there is no value in reporting swap transaction

and pricing data prior to all variable terms being determined.[447] While the Commission

recognizes the merit in these alternatives, the Commission is concerned the delays

suggested by CME and FIA would be long enough to impede the Commission's price

transparency goals. As a result, the Commission does not believe that PPS reporting

should be delayed after price is known.

Baseline: The current regulations require reporting parties to report all swaps

ASATP after execution; this baseline does not contain an exception for swaps with terms

that have not been determined at the time of execution, a category of swaps which

includes PPSs. As noted above, this potentially conflicts with SDR standards, which

often mandate values in certain fields, such as fields related to prices. Perhaps reflecting

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[446] CME at 3-4, FIA at 11.
[447] CME at 3-4.

this conflict, it appears many PPSs and other swaps with terms that have not been

determined at the time of execution are not reported until all terms have been determined.

Benefits: This rule will establish a bright-line standard for when PPSs and other

swaps with terms that have not been determined at the time of execution need to be

reported for public dissemination. By explicitly defining obligations for PPSs and other

swaps with terms that have not been determined at the time of execution, the rule creates

consistency in reporting and reduces uncertainty. This would strengthen market

participant's confidence in the real-time public data.

Another benefit to the final regulations it that the final requirements would permit

parties to hedge the positions they acquire in a more cost-effective way. For example, if

a client asks an SD to take the long side of a large swap, the SD may be able to hedge that

position with less price impact if other traders are unaware of the SD's hedging need.

This ability to hedge while mitigating price impact can often translate to better pricing for

the client. Thus, the Commission anticipates final § 43.3(a)(4) would decrease SDs'

hedging costs, especially for large or non-standardized trades, improve customer pricing,

and increase market participants' willingness to take positions.[448]

Costs: Delayed reporting of PPSs may reduce the amount of information available

to market participants and, as a result, frustrate the goal of price transparency. In

particular, other market participants would have a less-precise estimate of intraday

trading volume in real-time, which can introduce information asymmetry. For example, a

SD may be willing to make markets in equity PPSs and non-PPS on a similar underlying

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[448] The Commission estimates for PRA purposes that there would be a moderate decrease in the burden incurred by market participants, as discussed in the PRA section.

equity index. Access to real-time information on activity in both markets would be

equally important and potentially allow for cross-market arbitrage. With the delay in

PPS, the SD could be disadvantaged by a lack of information related to PPS activity.

However, the realities of the market and the reporting of PPSs today reduce the cost

burden linked to the reporting delay.[449] Further, the benefits of reporting swap data

immediately after execution is limited where price is not known.

Another potential cost is that § 43.3(a)(4) might encourage traders to trade more

PPSs and fewer swaps for which the price is known at execution. For example, if

choosing between two swaps with comparable terms except one has a price determined at

the end of the day, if the size is large relative to the rest of the market, the delay could

encourage the counterparties to select the swap with an unknown price. The incentive to

choose PPSs for a delay would reduce transparency with fewer trades reported ASATP

after execution.

The Commission is adopting § 43.3(a)(4) to specify the requirements for reporting

PPSs. Notwithstanding the potential costs identified above, the Commission believes this

change is warranted in light of the anticipated benefits.

ii. § 43.3(a)(5) – Clearing Swaps

Final § 43.3(a)(5) adds DCOs to the reporting counterparty hierarchy for clearing

swaps that are publicly reportable swap transactions. DCOs do not typically report swap

transaction and pricing data under part 43, because cleared swaps have already been

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[449] For example, PPSs are not standardized in how they are reported. If, for example, all PPSs traded at a specified differential from the daily settlement price, this would allow for more useful real-time data. The data limitations ultimately reduce the usefulness of PPS information, thus reducing the cost of delays related to this swap transaction and pricing data.

reported at execution: SEFs, DCMs, and reporting counterparties report the original,

market-facing swap to SDRs for public dissemination while sending the swap to a DCO

for clearing. Final § 43.3(a)(5) covers the limited cases where a DCO executes a publicly

reportable swap transaction that has not already been reported under part 43. However,

the Commission is adopting an alternative to § 43.3(a)(5) raised by commenters that

would lead to maintaining the status quo. ICE DCOs and CME believe the Commission

should also amend the definition of "publicly reportable swap transaction" in § 43.2 to

exclude swaps created through DCO default management processes to avoid allowing

front-running if the processes span multiple days.[450] These commenters believe §

43.3(a)(5) would be impractical as the default management process may be achieved

through the sale at the portfolio (not individual swap) level, which "does not lend itself"

to part 43 reporting.[451] Also, these commenters believe the prices disseminated for

default management swaps would be irrelevant as the prices are affected by the DCO's

priority to take timely action.[452]

While the Commission is adopting final § 43.3(a)(5), the Commission is also

adopting the alternative proposed by ICE DCOs and CME because the Commission

shares these commenters' concerns that the new requirement could impede the efficacy or

ability of DCOs to complete default management exercises.

Baseline: The existing rules do not expressly require DCOs to submit swap

transaction and pricing data to SDRs for public dissemination.

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[450] ICE DCOs at 2; CME at 7-8.
[451] *Id.*
[452] *Id.*

Benefits: Final § 43.3(a)(5) will clarify that, while DCOs have an obligation to report swaps meeting the definition of publicly reportable swap transactions, they are not required to report swaps resulting from default management processes, based on the important role these processes play for DCOs in managing risk.

Costs: New § 43.3(a)(5) would have imposed minor costs for DCOs as the reporting counterparties for publicly reportable swap transactions. However, with the Commission's decision to exempt swaps related to default management processes from public reporting, DCOs and SDRs should incur no additional costs from the new requirements.[453]

iii. § 43.3(a)(6) – Prime Broker Swaps

Final § 43.3(a)(6) establishes rules for publicly reporting PB swaps. [454] The new rule distinguishes between two types of PB swap transactions for the purposes of publicly reportable swap transactions subject to real-time public reporting: mirror swaps, which are not publicly reportable swap transactions, and trigger swaps, which are. Further, the Commission is adding a data element to appendix A to require an indicator flagging a swap as part of a prime brokerage transaction. These changes are explained in more detail in sections II.C.4 and III.A above.

Banks typically offer prime brokerage services to large, sophisticated customers. Customers that avail themselves of this service enter into an agency agreement with their PB by which the PB agrees to serve as the counterparty for at least two off-setting swaps:

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[453] The Commission estimates for PRA purposes that there would be no burden incurred by market participants, as discussed in the PRA section.
[454] As newly defined in § 43.2 a "prime broker swap" is any swap to which a swap dealer acting in the capacity as prime broker—a separate, specifically defined term—is a party.

a trigger swap with its customer, and a flip-side mirror swap with a third-party, often

referred to as an executing broker;[455] although it will not be a direct counterparty to the

mirror swap, the customer negotiates its terms (which must fall within acceptable

parameters set forth in the agency agreement) with the executing broker.[456] This

arrangement facilitates an end-user's ability to lay off risk through swaps that it directly

negotiates with third-party executing brokers, while foregoing the need to have a separate

ISDA agreement (a necessity for direct-facing counterparties to uncleared swaps) with

each executing brokers against which it executes a swap.[457] Instead, the PB essentially

stands in the middle of the exchange negotiated between its customer and the executing

broker. Because the PB is counterparty to both a trigger swap and a mirror swap, it has

two offsetting exposures that should leave it market risk neutral. The PB does, however,

take on counterparty credit risk from both its customer and the executing broker.

Existing part 43 does not expressly address mirror swaps or trigger swaps, and, as

a result, both are currently required to be reported to an SDR and publicly disseminated

ASATP as a publicly reportable swap transaction.[458] Existing part 43 also contains no

data elements to identify if a swap is related to a prime brokerage agreement and, if so,

distinguish between the mirror and trigger swaps. To the extent that both mirror and

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[455] It is possible to observe a difference in the reported price between the mirror and trigger swaps as the mirror swap may include an adjustment resulting from the prime brokerage servicing fees. If so, it provides further support for SDRs only disseminating trigger swaps to the public.

[456] As ISDA-SIFMA notes, these arrangements may involve multiple mirror swaps associated with a trigger swap. *See* ISDA-SIFMA at 58.

[457] Executing an underlying ISDA agreement can be costly, and most end users will have an ISDA agreement with few, if any, banks other than their PB. The PB, however, already will have an ISDA agreement with a large number of SDs. Further, because the PB will be the counterparty to the negotiated mirror swap, the executing broker will quote a price based on the PB's credit rating, not the customer's, which can result in more favorable pricing than the customer would receive if transacting directly.

[458] § 43.3(a)(1) and (b)(2).

trigger swaps are being currently reported, the Commission is concerned this creates a

false sense of market depth on the public tape and therefore harms price discovery. A

simple example illustrates how reporting both mirror and trigger swaps can adversely

affect price discovery: If both swaps are reported, the public sees double the trade count

and double the notional amount. Furthermore, as these prices are expected to be similar,

the market may appear more liquid and efficient than it actually is. If, on the other hand,

only one swap is reported, the public tape accurately reflects the trade count and notional

size following the negotiated terms of trade.

Compounding the Commission's transparency concerns under existing part 43 is

its understanding, based on anecdotal information, that PB swaps are reported, to an

unclear degree, inconsistently. In particular, the Commission is concerned mirror swaps

are currently under-reported because some market participants, believing that reporting

mirror swap terms is duplicative of the corresponding trigger swap and would distort

price discovery.[459] Because there is no data element indicating which swaps represent

trigger or mirror swaps in the public reporting requirements, the Commission cannot

reliably identify how common these swaps may be. As such, potential non-reporting of

mirror swaps under the existing regulations makes it difficult to quantify how many swap

trades and open positions result from PB activity.[460] This creates challenges for anyone

seeking to use swap transaction and pricing data for analysis or historical studies of

market activity.

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[459] This would be the case if all the primary economic terms are the same for, for instance, a trigger swap
and a single mirror swap. By reporting both the mirror and the trigger swap, market participants may
assume that the volume of price-forming trade activity is higher than it actually is.
[460] The swap transaction and pricing data elements in appendix A would include a new data element "Prime
brokerage transaction indicator."

Pursuant to new § 43.3(a)(6)(i), a mirror swap would fall outside the obligations

for ASATP reporting and SDR public dissemination,[461] though it would still be reported

to an SDR pursuant to part 45. In contrast, the trigger swap would remain subject to both

ASATP reporting and SDR public dissemination under part 43 as well as reporting under

part 45.

As discussed in sections II.C.4 and III above, and incorporated by reference for

purposes of the Commission's consideration of costs and benefits herein, the Commission

received several comments concerning new § 43.3(a)(6), including its associated

definitions and new prime broker transaction indicator in appendix A.[462] To the extent

these comments expressly address the Proposal's cost-benefit assessment or otherwise

raised issues with material cost-benefit implications, they are considered below in the

discussions of benefits and costs. Comments also addressed significant alternatives—

including Citadel's recommendation to require both mirror and trigger swap reporting

with an indicator to identify that a swap was a mirror swap, [463] and ISDA-SIFMA's

recommendation to relax trigger swap reporting requirements—are discussed separately

below as well. The Commission did not receive any comments that estimate the number

of mirror swaps or provide information to quantify the swaps resulting from prime

brokerage activity, or more generally, the rule's costs or benefits. ISDA-SIFMA

expressly notes that "strict internal policies" on information-sharing among firms

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[461] *See* § 43.3(a)(1) and (b)(2).
[462] Citadel at 10; CME at 5; FXPA at 4; ISDA-SIFMA at 51-53, 64-66; GFMA at 1, 5-6.
[463] Citadel at 10.

preclude it from speaking to mirror swap percentages and that it is "difficult to quantifying the cost or benefit in monetary terms."[464]

Baseline: Existing part 43 provides the baseline for assessing the costs and benefits of new § 43.3(a)(6) and its attendant definitions and new prime brokerage transaction indicator data element in appendix A. Existing part 43 contains no express provision for mirror swaps, trigger swaps, or PB transactions generally. Rather, because both trigger and mirror swaps fall within the current definition of publicly reportable swap transactions, real-time public reporting of both swaps is required. As described above, this is true even though there is no way to determine from reported data if and when swaps may be associated with each other as trigger and mirror swaps, or even the degree to which mirror swaps are not reported. As also discussed above, this undermines price transparency and complicates the ability of both market participants and the Commission to assess, and draw conclusions from, the real-time data.

Benefits: The Commission believes that by excluding mirror swaps from real-time reporting while requiring real-time reporting for trigger swaps, final § 43.3(a)(6) will enhance price discovery for market participants who monitor the public tape by preventing the duplicative reporting of mirror swaps that reflect the same economic terms as trigger swaps. Generally speaking, the Commission does not believe mirror swaps, as they are currently reported, improve price discovery. Several comments support this

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[464] ISDA-SIFMA at 58.

conclusion.[465] Rather, inclusion of such duplicative records can distort price discovery

by creating a false impression of market volume at a particular price.[466]

In reaching this conclusion, the Commission acknowledges marginal transparency

imperfections due to PB swaps will remain. As discussed below in the cost context, there

are aspects of mirror swap reporting that could theoretically inform price discovery to

some degree regarding market participant credit risk, total price (including PB fees that

reflect credit intermediation costs), and that, in some cases, a single trigger swap's

notional value may be offset by multiple mirror swaps. However, relative to distortion

from mirror swap double counting, the Commission views these potentially beneficial

aspects of mirror swap reporting as less impactful to the integrity of the public tape.

Further, since mirror swaps are currently required to be reported without any flag

indicative of their status or association with a trigger swap, whatever information they

now convey on the public tape is likely more akin to distortive "noise" than helpful to

inform market participants. Accordingly, the Commission believes that, overall,

excluding mirror swaps from real-time reporting will improve the quality of the real-time

tape, thereby enhancing price discovery relative to the status quo.

The Commission also foresees benefits from establishing clear rules for PB swap

reporting to alleviate reporting ambiguity, but the price discovery value of mirror swaps

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[465] ISDA-SIFMA at 52, 57 (mirror swaps "do not represent new pricing events" that enhance price discovery; "real-time reporting of mirror swaps would not enhance price transparency nor serve any price discovery purpose given that there would be no new or additional pricing information released to the market"); GFXD at 6 (supporting ISDA-SIFMA response); CME at 5 (it "does not believe that publishing information regarding mirror swaps would provide any information of value to market participants").
[466] *See* FXPA at 4 (agreeing "with Commissioner Berkowitz's assessment that '[d]uplicate reporting can create a false signal of swap trading volume and potentially obscure price discovery by giving the price reported for a single prime brokerage swap twice as much weight relative to other non-prime brokerage swaps.'").

remaining unclear. Uncertainty as to how market participants are reporting PB swaps can

challenge the public tape's quality, as well as undermine its price discovery utility.

Further, to the extent some market participants may not be fully reporting PB swaps,

while others may be fully reporting these swaps, § 43.3(a)(6) should level the playing

field. Finally, as one commenter notes, to the extent some market participants are now

reluctant to engage in PB swaps because of regulatory uncertainty, § 43.3(a)(6) "should

bring increased liquidity to OTC swaps markets" by countering this uncertainty.[467]

Costs: Mirror swaps may have information value in the following areas: (i) credit

risk, because the PB establishes open positions between itself and the executing broker,

with offsetting economic terms facing the client;[468] (ii) total price, because the price may

reflect PB fees that reflect PBs' credit intermediation costs paid by PBs' clients; and (iii)

mirror swap multiplicity, because some mirror swaps may not contain the same economic

terms as the trigger swap.

The informative value of each of the above, however, is largely dependent on a

market participant's ability to recognize whether a reported swap is a mirror swap. This

is currently impossible to determine because part 43 does not require mirror swaps to be

reported with any indicator. Accordingly, relative to the status quo baseline, the

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[467] FXPA at 4.

[468] Although the execution of the trigger swap results in a change in the market risk position between the PB and the executing broker, and the execution of the mirror swap results in a change in the market risk position between the PB and its customer, the PB does not have any net market exposure (because its market position is flat). However, because the market risk position between the PB and each of its counterparties changed, the trigger swap and mirror swap both are currently publicly reportable swap transactions.

Commission views any lost-transparency cost from not requiring mirror swap reporting

as largely theoretical.[469]

Separately, eliminating mirror swap dissemination could incentivize the use of

more complex mirror swaps to avoid public reporting, increasing the possibility of more

complicated, risky swaps being created. But the Commission expects such risk to be

minimal, given that all trigger swaps associated with prime brokerage transactions will

still be reported to SDRs pursuant to part 45. Further, with the benefit of part 45 data, the

Commission is well-positioned to monitor, and respond as appropriate, should PB swap

activity appear to be evolving as a real-time reporting avoidance strategy.

Alternatives: The Commission considered two significant alternatives to the

approach reflected in § 43.3(a)(6), neither of which it finds preferable on cost-benefit

grounds for the reasons discussed below.

Citadel advocates for the first alternative approach, i.e., to retain the current

requirement for reporting both trigger and mirror swaps while adding a required indicator

to flag mirror swaps.[470] This alternative would provide market participants with real-

time visibility into mirror swap activity. It, however, would not correct the double-

counting problem—a problem that Citadel does not dispute in its comment—but rather

would tolerate it in exchange for some potential incremental added insight deducible

from knowledge of whether a particular swap is a mirror swap. Moreover, the

Commission sees merit in ISDA-SIFMA's concern that the public dissemination of

mirror swaps with an associated flag is more likely to "create noise on the tape" than

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[469] The Commission estimates for PRA purposes that there would be a moderate decrease in the burden incurred by market participants, as discussed in the PRA section.
[470] Citadel at 10.

meaningfully improve price transparency, and is unlikely to result in a regulatory oversight benefit commensurate with its "added costs and complexity to prime broker reporting."[471]

ISDA-SIFMA's preferred alternative would relax the ASATP timeframe for reporting trigger swaps if the reporting obligation falls on the PB, i.e., where the trigger swap counterparty is not an SD. Rather than require a PB to report a trigger swap ASATP after the pricing event for a trigger swap—the point at which its material terms are determined and reporting is most impactful for price discovery—ISDA-SIFMA instead advocates for requiring ASATP reporting based off of a later, indeterminate point when the PB accepts the trigger swap.[472] Trigger swap acceptance can happen in a variable timeframe that ISDA-SIFMA believes should not exceed T+1 relative to the pricing event.[473] ISDA-SIFMA justifies this alternative on grounds that reporting the pricing event ASATP in circumstances where the PB is the reporting counterparty will sacrifice liquidity because it is not practicable for PBs to meet the requirement.[474] The Commission is unconvinced that any liquidity cost that might result if PBs find it impractical to report certain trigger swaps ASATP after the pricing event—a technical problem that § 43.3(a)(6) could incentive PBs and their customers to work to remedy—is more compelling than the negative impacts to price transparency and discovery that will likely result if trigger swap reporting is delayed for some indeterminate, variable time beyond the pricing event.

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[471] ISDA-SIFMA at 57.
[472] *Id.* at 52.
[473] *Id.* at 52, 66 n.113.
[474] *Id.* at 52.

Notwithstanding potential costs, the Commission believes new § 43.3(a)(6) is warranted in light of the anticipated benefits.

iv. § 43.3(c) – Availability of Swap Transaction and Pricing Data to the Public

Existing § 43.3(d)(1) and (2) specify the format in which SDRs make swap transaction and pricing data available to the public and require that disseminated data must be made "freely available and readily accessible" to the public. Substantively, amended § 43.3(c) changes these requirements to specify that SDRs shall make such data publicly available on their websites for at least one year after dissemination, and provide instructions on how to download, save, and search the data. As noted above in section II.C.7, the Commission understands a one-year data availability time-frame is current practice for at least a majority of SDRs. However, in that this is not a current requirement, potential remains for an SDR to elect to remove the data at some point in the future, thereby depriving market participants of extended data access that may be useful as a tool to assess market conditions.

The Commission received several comments, all generally supportive of amended § 43.3(c). None raised cost-benefit issues, advocated an alternative, or disputed the Proposal's assessment that costs will likely be negligible because SDRs already make the public reports available for more than one year.

Baseline: Current § 43.3(d)(1) and (2), and the market conditions attendant to them as described above, provide the baseline for assessing the costs and benefits of amended § 43.3(c).

Benefits: In that the Commission believes SDRs are now for the most part voluntarily doing what amended § 43.3(c) will now require, the provision will provide a

small incremental benefit. That is, it will help assure that, going forward, the status quo

market conditions that the Commission considers a positive for price transparency are not

reversed.

Costs: In that the Commission believes that SDRs are now for the most part

voluntarily doing what amended § 43.3(c) will now require, it does not foresee material

costs resulting from the amendment.

v. § 43.3(d) – Data Reported to SDRs

The Commission is adopting revisions to § 43.3(d), including on how reporting

counterparties, SEFs, and DCMs report data to SDRs for public dissemination, as well as

respond to SDR notifications of missing or incomplete data.[475] These requirements

should help improve the quality of data on the public tape. Specifically, the rules require

reporting counterparties, SEFs, and DCMs, when reporting swap transaction and pricing

data to an SDR, to: (i) report data as described in the elements in appendix A in §

43.3(d)(1); (ii) satisfy SDR validation procedures in § 43.3(d)(2); and (iii) use the

facilities, methods, or data standards provided or required by the SDR in § 43.3(d)(3).

New § 43.3(d)(1) will require reporting entities to adjust their reporting systems to

comply with the new list of data elements in appendix A. As discussed in a separate

release, these data elements in appendix A will be a subset of the data elements reported

to SDRs pursuant to part 45. The Commission believes a separate regulatory requirement

in part 43 avoids confusion by having overlapping parts 43 and 45 requirements only in

part 45. However, for cost-benefit purposes, this means most of the costs and benefits

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[475] Current § 43.3(d)(1) only requires SDRs disseminate "data in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved and analyzed." The remaining text is how the data is made available to the public and is being moved in the new final rule text.

associated with this change in part 43 have been analyzed by the Commission in a

separate part 45 release being adopted at the same time. This cost-benefit analysis will

consider the costs to SDRs for disseminating the updated appendix A data elements,

keeping in mind the majority of the costs have been accounted for in the part 45 release.

New § 43.3(d)(2) will require the reporting counterparty, SEF, or DCM to satisfy

the data validation procedures of the SDR for each required data element listed in

appendix A. Since § 43.3(d)(2) is closely related to new data validation requirements in

§ 43.3(f)(1) and the cost considerations to validate overlap significantly with initial

design costs, most, if not all, of the costs discussion here will overlap with new § 43.3(f).

Baseline: Current § 43.3(d)(1) specifies that SDRs disseminate data "in a

consistent, usable, and machine-readable electronic format that allows the data to be

downloaded, saved and analyzed." Regarding required data elements, existing appendix

A to part 43, entitled "Data Fields for Public Dissemination," describes the data fields

reporting counterparties are required to report and provides guidance for such reporting.

For each data field, there is a corresponding description, example, and, where applicable,

an enumerated list of allowable values. Furthermore, under existing regulations, SDRs

are not required to apply any data validations on the reports they receive. In addition, the

Commission understands that at least some SDRs have flexible application programming

interfaces ("APIs") that allow reporting counterparties to report data for part 43 purposes

in many ways, making standardization difficult, especially across SDRs.[476]

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[476] The Commission believes the lack of specificity in reporting has encouraged using flexible APIs.

Benefits: As mentioned above, the Commission discusses the benefits of updated and standardized data elements in a separate release adopting changes to part 45, as the part 43 data elements in appendix A will be a subset of the part 45 data elements in appendix 1. For the public, increased consistency will afford market participants a more easily-accessible, accurate view of activity across all Commission-regulated swaps markets. The Commission expects the general public would also benefit when the standardized information is more easily combined across SDRs.

Along with the expected benefits that will arise from the standardization and uniformity of information reported in real-time, the Commission expects additional benefits related to the new swap transaction and pricing data elements in appendix A. For example, there is a new data element allowing users to identify whether a swap is a PPS or if the swap is considered a bespoke swap. This additional information will allow for additional options in processing and studying market information.

Costs: The Commission expects reporting entities and SDRs to incur some initial costs to incorporate new reporting guidance into their reporting infrastructure (e.g., programming costs). The Commission is adopting the changes to part 43 concurrently with a release adopting changes to part 45; meaning the changes to parts 43 and 45 would largely require technological changes that could merge two different data streams into one. For example, SDRs will have to make adjustments to their extraction, transformation, and loading ("ETL") process in order to accept feeds that conform to the new technical specification and validation conditions.

The Commission expects many of the changes related to part 43 will be planned and developed in accordance with changes required under new regulations in part 45.

While the Commission cannot apportion shares of the aggregate total between these two rules, the costs attributable to part 43 would be some smaller proportional share of the indicated aggregate total since the list of data elements subject to real-time reporting is a small subset of the full set reported under part 45. For this reason, the costs described below may most accurately represent the full technological cost of satisfying the requirements for both rules, with the majority of the costs being allocated to compliance with the part 45 rules.

ODT SMEs, using experience designing data reporting, ingestion, and validation systems, estimates the cost per SDR range from $144,000 to $510,000.[477] ODT SMEs based this estimate on assumptions that cover the set of tasks required for the SDR to design, test, and implement a data system based on the list of swap data elements in appendix A and any related guidebooks.[478] These numbers assume that each SDR will spend approximately 3,000-5,000 hours to establish ETL into a relational database on such a data stream.[479]

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[477] To generate the included estimates, ODT SMEs used a bottom-up estimation method based on internal Commission expertise. In brief, ODT SMEs anticipate the task for the SDRs will be significantly more complex than it is for reporters. On several occasions, the Commission has developed an ETL data stream similar to the anticipated parts 43 and 45 data streams. These data sets consist of 100-200 fields, similar to the number of fields in appendix 1.

[478] These assumptions include: (1) at a minimum, the SDRs will be required to establish an ETL process. This implies that either the SDR will use a sophisticated ETL tool, or will be implementing a data staging process from which the transformation can be implemented. (2) It is assumed that the SDR would require the implementation of a new database or other data storage vehicle from which their business processes can be executed. (3) While the record structure is straight forward, the implementation of a database representing the different asset classes may be complex. (4) It is assumed that the SDR would need to implement a data validation regime typical of data sets of this size and magnitude. (5) It is reasonable to expect that the cost to operate the stream would be lower due to the standardization of incoming data, and the opportunity to automatically validate the data may make it less labor intensive.

[479] The lower estimate of $144,000 represents 3,000 working hours at the $48 rate. The higher estimate of $510,000 represents 5,000 working hours at the $102 rate.

For reporting entities, ODT SMEs estimate the cost per reporting entity to range

from $24,000 to $74,000.[480] ODT SMEs base this estimate on a number of assumptions

that cover tasks required to design, test, and implement an updated data system based on

the new swap data elements, any guidebooks, and validation conditions.[481] These tasks

include defining requirements, developing an extraction query, developing of an interim

extraction format (e.g., CSV), developing validations, developing formatting conversions,

developing a framework to execute tasks on a repeatable basis, and finally, integration

and testing. Staff estimates it would take a reporting entity 200 to 325 hours to

implement the extraction. Including validations and formatting conversions would add

another 300 to 400 hours, resulting in an estimated total of 500 to 725 hours per reporting

entity.[482]

However, the Commission reiterates that these costs have been accounted for in

the separate part 45 adopting release. The Commission repeats the analysis here, but

cautions the cost to SDRs in updating their systems to disseminate the updated data

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[480] To generate the included estimates, a bottom-up estimation method was used based on internal Commission expertise. On several occasions, the Commission has created data sets that are transmitted to outside organizations. These data sets consist of 100-200 fields, similar to the number of fields in the appendix A.

[481] These assumptions include: (1) the data that will be provided to the SDRs from this group of reporters largely exists in their environment, as the back-end data is currently available. (2) The data transmission connection from the firms that provide the data to the SDR currently exists. The assumption for the purposes of this estimate is that reporting firms do not need to set up infrastructure components such as FTP servers, routers, switches, or other hardware because these are already in place. (3) Implementing the requirement does not cause reporting firms to create back-end systems to collect their data in preparation for submission. It is assumed that firms that submit this information have the data available on a query-able environment today. (4) Reporting firms are provided with clear direction and guidance regarding form and manner of submission. A lack of clear guidance will significantly increase costs for each reporter. (5) There is no cost to disable reporting streams that will be made for obsolete by the change in part 43.

[482] The lower estimate of $24,000 represents 500 working hours at the $48 rate. The higher estimate of $74,000 represent 725 working hours at the $102 rate.

elements in appendix A, most of which the SDRs are already disseminating, would be a smaller portion of the costs just described.[483]

In summary, new § 43.3(d) places regulations on the reporting counterparty, SEF, or DCM related to how data is reported to SDRs along with requirements to satisfy the data validation procedures of the SDR. Taking into account the anticipated costs, the Commission believes the rules are warranted in light of the anticipated benefits.

vi. § 43.3(f) – Data Validation Acceptance Message

New § 43.3(f) establishes requirements for SDRs to validate real-time public data by sending SEFs, DCMs, and reporting counterparties data validation acceptance or rejection messages. Validation requirements, for each data element required under part 43, will be fully described in a guidebook published by DMO. The Commission expects SDRs to implement these validations while designing their reporting systems to reflect the newly required data elements discussed above in § 43.3(d).

Currently, the Commission does not require validations by SDRs, and therefore has not provided any guidance on either the content or format of the messages associated with these validations. New validations will help ensure reported data is accurate and consistent across SDRs. While the Commission does not currently require validations, the Commission can observe activity related to market participants cancelling and correcting publicly disseminated trade information.[484] While the new data validation

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[483] For the purposes of the PRA, the Commission estimated the smaller portion of these costs to SDRs to avoid double-counting costs between the parts 43 and 45 rules.

[484] For example, based on a three week study in January 2020, Commission staff found 11% of IRS records linked to a "Cancel" action type and 8% of records linked to a "Correct" action type. For CDS, staff found 7% and 6% of records linked to a "Cancel" and "Correct" action type, respectively. These percentages are much larger for commodity swaps and also appear to have a higher share related to uncleared swaps.

process will require increased communication between the reporting entity and the SDR,

the Commission expects these lines of communication are already well established

through the current reporting regime.

Baseline: SDRs are not currently required to validate data sent by reporting

entities. However, the Commission understands that SDRs currently employ their own

validations for swap transaction and pricing data reporting.

Benefits: The Commission expects § 43.3(f) will result in improved quality of

data reported to SDRs and disseminated to the public. Improved data quality helps

market participants make trading decisions and enables better market oversight by

regulators. More accurate and complete data also helps researchers learn about swaps

markets, which in turn can inform future market and regulatory decisions.[485]

It is difficult to estimate how many trades are reported with errors under the

current system. The Commission estimates more than 10% of trades are subsequently

corrected or cancelled. In addition to trades corrected or cancelled, trades are reported

with errors (such as missing or zero prices) that are not corrected, as errors are not

required to be corrected until they are discovered. As such, the Commission expects the

updated requirements to help ensure accurate data is reported for public dissemination, by

disallowing the reporting of swap transaction and pricing data that does not satisfy the

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[485] The Commission is aware of at least two publicly-available studies that discuss problems with the current part 43 data. The first study found that about 10% of CDS traded in their data set had missing or zero prices. Y.C. Loon, and Z. (Ken) Zhong, "Does Dodd-Frank affect OTC transaction costs and liquidity? Evidence from real-time trade reports," *Journal of Financial Economics* (2016), *available at http://dx.doi.org/10.1016/j.jfineco.2016.01.01*. The second reported a number of fields that were routinely null or missing, making it difficult to analyze swap market volumes. *See* Financial Stability Report, Office of Financial Research (Dec. 15, 2015) at 84-85, *available at https://financialresearch.gov/financial-stability-reports/files/OFR_2015-Financial-Stability-Report_12-15-2015.pdf*.

validations. The Commission expects the improvements in accuracy to increase transparency and improve price discovery.

Costs: The Commission expects the requirement to send and receive data validation messages will create costs for SEFs, DCMs, reporting counterparties, and SDRs, but the majority of these costs will be related to building systems to accept and report data. The Commission discussed these costs above in the analysis of § 43.3(d). The Commission expects the additional cost to send a message once the validation process is complete will be minimal as SDRs already have developed lines of communications with reporting entities.

While the Commission acknowledges there will some costs associated with this regulation, additional flexibility has been provided to allow SDRs options in how they perform validations. Based on a comment from DTCC, the Commission changed the rule text by replacing "transmitting" with "making available" to allow SDRs the flexibility to establish more efficient lines of communication to ensure the validation occurs with the least possible disruption.[486]

The Commission is adopting § 43.3(f) to establish requirements for SDRs to validate real-time public data. Taking into consideration the anticipated costs, the Commission believes this change is warranted in light of the anticipated benefits.

b. § 43.4 – Swap Transaction and Pricing Data to be Publicly Disseminated in Real-Time[487]

i. § 43.4(f) – Process to Determine Appropriate Rounded Notional or Principal Amounts

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[486] DTCC at 4.
[487] The Commission discusses the costs and benefits related to cap size changes in § 43.4(h) in the block thresholds discussion in § 43.6.

The Commission is changing the § 43.4(f) rules for rounding actual notional or

principal amounts of a swap before disseminating such swap transaction and pricing data.

The Commission requires SDRs to disseminate rounded notional or principal amounts of

swaps to conceal the exact notional of swap transactions in order to preserve the

anonymity of counterparties. Absent some degree of concealment, disseminating the

exact notional of a swap could allow market participants to more easily discern the

identity of the counterparties and gain insight into the counterparties' trading strategies,

which would potentially discourage market participants from executing swaps and harm

liquidity.

Final § 43.4(f)(8) requires SDRs to round the notional value of swap transactions

so that the revealed amount is more precise. For example, final § 43.4(f)(8) requires

trades with a notional or principal amount less than 100 billion but equal to or greater

than one billion to be rounded to the nearest 100 million; the existing regulation requires

rounding to nearest billion. Similarly, final § 43.4(f)(9) requires SDRs to round trades

with a notional or principal amount greater than 100 billion to the nearest 10 billion

before disseminating such swap transaction and pricing data; the existing requirement is

round to the nearest 50 billion. The Commission did not receive any comments on the

proposal.

This change effectively means that market participants will have more precise

measures of the size of large trades. The effects of this change on anonymity are

mitigated by the fact that most of swaps to which these changes will apply will also be

eligible for block and/or cap treatment. If a trade is subject to cap treatment, no

information will be revealed about the trade size above the capping level, such that this

change will have no anonymity impact in many cases. For trades with a cap above one

billion, this change in § 43.4(f)(8) will allow for a more precise estimate of total traded

notional or principal amounts, and thereby help market participants achieve a more

accurate estimate of general market trading activity.

Baseline: For both changes, the baseline is the existing rule regarding appropriate

rounding (e.g., to the nearest $1 billion if the swap is between $1 billion and $100

billion).

Benefits: The rule changes will give market participants more precise information

about the relationship between pricing and size for large trades to improve price

discovery and lead to more competitive markets.

Costs: The Commission expects actual implementation costs to be negligible.

The Commission acknowledges the rule may make it more likely market participants, or

competitors, can identify the counterparties to a specific trade. It may also make it more

difficult for traders to hedge positions they acquire in large trades. If either were to

occur, some counterparties to the trades could experience higher trading costs.

As noted above, the benefits and costs of the changes in § 43.4(f)(8) are mitigated

by the fact that change is only relevant when cap sizes are above one billion. Since the

cap sizes for CDS and FX are well below the one billion mark for all swap categories, the

change will have no effect in those asset classes. Only shorter-tenor IRS categories have

cap sizes above one billion.

The Commission is amending the rules for rounding actual notional or principal

amounts of a swap. Notwithstanding the anticipated costs, the Commission believes this

change is warranted in light of the anticipated benefits to increased transparency.

d. § 43.6 – Block Trades

Section 43.6 specifies how the Commission sets AMBSs—thresholds determining

whether a transaction qualifies as either a block trade or large notional off-facility

swap[488] eligible for a real-time public-reporting delay under § 43.5—as well as cap sizes

protecting counterparty identity by truncating the transaction size displayed on the public

tape.[489] As such, § 43.6 is an important piece of the real-time reporting structure that

seeks to enhance price discovery while giving due concern to liquidity and counterparty

anonymity as required by CEA section 2(a)(13)(E).[490]

The cornerstones of current § 43.6 are subsections (b) prescribing the swap

categories for which AMBSs (also referred to as block thresholds) and caps must be set,

and (c)-(h), which specify the process, methodology and other details for how the block

thresholds and caps are determined for the categories specified in subsection (b). The

Commission is updating two primary areas of § 43.6: (1) the swap categories; and (2) the

methodologies and process for calculating AMBS and cap sizes.[491]

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[488] As defined in § 43.3(2), both block trades and large notional off-facility swaps must have a notional or principal amount above the AMBS, though the former are transacted on a SEF or DCM, while the latter are transacted off-facility. Unless otherwise indicated, for purposes of this discussion they are collectively referred to as "block trades." AMBSs are also at times referred to as "block thresholds" in this discussion.

[489] *See* current § 43.4(h), and amended § 43.4(g) as being adopted through this release.

[490] The delay allows for greater liquidity for large size trades, often by allowing SDs time to hedge positions established to facilitate client transactions. In addition to reporting delays, the Commission has determined the largest trades should receive additional protection by truncating the size displayed on the public tape, *i.e.,* caps. In promulgating rules for blocks and caps in Block Trade Rule, the Commission considered the benefits of delayed reporting and anonymity against the costs of reduced transparency. The Commission considers the same factors for the changes adopted in this release.

[491] As discussed in section II.F.1, existing § 43.6(f)(1)-(3) requires the Commission to establish post-initial AMBS using a one-year window of reliable SDR data recalculated no less than once each calendar year using the 67-percent notional amount calculation for most swap categories. Similarly, existing § 43.4(h)(2) requires the Commission to establish post-initial cap sizes using a one-year window of reliable SDR data recalculated no less than once each calendar year using the 75-percent notional amount calculation described in § 43.6(c)(3).

As discussed above, the Commission established a phased-in approach for the block thresholds and cap sizes. In general, the first phase involved using a 50-percent notional amount calculation for block thresholds and a 67-percent notional amount calculation for cap sizes. In this release, the Commission is moving to the second and final phase by using a 67-percent notional calculation for block thresholds and a 75-percent notional calculation for cap sizes. Using the 67-percent and 75-percent notional calculations will generally result in higher block thresholds and larger cap sizes, but, as applied to the better calibrated swap categories in § 43.6(c), will result in some transactions qualifying as blocks that previously would not have, while others that previously did may not going forward. The Commission provides additional background on its economic assessment of the updated § 43.6(c) swap categories, and their interplay with AMBS and cap sizes, below.

As discussed at length in section II.F, the Commission is changing the swap categories in § 43.6(c) to alleviate concerns the current categories are too broad and would result in an undesirable impact on certain categories of swaps when AMBSs and cap sizes are calculated using the 67-percent and 75-percent notional calculations, respectively. The Commission believes the new categories: (1) group together swaps with similar quantitative or qualitative characteristics that warrant being subject to the same AMBS thresholds and cap sizes; and (2) minimize the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[492]

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[492] Proposal at 21534.

As the Commission did in creating the existing swap categories, the Commission is grouping products with similar characteristics. For example, the Commission believes products are typically related when: the products are complements of, or substitutes for, one another; one product is a significant input into the other product(s); the products share a significant common input; or the prices of the products are influenced by shared external factors. The Commission believes this is how market participants assign products to larger swap categories, including DCOs when portfolio margining. Further, the Commission recognizes some market participants trade related products, and the Commission did not want to create a block rule that would disadvantage one product for another product by influencing market participants to trade in the illiquid products.

The adoption of § 43.6(c) will expand the number of swap categories the Commission uses to calculate block thresholds.[493] For example, there will be 136 distinct IRS categories with distinct block thresholds, compared to 27 categories under the current rule. The Commission believes the IRS categories will better reflect trading patterns for IRS by depending on specific currencies.[494]

The Commission is adopting similar changes for other asset classes. For CDS, the new swap categories are no longer based on observed spreads with multiple tenor groups, but instead on well-defined products (e.g., CDXIG, CMBX, iTraxx) for a single tenor range between four to six years (designed to pick up the most actively traded five year on-the-run CDS).

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[493] The same logic applies to cap size calculations.
[494] For instance, this bucketing results in block levels for the most active USD IRS products that differ from levels for the still active, but slightly less common JPY or GBP IRS products, where trade sizes are lower. All currencies not included in one of the 15 groups have a block size of zero – essentially allowing this small subset of IRS to receive full block treatment.

Further, in response to commenters, the Commission found a notable difference in the distribution of trade sizes between non-option and option CDS. As such, the Commission is giving certain option CDS their own categories to avoid skewing the AMBS threshold and cap size calculations higher in CDS categories in which they remained combined with non-option CDS (thereby resulting in more non-option CDS falling under the thresholds, precluding them from a block reporting delay or notional-amount capping). For example, the average option notional trade size is three-to-six times larger than non-option trades for certain CDS. This results in clear differences in block and cap treatment between option and non-option swaps as 97-percent of total notional for CDXIG options are eligible for block and cap treatment, as compared to 66-percent for non-options.[495] For CDXIG, if options are excluded, the calculated block and cap thresholds decrease by 50- and 63-percent, respectively (e.g., the new block threshold is $500 million with options trades included and $250 million with these trades removed). As such, the Commission separated the option activity into distinct swap categories for CDXIG and CDXIG-options.

FX swap categories include a list of 22 currencies exchanged for USD along with the set of 180 swap categories, comprised of each unique pairwise combination of these 22 currencies. This differs from the current set of 84 swap categories comprised of 22 currencies exchanged for one of the super-major currencies (EUR, GBP, JPY, or USD).[496] Finally, the Commission changed the swap categories related to "Other

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[495] Note that a few index CDS categories, including CDXEM and CMBX, do not have any option trades during the time period that comprises the data sample, so no adjustment is necessary.
[496] While there are 84 current swap categories for FX, 40 of these have a block size of zero.

Commodity" to represent the underlying commodity instead of references to specific

futures contracts and exchanges.

The adoption of § 43.6(c) will result in a block size of zero for swaps excluded

from the defined swap categories.[497] This will result in all trades for some types of swaps

(e.g., off-the-run CDS and certain major and non-major currencies in the IRS and FX

asset classes) being eligible for block treatment. For example, there are IRS trades linked

to 37 currencies, but only 15 currencies that are explicitly placed in a category. This

subset was primarily chosen based on trading volume. [498] Similarly, for CDS, all trades

in off-the-run series for major indices along with other less active indices will also be

eligible for complete block status with delayed reporting.[499]

As discussed in section II.F. above, and incorporated by reference for purposes of

the Commission's consideration of costs and benefits herein, the Commission received

numerous comments concerning the block threshold and cap size amendments. Many

concern issues of cost-benefit consequence, including the trade-off between price

transparency and liquidity, which the Commission considers below in the specific

discussions of costs and benefits.[500] Comments also addressed two significant

alternatives: (1) lowering AMBS and cap thresholds rather than raising them,[501] and (2)

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[497] The Final Rule also adjusts the fixed cap size applied to currencies without swap categories by a move from the current $250 million to $150 million.

[498] For example, the 15 currencies that are explicitly placed in a category make up 96% of the total population of IRS trades.

[499] The majority of off-the-run activity is linked to IG indexes. Other indexes without defined swap categories includes iTraxx Asia Ex-Japan, iTraxx Australia, and iTraxx Japan.

[500] *See, e.g.,* Clarus at 2 and Citadel at 9 (transparency/liquidity trade-off favors higher thresholds) and PIMCO at 3-4 and SIFMA AMG at 2-4. (transparency/liquidity trade-off favors lower thresholds).

[501] *See, e.g.,* PIMCO at 3-4; SIFMA AMG at 2-4; Vanguard at 3 ISDA-SIFMA (Blocks) at 3-4; and ICI at 6-7.

risk-adjusting notional values before determining block and cap thresholds.[502] The

Commission discusses the costs and benefits of these two alternatives below. The

Commission did not receive any comments quantifying the rule's costs or benefits, nor

did it receive comments providing data to help it do so.

In addition to the block threshold and cap size amendments, the Commission is

changing the provisions for order aggregation in existing § 43.6(h) and revising the block

trade definition in § 43.2.[503] Order aggregation concerns how individual orders can be

aggregated to result in a transaction eligible for block treatment. Amended § 43.6(f) will

expand aggregation to include swaps that are not yet available for trading on a SEF or

DCM. It will also remove the existing requirement for at least $25 million in assets

under management for the aggregator, thus allowing more market participants to

aggregate individual orders and receive block treatment. The revised block trade

definition will enable market participants to execute block trades on a SEF, which will

allow FCMs to conduct pre-execution credit screenings in accordance with § 1.73.[504]

Baseline: The Commission considers the cost and benefits of its amendments

relative to the baseline of what its regulations currently require. As discussed in section

II.F.2, existing § 43.6(f)(1) and § 43.4(h)(2), respectively, provide that after the collection

of at least one year of reliable SDR data collection—a threshold now crossed—AMBSs

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[502] *See, e.g.,* ISDA-SIFMA (Blocks) at 4; Credit Suisse at 3; and ACLI at 3-4.

[503] The remaining changes in § 43.6 are non-substantive and do not involve material costs or benefits. Accordingly, the Commission does not consider them. For example, § 43.6(d) discusses the method for determining the AMBS, but the only change from the current rule relates to the new definition for a "trimmed data set," which does not have material costs or benefits.

[504] This would effectively allow SEFs to offer a "RFQ-to-one" functionality that allows counterparties to bilaterally negotiate a block trade, without requiring disclosure of the potential trade to other market participants on a pre-trade basis. The ability to trade bilaterally on SEFs may be particularly relevant for parties trading Made Available for Trade ("MAT") instruments, which are required to be traded on SEFs.

be calculated using a 67-percent notional formula and caps be calculated using a 75-percent notional formula as applied to swap categories set out in existing § 43.6(b).[505]

The Commission extensively analyzed the costs and benefits of the 50-percent threshold and 67-percent threshold when it adopted the phased-in approach.[506] Accordingly, this state in which the Commission should already be in, defines the baseline against which the costs and benefits of § 43.4(h) and § 43.6(c) are considered below. In addition, for the changes to the block trade definition, the existing block trade definition requires that block trades be executed away from a SEF, pursuant to the rules of the SEF.[507]

Benefits: Large trades receive dissemination delays because large trades often require intermediaries to take large positions, albeit temporarily. The costs to these intermediaries to subsequently hedge the trade are reduced by allowing the intermediaries some period to hedge, prior to the initial trade becoming public knowledge. A trade is "large" in this sense when it is substantial relative to typical trade size and daily volume

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[505] The relative costs and benefits of not implementing the 67-percent and 75-percent notional amount calculations required under existing §§ 43.6(f)(1)-(3) and 43.4(h)(2) are considered in the discussion of alternatives, below. Given the Commission currently enforces a 50-percent threshold, the Commission considered using a 50-percent baseline and 67-percent as an alternative threshold. The Commission did not do so. Because the 67-percent threshold is required by existing regulations and the Commission did not propose amending the rule, the Commission uses a baseline of 67-percent and below considers an alternative threshold of 50-percent. This baseline does not impact the cost benefit consideration, as the economic analysis and conclusion using a 50-percent baseline with a 67-percent alternative threshold or a 67-percent baseline and a 50-percent alternative threshold are identical.

[506] 77 FR 32866 at 32918-24. In that release, the Commission considered extensive comments, the CEA's factors for providing price transparency, concerns about liquidity, anonymity, competition, and the general benefits and drawbacks of transparency. Based on those considerations, the Commission has endeavored in this release to adopt the 67-percent block threshold with certain updates to reflect the Commission's experience with block trade delays since 2013, including adjusting how the Commission applies the notional amount calculations to CDS with optionality, and providing guidance that certain risk-reduction exercises are not publicly reportable swap transactions to calibrate AMBSs so as to mitigate any costs to market participants.

[507] As a practical matter, market participants are currently relying on no-action relief (NAL No. 17-60) to execute on a SEF block trades that are intended-to-be-cleared ("ITBC"). The relief allows the market participants to use any execution method that is not an order book, as defined in 37.3(a).

in that instrument. Similarly, for the largest trades, the Commission allows for the truncation of displayed notionals in order to preserve anonymity and reduce hedging costs. For this reason, blocks and caps should account for instruments' market characteristics.

The Commission has recognized "the optimal point in [the transparency/liquidity interplay] defies precision."[508] However, the optimal point remains the Commission's goal, and the Commission believes the new swap categories, in combination with raised block thresholds and cap sizes, help the Commission get closer to this goal. Generally speaking, thresholds determined in the context of swap categories that better account for product characteristics—as the Commission believes the expanded thresholds in § 43.6(c) do—result in higher thresholds for instruments for which large trades can readily be hedged, which can improve transparency with minimal impact on liquidity. Conversely, in categories in which large trade hedging is likely to be more difficult, the resulting thresholds should be lower, accommodating liquidity.

The Commission expects the changes to the swap categories will better achieve the intention of the Block Trade Rule to group swaps with similar characteristics together, thereby improving the transparency/liquidity optimization. The block thresholds and cap sizes applied in the context of § 43.6(c)'s swap categories will result in levels that better reflect current liquidity for each type of swap. For example, USD IRSs currently represent most of the actual trades in the IRS Super-Major category, such that the current AMBS for JPY IRS swaps (also in the Super-Major category) is based

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[508] 78 FR at 32917.

largely on USD trades. The new categories, which separate JPY IRS from USD IRS will result in an AMBS that better reflects the size distribution of JPY rate swaps. This will mean that instruments like the JPY IRS, with fewer large trades (than USD IRS) will have lower thresholds, meaning that smaller trades will be eligible for block treatment and have lower caps for such instruments than if swap categories were not changed. This will benefit relatively large JPY IRS trades. The move from spread-based (i.e., price-based) to product-based swap categories for CDSs is expected to achieve similar results, as the trade distribution is often much more homogenous within a product group than a spread category. This change will have the additional benefit of decoupling prices and categories. Under the existing rules, a product could move into a different cap/block regime if its price changed, which could disrupt markets. The new categories are not price-dependent.

The amendment to the block trade definition will enable market participants to execute block trades on SEFs. These trades may be executed bilaterally so that a party wishing to make a large trade on a SEF can choose to reveal the would-be trade to a single selected counterparty.[509] In addition, it would allow a 15-minute reporting delay on such trades. The Commission believes that permitting swap block trades to be executed on SEFs pursuant to Commission regulation would provide tangible benefits to market participants by allowing them to further utilize a SEF's trading systems and platforms with the exception of the order book, as defined in § 37.3(a). To the extent that

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[509] Curtailing the number of entities that know its trading plans can mitigate a "winner's curse" problem for the trader, allowing it to get better pricing. *See*, e.g., Riggs, et al., "Swap Trading after Dodd-Frank: Evidence from Index CDS" 137 J of Fin. Econ. 857 (2020), *available at: https://doi.org/10.1016/j.jfineco.2020.03.008.*

a SEF provides the most operationally- and cost-efficient method of executing swap

block trades, the amendment to the block trade definition would help market participants

to continue realizing such benefits. Additionally, allowing market participants to execute

swap block trades on a SEF helps to facilitate the pre-execution screening of transactions

against risk-based limits in an efficient manner through SEF-based mechanisms.[510] The

amendments would preclude the need for market participants to expend additional

resources to negate those changes. Further, incorporating the current no-action relief in

the Commission's regulations would promote the statutory goal in CEA section 5h(e) of

promoting swaps trading on SEFs. Finally, the amendment would permit SEFs to extend

the benefits of executed swap block trades on-SEF to swaps not-ITBC as well as ITBC

swaps.

Regarding the ability to aggregate orders into a large single trade, the

Commission expects the rule changes will expand the opportunity to aggregate across

more products and market participants. By removing the $25-million requirement, the

Commission expects to create a more equal and accessible market by allowing the

opportunity to aggregate regardless of the aggregator's size. Extending the aggregation

policy to additional products will allow more equal treatment across products, potentially

reducing an entity's incentive to trade a product because of the differential regulation.

Costs: The Commission recognizes that some market participants could

experience some costs associated with the expanding swap categorization, but views

them as less consequential relative to the benefits described above. As noted by some

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[510] The Commission also recognizes that many SEFs and market participants have already expended resources to implement technological and operational changes needed to avail themselves of the no-action relief under NAL No. 17-60.

commenters, one such potential cost is that traders may find it more difficult to determine

from § 43.6(c)'s expanded lists which category is relevant for their swaps.[511]

Further, there will be operational costs for reporting parties adjusting their

systems, by writing and implementing new code, for instance. The Commission expects

the operational costs of these changes to vary by asset class and the activity level of the

reporting entity, but believes that the more granular bucketing of block categories will

help mitigate costs. Costs may also differ depending on the type of cost. For instance,

the Commission expects market participants specializing in a single swap category to

face smaller operational costs relative to those operating across multiple categories, given

the single-category market participants will likely only need to adjust their operational

systems (where necessary) for a more limited number of categories.

The Commission does not expect the block trade definition amendment will

impose significant costs on market participants. The change does not reduce choices, but

instead provides block trade counterparties with the additional choice of executing block

on SEFs. For counterparties choosing to execute trades on SEFs, there will be no

increase in reporting costs as the existing regulation requires counterparties to report

transactions to a SEF after a block is executed. The final regulation simply allows

counterparties to report the trade to the SEF before it is executed. FCMs will also not

incur greater expenses as they currently use SEFs to conduct pre-trade credit checks.

Finally, SEFs are not expected to incur greater costs processing block trades before

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[511] *See* ISDA-SIFMA at 6, Citadel at 9.

execution than they incur processing block trades after execution as the entire process is automated and already in place.

The Commission expects minimal costs resulting from changes in how market participants aggregate orders into a single large order to obtain block treatment. As this ability is already available to the largest market participants, the Commission expects the new increase in activity will be small relative to current activity. Regardless, any increase due to greater aggregation will result in a reduction of transparency, which can create inhibit price discovery. Moreover, to the extent that some entities, such as asset managers, may encourage trading by their clients in order to have sufficient volume to meet the block threshold, the rule may lead to increased agency issues.

Notwithstanding the potential costs, the Commission believes the substantive changes to §§ 43.4(h), 43.6, and 43.2's definition of block trade change are warranted in light of the anticipated benefits.

Alternatives: Multiple commenters suggest maintaining block and cap levels at the initial-period levels instead of raising them.[512] The primary reason is the expected difficulty executing large trades between the existing 50-percent and new 67-percent block thresholds.[513] This section discusses the cost and benefits of this alternative

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[512] For example, PIMCO "urges the CFTC not to adopt increases to block and cap size, for purposes of real time reporting delays, as these changes would directly and adversely impact liquidity for block products and increase prices for PIMCO's clients." ISDA-SIFMA and Credit Suisse express similar concerns. On the other side, Citadel supports the increase as this "more appropriately balances market transparency and information leakage risks than the current approach" and also "increases harmonization with the EU post-trade transparency framework."

[513] ISDA-SIFMA and PIMCO use the extreme volatility observed at the start of the COVID-19 pandemic to justify current levels and even suggest lower AMBS levels. The Commission believes using this sample to define block and cap thresholds would be a mistake since this is an extreme outlier to historical market activity. The Commission notes the sample used to define block and cap thresholds does include a more reasonable period of elevated volatility, such as during the end of 2018. ISDA-SIFMA further point to the

relative to those of the relevant rules amended herein. This alternative assumes the new

swap categories in § 43.6(c) and cap sizes are maintained at the current initial-period

levels.

Maintaining the existing threshold would, all else being equal, increase the

number of swaps eligible for block delays. For those trades, SDs could find it less

difficult to hedge the exposure created by trading a large swap, with ASATP reporting

and public dissemination no longer required. For example, without a 15-minute delay,

other market participants could potentially anticipate the trades of the SDs who are trying

to hedge their positions and act accordingly to their own advantage (e.g., taking long

positions to eventually resell to the SDs). As multiple commenters suggest, if SDs face

increased difficulties hedging client demands, they could increase the trading costs

offered to clients or, potentially, stop trading in the relevant notional range, which in turn

could contribute to a decrease in liquidity.[514] This in turn could increase price volatility

and the bid-ask spread facing some end-users.

The idea that SDs could experience higher hedging costs if their intentions were

widely known has a long history. Harris (2003), for example, suggests other traders

anticipating SDs hedging trades could result in higher trading costs for SDs.[515] While

none of the comments to the Proposal quantified the magnitude of this effect for swaps,

there is empirical research in other financial markets on the effect of providing some

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significant increase in CDS, which is now no longer an accurate comparison as new option categories have dropped CDXIG from $550mm to $250mm.

[514] PIMCO at 2. Similar concerns were expressed in ICI at 7, Vanguard at 4, SIFMA AMG at 2-4, and ISDA-SIFMA at 5.

[515] Harris, Larry (2003), *Trading and Exchanges: Market Microstructure for Practitioners*. *See also* Brunnermeier, Markus and Lasse Pedersen (2005), "Predatory trading" *J. of Fin*, 60, 825-63, for a theoretical treatment of this analysis.

advantages to SDs in hedging their trades. For example, one study examined the effect of a Canadian regulation that made equity trading more difficult for high-frequency traders (who are often seen as traders who anticipate orders in equity markets).[516] The policy change reduced trading. It also led to a reduction of about 15% in the impact on prices of the trades of large institutional traders, which the authors suggests may be due to the reduction in trading by high-frequency traders. At the same time, the authors found evidence bid-ask spreads rose after the regulatory change, such that execution costs rose for small institutional traders, while falling for larger institutional traders (especially those trading on information), as a result of enhanced protection against front-runners.[517] Similarly, a study of equity trading in Sweden found that high-frequency traders eventually do trade in the direction of informed traders, leading to higher trading costs.[518] Another study found that a London Stock Exchange ("LSE") rule that reduced post-trade transparency led to reduced bid-ask spreads and execution costs on the LSE, especially for illiquid stocks, consistent with the order anticipation hypothesis.[519] Conversely, an older study that looked specifically at changes in the reporting delay afforded to block trades on the LSE found little evidence that delaying the reporting of trade data reduces customers' cost of trading large blocks.[520]

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[516] Korajczyk, Robert and Dermot Murphy (2019) "High-Frequency Market Making to Large Institutional Trades" *Rev. of Fin. Stud.*, 32, 1034-10.

[517] *See id.*

[518] *See* van Kervel, Vincent and Albert Menkveld (2019), "High-Frequency Trading around Large Institutional Orders", *J of Fin.*, 74, 1091-1137.

[519] *See* Friederich, Sylvain, and Richard Payne (2014) "Trading Anonymity and Order Anticipation", *J of Fin Markets*, 21, 1-24.

[520] *See* Gemmill, Gordon (1996), "Transparency and Liquidity: A Study of Block Trades on the London Stock Exchange under Different Publication Rules" *J of Fin*, 51, 1765-1790.

In sum, a certain body of academic literature suggests more information released in some circumstances can negatively impact SDs' hedging costs, and consequently, the prices offered by SDs to large traders. However, the magnitude of these effects in swaps markets is not precisely known. Further, as discussed below, there is an offsetting body of academic literature indicating that, in at least some circumstances, increased transparency lowers trading costs.

The Commission believes maintaining existing block thresholds would reduce transparency in swaps markets by increasing the overall number of trades eligible for block delays and decreasing the number of swaps reported in real time. This would lead to decreased accuracy in the real-time tape.

In the Proposal, the Commission characterized the costs and benefits of changing the cap and blocks thresholds in regard to the potential effects on liquidity of large blocks and on price transparency. The Commission received a number of comments that discussed these liquidity and transparency effects.[521] With respect to transparency, several commenters note the importance of transparency in regard to lowering trading costs, and pointed to a significant body of academic literature that empirically demonstrated this effect.[522] While none of the literature cited by the commenters studied the markets at issue here, they did evaluate a variety of financial markets, and generally found that better price information leads to lower trading costs. Some commenters cite the example of the experiment for analyzing the effect of transparency that was the Trade Reporting and Compliance Engine ("TRACE") program. TRACE required dealers to

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[521] *See, e.g.,* Citadel at 9; GFMA at 7, 10; ICI at 4-5; SIFMA AMG at 6.
[522] MIT at 1-2; Carnegie Mellon at 2-4; SMU at 4-5; and Citadel at 5.

report all bond trades (including price data) to the National Association of Securities

Dealers ("NASD"), and the NASD made prices for a subset of those bonds available to

traders. Three papers in leading finance journals studied the effect of this pricing

information, and all found evidence that the availability of pricing data from TRACE

lowered the costs of trading bonds.[523] Another example of increased transparency

occurred when new reporting requirements came into effect for single-name CDS, and

the authors of a subsequent study found that the enhanced price transparency lowered

trading costs in these markets.[524]

      These studies analyze a change in information-related regulation based on

appropriate data before and after the regulatory change. Without a similar study for

block and cap changes for swaps, the Commission bases its conclusion that greater

transparency will benefit the market on findings in related markets.

      The ideal block size balances the benefits of large size blocks – increased

transparency, price discovery, and swaps market competitiveness with their costs –

increased trading costs for SDs and their customers and less liquidity. After providing

notice to the public of proposed methods, considering public comments and considering

costs and benefits of the proposed and alternative methods, the Commission determined

in 2013 to adopt a 67-percent notional amount calculation method, but to implement a

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[523] Bessembinder, Hendrick, William Maxwell and Kumar Venkataraman (2006) "Market transparency, liquidity externalities, and institutional trading costs in corporate bonds" *J of Fin. Econ.,* 82, 251-288, Edwards, Amy, Larry Harris, and Michael Piwowar (2007) "Corporate Bond Market Transaction Costs and Transparency" *J. of Fin.* 62, 1421-1451, Goldstein, Michael, Edith Hotchkiss, and Eric Sirri (2007), "Transparency and Liquidity: A Controlled Experiment on Corporate Bonds" *The Rev. of Fin. Stud.*, 20, 235–273.
[524] Loon, Yee Cheng, and Zhaodong Ken Zhong (2014), "The impact of central clearing on counterparty risk, liquidity, and trading: Evidence from the credit default swap market," *J. of Fin. Econ.* 112, 91–115.

50-percent notional amount calculation method as a conservative, transitionary level to
allow the market time to adjust before moving to the more appropriate 67-percent
method.

As discussed in Section II.F.4 above, the Commission continues to believe the 67-
percent method provides a better outcome than the 50-percent method as it more
appropriately balances the tradeoff between transparency and hedging costs, among other
issues. The initial conservative threshold resulted in a wide band of swaps receiving
block treatment, to the detriment of transparency, price discovery, and swaps market
competitiveness. The Commission acknowledges, as comment letters discuss, that the
increased transparency caused by the 67-percent method potentially may result in higher
market costs for some market participants and less liquidity. However, the Commission
has not been presented with evidence that the 50-percent notional amount calculation
method is clearly superior to the 67-percent notional amount calculation for AMBS and
the 75-percent notional amount calculation for caps, and the Commission continues to
believe that the 67-percent and 75-percent methods provides a superior balance of the
benefits and costs of blocks and capped notionals.[525] This is particularly true given that
the 67-percent and 75-percent notional calculation methods will be applied in the context
of recalibrated swap categories set out in § 43.6(c)—a factor not taken into account in
comments advocating for the lower-threshold alternative. Applied in the context of the
new swap categories, the Commission believes the 67-percent and 75-percent notional

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[525] The ISDA-SIFMA letter suggests the only reason to raise the threshold is to correct a problem with price discovery and they are not aware of any current problems. This is not a correct interpretation of current part 43. The Commission established requirements to increase block and cap thresholds in 2013 without making them conditional on identifying problems with price discovery.

thresholds will be more responsive to liquidity needs, including through separate option

and non-option CDS categories, adjusting certain CDS block sizes around the roll

months, the expansion of zero-block size categories, and clarifying certain risk reduction

exercises are not publicly reportable swap transactions.

A second alternative advocated in comments relates to risk adjusting notional

values before determining block and cap thresholds (e.g., AGLI and ISDA-SIFMA).

Comments argue that, all else being equal, longer-tenor contracts have more risk-transfer

and the thresholds should reflect those differences. For example, if thresholds are the

same for all tenors of an asset class, the risk transfer of swaps at the threshold value will

be very different across tenors. This is particularly relevant for IRS, where there is

significant variation in tenor and different tenors represent different amounts of risk

transfer.

Although basing block size on DV01 theoretically might be appropriate, the

commenters have not explained how this could be accomplished in practice, nor are the

means for doing so apparent to the Commission. Moreover, the ultimate goal in

establishing thresholds is to focus on liquidity differences across swap categories, not

risk-transfer *per se* (although risk transfer may be a factor influencing liquidity). In

addition, the Commission notes risk adjusting across tenors would imply that thresholds

would be higher for shorter-tenor swaps than longer-tenor ones. For the most part, the

rule reflects this principle, since for IRS, block thresholds are generally decreasing with

tenor.

Conclusion: The Commission is adopting the changes above. Notwithstanding the anticipated costs, the Commission believes this change is warranted in light of the anticipated benefits.

3. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of the amendments to part 43 with respect to the following factors: protection of market participants and the public; efficiency, competitiveness, and financial integrity of markets; price discovery; sound risk management practices; and other public interest considerations.

As discussed above, the amendments to part 43 include changes that reflect what the Commission has learned about the technical aspects of reporting as well as changes that alter categories of swaps. The Commission expects that this, along with the data validation requirements in § 43.3(f), will increase the quality and timeliness of swap transaction and pricing data reported and publicly disseminated pursuant to part 43.

a. Protection of Market Participants and the Public

The Commission believes by enhancing transparency, the reporting requirements empower market participants by informing them, in real-time, about the trade prices of a broad set of swap products. This real-time information helps protect these participants from transacting at prices significantly different from the prevailing market. In addition, the Commission believes enhanced transparency allows for better monitoring of the quantity and size of market transactions, leading to improved protection of market participants and the public. As discussed above, several of the changes increase transparency, such as improvements in how swap categories are defined and

improvements in reported data. However, these same changes at times may make it more

expensive for SDs to hedge large positions they acquire, thereby increasing hedging costs

for trades within certain size ranges.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

Real-time reporting of transactions affects the efficiency of markets by quickly

providing new information to all market participants in a standardized manner. This real-

time information, which is publicly accessible, allows prices to rapidly and efficiently

adjust to the prevailing trading conditions. To the extent that these Final Rules reduce the

cost of information gathering and processing, as the Commission expects, market

efficiency should be improved.

Improvements to real-time reporting may also enhance competition, as market

participants may learn about the prices and venues where potential counterparties are

executing their transactions. As such, swaps markets may become more competitive

because parties will have better access to the prices where most participants are

transacting and will be able to use this information to make their own trading decisions.

The Final Rules, through their effects on transparency, are also designed to

positively impact the financial integrity of markets, because market participants can

verify that they are transacting at or near prevailing market prices. In addition to

transparency, the Commission expects changes to part 43 are likely to positively affect

financial integrity in other ways. In particular, the Commission believes that more

accurate swap transaction and pricing data will lead to greater understanding of liquidity

and market depth for market participants executing swap transactions. Also, changes

improving part 43 swap transaction and pricing data for the public will expand the ability

of market participants to monitor real-time activity by other participants and to respond

appropriately.

c. Price Discovery

Section 2(a)(13) of the CEA and the Commission's existing regulations in part 43

implementing CEA section 2(a)(13) require swap transaction and pricing data to be made

available to the public in real time. The Commission believes inaccurate and incomplete

swap transaction and pricing data hinders the use of the swap transaction and pricing

data, which harms transparency and price discovery. The Commission expects market

participants will be better able to analyze swap transaction and pricing data as a result of

the finalized amendments, because the amendments will make swap transaction and

pricing data more accurate and complete. The Commission also expects price discovery

to be improved by avoiding duplicative reporting of mirror swaps.

One aspect of the final regulations does hold some potential to dampen price

discovery relative to the status quo to a limited degree. Specifically, if § 43.4(a)(4)

encourages more PPSs, then this may also reduce price discovery because fewer trades

would have prices that are known at the time of execution. But countering this, as noted

above, removing mirror swaps from public reporting could remove redundancy false

impressions of market activity, thereby promoting the accuracy of the data.

d. Sound Risk Management Practices

The rule changes promulgated here will have a variety of effects on risk

management practices. The effect of increasing the threshold for block determinations

will result in more rapid dissemination of trade data for trades within specific size ranges.

As discussed above, some commenters note that this change may make it more expensive

for SDs to manage the risk they take on when accommodating customer trades.[526] If SDs

face increased difficulties to hedge client demands, then the SDs may increase the trading

costs offered to clients or, potentially, stop trading in the notional range, which in turn

can contribute to a decrease in liquidity.[527] These effects may inhibit sound risk

management by SDs and their clients, respectively.

Conversely, to the extent the final regulations result in more price transparency

for the reasons discussed above, it is likely that trading costs will fall for some swaps,

particularly smaller-sized swaps. This effect will enable some market participants to

more readily hedge their inherent risk, and thereby improve risk management.

e. Other Public Interest Considerations

More accurate swap transaction and pricing data would be helpful to researchers

who may use the data to improve the public's understanding of how swap markets

function with respect to market participants, other financial markets, and the overall

economy. Higher-quality data would also likely improve the Commission's regulatory

oversight and enforcement capabilities.

D.   *Antitrust Considerations*

Section 15(b) of the CEA requires the Commission to take into consideration the

public interest to be protected by the antitrust laws and to endeavor to take the least

anticompetitive means of achieving the objectives of the CEA, in issuing any order or

adopting any Commission rule or regulation.

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[526] *See, e.g.,* ISDA-SIFMA at 2.
[527] *See, e.g.*, SIFMA AMG at 3-4; PIMCO at 2-4.

The Commission does not believe that the amendments to part 43 will result in anti-competitive behavior. The Commission did not receive any comments on the antitrust considerations in the Proposal.

VI. Text of the Final Rules

List of Subjects

17 CFR Part 43

Real-time public swap reporting

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 43 as set forth below:

PART 43 – REAL-TIME PUBLIC REPORTING

1. The authority citation for part 43 continues to read as follows:

Authority: 7 U.S.C. 2(a), 12a(5), and 24a, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010), unless otherwise noted.

2. Amend § 43.1 by removing paragraphs (b) and (d), re-designating paragraph (c) as (b), and revising newly re-designated paragraph (b).

The revision reads as follows:

§ 43.1 Purpose, scope, and rules of construction.

* * * * *

(b) *Rules of construction.* The examples in this part are not exclusive. Compliance with a particular example or application of a sample clause, to the extent

applicable, shall constitute compliance with the particular portion of the rule to which the example relates.

3.   Revise § 43.2 to read as follows:

§ 43.2 Definitions.

(a) *Definitions*. As used in this part:

Appropriate minimum block size means the minimum notional or principal amount for a category of swaps that qualifies a swap within such category as a block trade or large notional off-facility swap.

As soon as technologically practicable means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.

Asset class means a broad category of commodities including, without limitation, any "excluded commodity" as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

Block trade means a publicly reportable swap transaction that:

(1) Involves a swap that is listed on a swap execution facility or designated contract market;

(2) Is executed on a swap execution facility's trading system or platform that is not an order book as defined in § 37.3(a)(3) of this chapter, or occurs away from the swap execution facility's or designated contract market's trading system or platform and is

executed pursuant to the swap execution facility's or designated contract market's rules and procedures;

(3) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and

(4) Is reported subject to the rules and procedures of the swap execution facility or designated contract market and the rules described in this part, including the appropriate time delay requirements set forth in §43.5 of this part.

Business day means the twenty-four hour day, on all days except Saturdays, Sundays and legal holidays, in the location of the reporting party or registered entity reporting data for the swap.

Business hours means the consecutive hours of one or more consecutive business days.

Cap size means, for each swap category, the maximum notional or principal amount of a publicly reportable swap transaction that is publicly disseminated.

Economically related means a direct or indirect reference to the same commodity at the same delivery location or locations, or with the same or a substantially similar cash market price series.

Embedded option means any right, but not an obligation, provided to one party of a swap by the other party to the swap that provides the party holding the option with the ability to change any one or more of the economic terms of the swap.

Execution means an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms under applicable law.

Execution date means the date of execution of a particular swap.

Futures-related swap means a swap (as defined in section 1a(47) of the Act and as further defined by the Commission in implementing regulations) that is economically related to a futures contract.

Large notional off-facility swap means an off-facility swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such publicly reportable swap transaction and is not a block trade as defined in §43.2 of the Commission's regulations.

Major currencies means the currencies, and the cross-rates between the currencies, of Australia, Canada, Denmark, New Zealand, Norway, South Africa, South Korea, Sweden, and Switzerland.

Mirror swap means a swap:

(1) To which (i) a prime broker is a counterparty or (ii) both counterparties are prime brokers;

(2) That is executed contemporaneously with a corresponding trigger swap;

(3) That has identical terms and pricing as the contemporaneously executed trigger swap (except (i) that a mirror swap, but not the corresponding trigger swap, may include any associated prime brokerage service fees agreed to by the parties and (ii) as provided in paragraph (5) of this "mirror swap" definition);

(4) With respect to which the sole price forming event is the occurrence of the contemporaneously executed trigger swap; and

(5) The execution of which is contingent on, or is triggered by, the execution of the contemporaneously executed trigger swap. The contractually agreed payments and

delivery amounts under a mirror swap may differ from those amounts of the corresponding trigger swap if:

(i) under all such mirror swaps to which the prime broker that is a counterparty to the trigger swap is also a counterparty, the aggregate contractually agreed payments and delivery amounts shall be equal to the aggregate of the contractually agreed payments and delivery amounts under the corresponding trigger swap; and

(ii) the market risk and contractually agreed payments and delivery amounts of all such mirror swaps to which a prime broker that is not a counterparty to the corresponding trigger swap is a party will offset each other, resulting in such prime broker having a flat market risk position at the execution of such mirror swaps.

Non-major currencies means all other currencies that are not super-major currencies or major currencies.

Novation means the process by which a party to a swap legally transfers all or part of its rights, liabilities, duties, and obligations under the swap to a new legal party other than the counterparty to the swap under applicable law.

Off-facility swap means any swap transaction that is not executed on or pursuant to the rules of a swap execution facility or designated contract market.

Other commodity means any commodity that is not categorized in the interest rate, credit, foreign exchange, equity, or other asset classes as may be determined by the Commission.

Physical commodity swap means a swap in the other commodity asset class that is based on a tangible commodity.

Post-priced swap means an off-facility swap for which the price is not determined as of the time of execution.

Pricing event means the completion of the negotiation of the material economic terms and pricing of a trigger swap.

Prime broker means, with respect to a mirror swap and its related trigger swap, a swap dealer acting in the capacity of a prime broker with respect to such swaps.

Prime brokerage agency arrangement means an arrangement pursuant to which a prime broker authorizes one of its clients, acting as agent for such prime broker, to cause the execution of a prime broker swap.

Prime brokerage agent means a client of a prime broker who causes the execution of one or more prime broker swap(s) acting pursuant to a prime brokerage agency arrangement.

Prime broker swap means any swap to which a swap dealer acting in the capacity as prime broker is a party.

Public dissemination and publicly disseminate means to make freely available and readily accessible to the public swap transaction and pricing data in a non-discriminatory manner, through the internet or other electronic data feed that is widely published. Such public dissemination shall be made in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved, and analyzed.

Publicly reportable swap transaction means:

(1) Unless otherwise provided in this part—

(i) Any executed swap that is an arm's-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or

(ii) Any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap.

(2) Examples of executed swaps that do not fall within the definition of publicly reportable swap may include:

(i) Internal swaps between one-hundred percent owned subsidiaries of the same parent entity;

(ii) Portfolio compression exercises; and

(iii) Swaps entered into by a derivatives clearing organization as part of managing the default of a clearing member.

(3) These examples represent swaps that are not at arm's length and thus are not publicly reportable swap transactions, notwithstanding that they do result in a corresponding change in the market risk position between two parties.

Reference price means a floating price series (including derivatives contract prices and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of a swap contract.

Reporting counterparty means the party to a swap with the duty to report a publicly reportable swap transaction in accordance with this part and section 2(a)(13)(F) of the Act.

Super-major currencies means the currencies of the European Monetary Union, Japan, the United Kingdom, and United States.

Swap execution facility means a trading system or platform that is a swap execution facility as defined in CEA section 1a(50) and in § 1.3 of this chapter and that is registered with the Commission pursuant to CEA section 5h and part 37 of this chapter.

Swap transaction and pricing data means all data elements for a swap in appendix A of this part that are required to be reported or publicly disseminated pursuant to this part.

Swaps with composite reference prices means swaps based on reference prices that are composed of more than one reference price from more than one swap category.

Trigger swap means a swap:

(1) That is executed pursuant to one or more prime brokerage agency arrangements;

(2) To which one counterparty or both counterparties are prime brokers;

(3) That serves as the contingency for, or triggers, the execution of one or more corresponding mirror swaps; and

(4) That is a publicly reportable swap transaction that is required to be reported to a swap data repository pursuant to this part and part 45 of this chapter. A prime broker swap executed on or pursuant to the rules of a swap execution facility or designated contract market shall be treated as the trigger swap for purposes of this part.

Trimmed data set means a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of 10, computing the mean, and excluding transactions that are beyond two standard deviations above the mean for the other commodity asset class and three standard deviations above the mean for all other asset classes.

(b) *Other defined terms*. Terms not defined in this part have the meanings

assigned to the terms in § 1.3 of this chapter.

4.   Amend § 43.3 by revising paragraphs (a) through (d), removing paragraph (h), re-

designating paragraph (i) as paragraph (g), and revising paragraph (f) and newly re-

designated paragraph (g).

       The revisions read as follows:

§ 43.3 Method and timing for real-time public reporting.

       (a) *Responsibilities to report swap transaction and pricing data in real-time*—(1)

In general. The reporting counterparty, swap execution facility, or designated contract

market responsible for reporting a swap as determined by this section shall report the

publicly reportable swap transaction to a swap data repository as soon as technologically

practicable after execution, subject to paragraphs (a)(2) through (6) of this section. Such

reporting shall be done in the manner set forth in paragraph (d) of this section.

       (2) *Swaps executed on or pursuant to the rules of a swap execution facility or*

designated contract market. For each swap executed on or pursuant to the rules of a

swap execution facility or designated contract market, the swap execution facility or

designated contract market shall report swap transaction and pricing data to a swap data

repository as soon as technologically practicable after execution.

       (3) *Off-facility swaps.* Except as otherwise provided in paragraphs (a)(4) through

(6) of this section, a reporting counterparty shall report all publicly reportable swap

transactions that are off-facility swaps to a swap data repository for the appropriate asset

class in accordance with the rules set forth in this part as soon as technologically

practicable after execution. Unless otherwise agreed to by the parties prior to execution, the following shall be the reporting counterparty for a publicly reportable swap transaction that is an off-facility swap:

(i) If only one party is a swap dealer or major swap participant, then the swap dealer or major swap participant shall be the reporting counterparty;

(ii) If one party is a swap dealer and the other party is a major swap participant, then the swap dealer shall be the reporting counterparty;

(iii) If both parties are swap dealers, then the swap dealers shall designate which party shall be the reporting counterparty prior to execution of such swap;

(iv) If both parties are major swap participants, then the major swap participants shall designate which party shall be the reporting counterparty prior to execution of such swap; and

(v) If neither party is a swap dealer or a major swap participant, then the parties shall designate which party shall be the reporting counterparty prior to execution of such swap.

(4) *Post-priced swaps*—(i) *Post-priced swaps reporting delays.* The reporting counterparty may delay reporting a post-priced swap to a swap data repository until the earlier of the price being determined and 11:59:59 pm eastern time on the execution date. If the price of a publicly reportable swap transaction that is a post-priced swap is not determined by 11:59:59 pm eastern time on the execution date, the reporting counterparty shall report to a swap data repository by 11:59:59 pm eastern time on the execution date all swap transaction and pricing data for such post-priced swap other than the price and any other then-undetermined swap transaction and pricing data and shall report each such

item of previously undetermined swap transaction and pricing data as soon as technologically practicable after such item is determined.

(ii) *Other economic terms.* The post-priced swap reporting delay set forth in paragraph (a)(4)(i) of this section does not apply to publicly reportable swap transactions with respect to which the price is known at execution, but one or more other economic or other terms are not yet known at the time of execution.

(5) *Clearing swaps.* Notwithstanding the provisions of paragraphs (a)(1) through (3) of this section, if a clearing swap, as defined in § 45.1(a) of this chapter, is a publicly reportable swap transaction, the derivatives clearing organization that is a party to such swap shall be the reporting counterparty and shall fulfill all reporting counterparty obligations for such swap as soon as technologically practicable after execution.

(6) *Prime Broker swaps.* (i) A mirror swap is not a publicly reportable swap transaction. Execution of a trigger swap, for purposes of determining when execution occurs under paragraphs (a)(1) through (3) of this section, shall be deemed to occur at the time of the pricing event for such trigger swap.

(ii) With respect to a given set of swaps, if it is unclear which is, or are the mirror swap(s) and which is the related trigger swap (including, but not limited to, situations where there is more than one prime broker counterparty within such set of swaps and situations where the pricing event for each set of swaps occurs between prime brokerage agents of a common prime broker), or if under the prime brokerage agency arrangement, the trigger swap would occur between two prime brokers, the prime broker(s) shall determine which of the prime broker swaps shall be treated as the trigger swap and which are mirror swaps.

(iii) Trigger swaps shall be reported in accordance with the following:

(A)   Trigger swaps executed on or pursuant to the rules of a swap execution facility or designated contract market shall be reported pursuant to paragraph (a)(2) of this section; and

(B)   Off-facility trigger swaps shall be reported pursuant to paragraph (a)(3) of this section, except that if a counterparty to a trigger swap is a swap dealer that is not a prime broker with respect to that trigger swap, then that swap dealer counterparty shall be the reporting counterparty for the trigger swap.

(7) *Third-party facilitation of data reporting.* Any person required by this part to report swap transaction and pricing data, while remaining fully responsible for reporting as required by this part, may contract with a third-party service provider to facilitate reporting.

(b) *Public dissemination of swap transaction and pricing data by swap data repositories in real-time*—(1) *In general.* A swap data repository shall publicly disseminate swap transaction and pricing data as soon as technologically practicable after such data is received from a swap execution facility, designated contract market, or reporting counterparty, unless such swap transaction and pricing data is subject to a time delay described in § 43.5, in which case the swap transaction and pricing data shall be publicly disseminated in the manner described in § 43.5.

(2) *Compliance with 17 CFR part 49.* Any swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall comply with part 49 of this chapter.

(3) *Prohibitions on disclosure of data.* (i) If there is a swap data repository for an asset class, a swap execution facility or designated contract market shall not disclose swap transaction and pricing data relating to publicly reportable swap transactions in such asset class, prior to the public dissemination of such data by a swap data repository unless:

(A) Such disclosure is made no earlier than the transmittal of such data to a swap data repository for public dissemination;

(B) Such disclosure is only made to market participants on such swap execution facility or designated contract market;

(C) Market participants are provided advance notice of such disclosure; and

(D) Any such disclosure by the swap execution facility or designated contract market is non-discriminatory.

(ii) If there is a swap data repository for an asset class, a swap dealer or major swap participant shall not disclose swap transaction and pricing data relating to publicly reportable swap transactions in such asset class, prior to the public dissemination of such data by a swap data repository unless:

(A) Such disclosure is made no earlier than the transmittal of such data to a swap data repository for public dissemination;

(B) Such disclosure is only made to the customer base of such swap dealer or major swap participant, including parties who maintain accounts with or have been swap counterparties with such swap dealer or major swap participant;

(C) Swap counterparties are provided advance notice of such disclosure; and

(D) Any such disclosure by the swap dealer or major swap participant is non-

discriminatory.

(4) *Acceptance and public dissemination of all swaps in an asset class.* Any swap

data repository that accepts and publicly disseminates swap transaction and pricing data

in real-time for swaps in its selected asset class shall accept and publicly disseminate

swap transaction and pricing data in real-time for all publicly reportable swap

transactions within such asset class, unless otherwise prescribed by the Commission.

(5) *Annual independent review.* Any swap data repository that accepts and

publicly disseminates swap transaction and pricing data in real-time shall perform, on an

annual basis, an independent review in accordance with established audit procedures and

standards of the swap data repository's security and other system controls for the purpose

of ensuring compliance with the requirements in this part.

(c) *Availability of swap transaction and pricing data to the public.* (1) Swap data

repositories shall make swap transaction and pricing data available on their websites for a

period of time that is at least one year after the initial public dissemination of such data

and shall make instructions freely available on their websites on how to download, save,

and search such data.

(2) Swap transaction and pricing data that is publicly disseminated pursuant to

this paragraph shall be made available free of charge.

(d) *Data reported to swap data repositories.* (1) In reporting swap transaction and

pricing data to a swap data repository, each reporting counterparty, swap execution

facility, or designated contract market shall report the swap transaction and pricing data

as described in the elements in appendix A of this part in the form and manner provided

in the technical specification published by the Commission pursuant to § 43.7.

(2) In reporting swap transaction and pricing data to a swap data repository, each

reporting counterparty, swap execution facility, or designated contract market making

such report shall satisfy the data validation procedures of the swap data repository.

(3) In reporting swap transaction and pricing data to a swap data repository, each

reporting counterparty, swap execution facility, or designated contract market shall use

the facilities, methods, or data standards provided or required by the swap data repository

to which the entity or reporting counterparty reports the data.

* * * * *

(f) *Data Validation Acceptance Message.* (1) A swap data repository shall

validate each swap transaction and pricing data report submitted to the swap data

repository and notify the reporting counterparty, swap execution facility, or designated

contract market submitting the report whether the report satisfied the data validation

procedures of the swap data repository as soon as technologically practicable after

accepting the swap transaction and pricing data report. A swap data repository may

satisfy the requirements of this paragraph by making available data validation acceptance

messages as required by § 49.10 of this chapter.

(2) If a swap transaction and pricing data report submitted to a swap data

repository does not satisfy the data validation procedures of the swap data repository, the

reporting counterparty, swap execution facility, or designated contract market required to

submit the report has not satisfied its obligation to report swap transaction and pricing

data in the manner provided by paragraph (d) of this section. The reporting counterparty,

swap execution facility, or designated contract market has not satisfied its obligation until

it submits the swap transaction and pricing data report in the manner provided by

paragraph (d) of this section, which includes the requirement to satisfy the data validation

procedures of the swap data repository.

(g) *Fees.* Any fee or charge assessed on a reporting counterparty, swap execution

facility, or designated contract market by a swap data repository that accepts and publicly

disseminates swap transaction and pricing data in real-time for the collection of such data

shall be equitable and non-discriminatory. If such swap data repository allows a fee

discount based on the volume of data reported to it for public dissemination, then such

discount shall be made available to all reporting counterparties, swap execution facilities,

and designated contract markets in an equitable and non-discriminatory manner.

5.   Revise § 43.4 to read as follows:

§ 43.4 Swap transaction and pricing data to be publicly disseminated in real-time.

(a) *Public dissemination of data fields.* Any swap data repository that accepts and

publicly disseminates swap transaction and pricing data in real-time shall publicly

disseminate the information described in appendix A of this part for the swap transaction

and pricing data, as applicable, in the form and manner provided in the technical

specification published by the Commission pursuant to § 43.7.

(b) *Additional swap information.* A swap data repository that accepts and publicly

disseminates swap transaction and pricing data in real-time may require reporting

counterparties, swap execution facilities, and designated contract markets to report to

such swap data repository information that is necessary to compare the swap transaction

and pricing data that was publicly disseminated in real-time to the data reported to a swap

data repository pursuant to section 2(a)(13)(G) of the Act or to confirm that parties to a

swap have reported in a timely manner pursuant to § 43.3. Such additional information

shall not be publicly disseminated by the swap data repository.

(c) *Anonymity of the parties to a publicly reportable swap transaction*—(1) *In*

general. Swap transaction and pricing data that is publicly disseminated in real-time

shall not disclose the identities of the parties to the swap or otherwise facilitate the

identification of a party to a swap. A swap data repository that accepts and publicly

disseminates swap transaction and pricing data in real-time shall not publicly disseminate

such data in a manner that discloses or otherwise facilitates the identification of a party to

a swap.

(2) *Actual product description reported to swap data repository.* Reporting

counterparties, swap execution facilities, and designated contract markets shall provide a

swap data repository with swap transaction and pricing data that includes an actual

description of the underlying asset(s). This requirement is separate from the requirement

that a reporting counterparty, swap execution facility, or designated contract market shall

report swap data to a swap data repository pursuant to section 2(a)(13)(G) of the Act and

the Commission's regulations.

(3) *Public dissemination of the actual description of underlying asset(s).*

Notwithstanding the anonymity protection for certain swaps in the other commodity asset

class in paragraph (c)(4) of this section, a swap data repository shall publicly disseminate

the actual underlying asset(s) of all publicly reportable swap transactions in the interest

rate, credit, equity, and foreign exchange asset classes.

(4) *Public dissemination of the underlying asset(s) for certain swaps in the other commodity asset class.* A swap data repository shall publicly disseminate swap transaction and pricing data in the other commodity asset class as described in this subsection.

(i) A swap data repository shall publicly disseminate swap transaction and pricing data for publicly reportable swap transactions in the other commodity asset class in the manner described in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section.

(ii) The actual underlying asset(s) shall be publicly disseminated for the following publicly reportable swap transactions in the other commodity asset class:

(A) Any publicly reportable swap transaction that references one of the contracts described in appendix B to this part;

(B) Any publicly reportable swap transaction that is economically related to one of the contracts described in appendix B of this part; or

(C) Any publicly reportable swap transaction executed on or pursuant to the rules of a swap execution facility or designated contract market.

(iii) The underlying assets of swaps in the other commodity asset class that are not described in paragraph (c)(4)(ii) of this section shall be publicly disseminated by limiting the geographic detail of the underlying asset(s). The identification of any specific delivery point or pricing point associated with the underlying asset of such other commodity swap shall be publicly disseminated pursuant to appendix E of this part.

(d) *Reporting of notional or principal amounts to a swap data repository*—(1) *Off-facility swaps.* The reporting counterparty shall report the actual notional or principal

amount of any publicly reportable swap transaction that is an off-facility swap to a swap

data repository that accepts and publicly disseminates such data pursuant to this part.

(2) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* (i) A swap execution facility or designated contract market shall report the actual notional or principal amount for all swaps executed on or pursuant to the rules of such swap execution facility or designated contract market to a swap data repository that accepts and publicly disseminates such data pursuant to this part.

(ii) The actual notional or principal amount for any block trade executed on or pursuant to the rules of a swap execution facility or designated contract market shall be reported to the swap execution facility or designated contract market pursuant to the rules of the swap execution facility of designated contract market.

(e) *Public dissemination of notional or principal amounts.* The notional or principal amount of a publicly reportable swap transaction shall be publicly disseminated by a swap data repository subject to rounding as set forth in paragraph (f) of this section, and the cap size as set forth in paragraph (g) of this section.

(f) *Process to determine appropriate rounded notional or principal amounts.* (1) If the notional or principal amount is less than one thousand, round to nearest five, but in no case shall a publicly disseminated notional or principal amount be less than five;

(2) If the notional or principal amount is less than 10 thousand but equal to or greater than one thousand, round to nearest one hundred;

(3) If the notional or principal amount is less than 100 thousand but equal to or greater than 10 thousand, round to nearest one thousand;

(4) If the notional or principal amount is less than one million but equal to or greater than 100 thousand, round to nearest 10 thousand;

(5) If the notional or principal amount is less than 100 million but equal to or greater than one million, round to the nearest one million;

(6) If the notional or principal amount is less than 500 million but equal to or greater than 100 million, round to the nearest 10 million;

(7) If the notional or principal amount is less than one billion but equal to or greater than 500 million, round to the nearest 50 million;

(8) If the notional or principal amount is less than 100 billion but equal to or greater than one billion, round to the nearest 100 million;

(9) If the notional or principal amount is equal to or greater than 100 billion, round to the nearest 10 billion.

(g) *Initial cap sizes.* Prior to the effective date of a Commission determination to establish an applicable post-initial cap size for a swap category as determined pursuant to paragraph (h) of this section, the initial cap sizes for each swap category shall be equal to the greater of the initial appropriate minimum block size for the respective swap category in appendix F of this part or the respective cap sizes in paragraphs (g)(1)(i) through (g)(1)(v) of this section. If appendix F of this part does not provide an initial appropriate minimum block size for a particular swap category, the initial cap size for such swap category shall be equal to the appropriate cap size as set forth in paragraphs (g)(1)(i) through (g)(1)(v) of this section.—

(i) For swaps in the interest rate asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be:

(A) USD 250 million for swaps with a tenor greater than zero up to and including two years;

(B) USD 100 million for swaps with a tenor greater than two years up to and including ten years; and

(C) USD 75 million for swaps with a tenor greater than ten years.

(ii) For swaps in the credit asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 100 million.

(iii) For swaps in the equity asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 250 million.

(iv) For swaps in the foreign exchange asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 250 million.

(v) For swaps in the other commodity asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 25 million.

(h) *Post-initial cap sizes.*

(1) The Commission shall establish, by swap categories, the cap sizes as described in paragraphs (h)(2)-(8) of this section.

(2) The Commission shall determine the cap sizes for the swap categories described in paragraphs (c)(1)(i), (c)(2)(i)-(xii), (c)(4)(i), and (c)(5)(i) of § 43.6 by utilizing reliable data collected by swap data repositories, as determined by the Commission, based on paragraphs (h)(2)(i) and (h)(2)(ii) of this section. If the Commission is unable to determine a cap size for any swap category described in §

43.6(c)(1)(i), the Commission shall assign a cap size of USD 100 million to such

category.

(i) A one-year window of swap transaction and pricing data corresponding to each

relevant swap category recalculated no less than once each calendar year; and

(ii) The 75-percent notional amount calculation described in §43.6(c)(2).

(3) The Commission shall determine the cap size for a swap category in the

foreign exchange asset class described in § 43.6(c)(4)(ii) as the lower of the notional

amount of either currency's cap size for the swap category described in § 43.6(c)(4)(i).

(4) All swaps or instruments in the swap category described in § 43.6(c)(1)(ii)

shall have a cap size of USD 100 million.

(5) All swaps or instruments in the swap category described in § 43.6(c)(2)(xiii)

shall have a cap size of USD 400 million.

(6) All swaps or instruments in the swap category described in § 43.6(c)(3) shall

have a cap size of USD 250 million.

(7) All swaps or instruments in the swap category described in § 43.6(c)(4)(iii)

shall have a cap size of USD 150 million.

(8) All swaps or instruments in the swap category described in § 43.6(c)(5)(ii)

shall have a cap size of USD 100 million.

(9) *Commission publication of post-initial cap sizes.* The Commission shall

publish post-initial cap sizes on its Web site at *http://www.cftc.gov*.

(10) *Effective date of post-initial cap sizes.* Unless otherwise indicated on the

Commission's Web site, the post-initial cap sizes shall be effective on the first day of the

second month following the date of publication of the revised cap size.

6.   Revise § 43.5 to read as follows:

§ 43.5 Time delays for public dissemination of swap transaction and pricing data.

(a) *In general.* The time delay for the real-time public reporting of a block trade or large notional off-facility swap begins upon execution, as defined in §43.2 of this part. It is the responsibility of the swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time to ensure that the block trade or large notional off-facility swap transaction and pricing data is publicly disseminated pursuant to this part upon the expiration of the appropriate time delay described in §43.5(d) through (h).

(b) *Public dissemination of publicly reportable swap transactions subject to a time delay.* A swap data repository shall publicly disseminate swap transaction and pricing data that is subject to a time delay pursuant to this paragraph, as follows:

(1) No later than the prescribed time delay period described in this paragraph;

(2) No sooner than the prescribed time delay period described in this paragraph; and

(3) Precisely upon the expiration of the time delay period described in this paragraph.

(c) *Reserved.*

(d) *Time delay for block trades executed on or pursuant to the rules of a swap execution facility or designated contract market.* Any block trade that is executed on or pursuant to the rules of a swap execution facility or designated contract market shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

(1) *Reserved.*

(2) The time delay for public dissemination of swap transaction and pricing data for all publicly reportable swap transactions described in §43.5(d) shall be 15 minutes immediately after execution of such publicly reportable swap transaction.

(e) *Time delay for large notional off-facility swaps subject to the mandatory clearing requirement—*

(1) *In general.* This subsection shall not apply to off-facility swaps that are excepted from the mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations, and this subsection shall not apply to those swaps that are required to be cleared under Section 2(h)(2) of the Act and Commission regulations but are not cleared.

(2) *Swaps subject to the mandatory clearing requirement where at least one party is a swap dealer or major swap participant.* Any large notional off-facility swap that is subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act and Commission regulations, in which at least one party is a swap dealer or major swap participant, shall receive a time delay as follows:

 (i) *Reserved.*

 (ii) The time delay for public dissemination of swap transaction and pricing data for all swaps described in §43.5(e)(2) shall be 15 minutes immediately after execution of such swap.

(3) *Swaps subject to the mandatory clearing requirement where neither party is a swap dealer or major swap participant.* Any large notional off-facility swap that is subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act and

Commission regulations, in which neither party is a swap dealer or major swap participant, shall receive a time delay as follows:

 (i) *Reserved.*

 (ii) *Reserved.*

 (iii) The time delay for public dissemination of swap transaction and pricing data for all swaps described in §43.5(e)(3) shall be one hour immediately after execution of such swap.

 (f) *Time delay for large notional off-facility swaps in the interest rate, credit, foreign exchange or equity asset classes not subject to the mandatory clearing requirement with at least one swap dealer or major swap participant counterparty.* Any large notional off-facility swap in the interest rate, credit, foreign exchange or equity asset classes where at least one party is a swap dealer or major swap participant, that is not subject to the mandatory clearing requirement or is excepted from such mandatory clearing requirement, shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

 (1) *Reserved.*

 (2) *Reserved.*

 (3) The time delay for public dissemination of swap transaction and pricing data for all swaps described in §43.5(f) shall be 30 minutes immediately after execution of such swap.

 (g) *Time delay for large notional off-facility swaps in the other commodity asset class not subject to the mandatory clearing requirement with at least one swap dealer or major swap participant counterparty.* Any large notional off-facility swap in the other

commodity asset class where at least one party is a swap dealer or major swap

participant, that is not subject to the mandatory clearing requirement or is exempt from

such mandatory clearing requirement, shall receive a time delay in the public

dissemination of swap transaction and pricing data as follows:

(1) *Reserved.*

(2) *Reserved.*

(3) The time delay for public dissemination of swap transaction and pricing data for

all swaps described in §43.5(g) shall be two hours after the execution of such swap.

(h) *Time delay for large notional off-facility swaps in all asset classes not subject to*

the mandatory clearing requirement in which neither counterparty is a swap dealer or a

major swap participant. Any large notional off-facility swap in which neither party is a

swap dealer or a major swap participant, which is not subject to the mandatory clearing

requirement or is exempt from such mandatory clearing requirement, shall receive a time

delay in the public dissemination of swap transaction and pricing data as follows:

(1) *Reserved.*

(2) *Reserved.*

(3) The time delay for public dissemination transaction and pricing data for all

swaps described in §43.5(h) shall be 24 business hours immediately after the execution of

such swap.

6.   Revise § 43.6 to read as follows:

§ 43.6 Block trades and large notional off-facility swaps.

(a) *Commission determination*. The Commission shall establish the appropriate minimum block size for publicly reportable swap transactions based on the swap categories set forth in paragraphs (b) and (c) of this section in accordance with the provisions set forth in paragraphs (d), (e), (f), (g) or (h) of this section, as applicable.

(b) *Initial swap categories*. Swap categories shall be established for all swaps, by asset class, in the following manner:

(1) Interest rates asset class. Interest rate asset class swap categories shall be based on unique combinations of the following:

(i) Currency by:

(A) Super-major currency;

(B) Major currency; or

(C) Non-major currency; and

(ii) Tenor of swap as follows:

(A) Zero to 46 days;

(B) Greater than 46 days to three months (47 to 107 days);

(C) Greater than three months to six months (108 to 198 days);

(D) Greater than six months to one year (199 to 381 days);

(E) Greater than one to two years (382 to 746 days);

(F) Greater than two to five years (747 to 1,842 days);

(G) Greater than five to ten years (1,843 to 3,668 days);

(H) Greater than ten to 30 years (3,669 to 10,973 days); or

(I) Greater than 30 years (10,974 days and above).

(2) Credit asset class. Credit asset class swap categories shall be based on unique combinations of the following:

(i) Traded Spread rounded to the nearest basis point (0.01) as follows:

(A) 0 to 175 points;

(B) 176 to 350 points; or

(C) 351 points and above;

(ii) Tenor of swap as follows:

(A) Zero to two years (0-746 days);

(B) Greater than two to four years (747-1,476 days);

(C) Greater than four to six years (1,477-2,207 days);

(D) Greater than six to eight-and-a-half years (2,208-3,120 days);

(E) Greater than eight-and-a-half to 12.5 years (3,121-4,581 days); and

(F) Greater than 12.5 years (4,582 days and above).

(3) Equity asset class. There shall be one swap category consisting of all swaps in the equity asset class.

(4) Foreign exchange asset class. Swap categories in the foreign exchange asset class shall be grouped as follows:

(i) By the unique currency combinations of one super-major currency paired with one of the following:

(A) Another super major currency;

(B) A major currency; or

(C) A currency of Brazil, China, Czech Republic, Hungary, Israel, Mexico, Poland, Russia, and Turkey; or

(ii) By unique currency combinations not included in paragraph (b)(4)(i) of this section.

(5) Other commodity asset class. Swap contracts in the other commodity asset class shall be grouped into swap categories as follows:

(i) For swaps that are economically related to contracts in appendix B of this part, by the relevant contract as referenced in appendix B of this part; or

(ii) For swaps that are not economically related to contracts in appendix B of this part, by the following futures-related swaps -

(A) CME Cheese;

(B) CBOT Distillers' Dried Grain;

(C) CBOT Dow Jones-UBS Commodity Index;

(D) CBOT Ethanol;

(E) CME Frost Index;

(F) CME Goldman Sachs Commodity Index (GSCI), (GSCI Excess Return Index);

(G) NYMEX Gulf Coast Sour Crude Oil;

(H) CME Hurricane Index;

(I) CME Rainfall Index;

(J) CME Snowfall Index;

(K) CME Temperature Index;

(L) CME U.S. Dollar Cash Settled Crude Palm Oil; or

(iii) For swaps that are not covered in paragraphs (b)(5)(i) and (b)(5)(ii) of this section, the relevant product type as referenced in appendix D of this part.

(c) *Post-initial swap categories.* Swap categories shall be established for all

swaps, by asset class, in the following manner:

(1) *Interest rate asset class.* Swaps in the interest rate asset class shall be grouped

into swap categories as follows:

(i) Based on a unique combination of the following currencies and tenors:

(A) A currency of one of the following countries or union:

(*1*) Australia,

(*2*) Brazil,

(*3*) Canada,

(*4*) Chile,

(*5*) Czech Republic,

(*6*) The European Union,

(*7*) Great Britain,

(*8*) India,

(*9*) Japan,

(*10*) Mexico,

(*11*) New Zealand,

(*12*) South Africa,

(*13*) South Korea,

(*14*) Sweden, or

(*15*) The United States; and

(B) One of the following tenors:

(*1*) Zero to 46 days;

(*2*) Greater than 46 and less than or equal to 107 days;

(*3*) Greater than 107 and less than or equal to 198 days;

(*4*) Greater than 198 and less than or equal to 381 days;

(*5*) Greater than 381 and less than or equal to 746 days;

(*6*) Greater than 746 and less than or equal to 1,842 days;

(*7*) Greater than 1,842 and less than or equal to 3,668 days;

(*8*) Greater than 3,668 and less than or equal to 10,973 days; or

(*9*) Greater than 10,973 days.

(ii) Other interest rate swaps not covered in the paragraph (c)(1)(i) of this section.

(2) *Credit asset class.* Swaps in the credit asset class shall be grouped into swap categories as follows.

(i) Based on the CDXHY product type, without options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(ii) Based on the CDXHY product type, with only options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(iii) Based on the iTraxx Europe product type, without options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(iv) Based on the iTraxx Europe product type, with only options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(v) Based on the iTraxx Crossover product type, without options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(vi) Based on the iTraxx Crossover product type, with only options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(vii) Based on the iTraxx Senior Financials product type, without options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(viii) Based on the iTraxx Senior Financials product type, with only options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(ix) Based on the CDXIG product type and a tenor greater, without options than 1,477 days and less than or equal to 2,207 days;

(x) Based on the CDXIG product type with only options and a tenor greater, than 1,477 days and less than or equal to 2,207 days;

(xi) Based on the CDXEmergingMarkets product type and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(xii) Based on the CMBX product type; and

(xiii) Other credit swaps not covered in paragraphs (c)(2)(i)-(xii) of this section.

(3) *Equity asset class.* There shall be one swap category consisting of all swaps in the equity asset class.

(4) *Foreign exchange asset class.* Swaps in the foreign exchange asset class shall be grouped into swap categories as follows:

(i) By the unique currency combinations of the United States currency paired with a currency of one of the following countries or union: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan.

(ii) By the unique currency pair consisting of two separate currencies from the following countries or union: Argentina, Australia, Brazil, Canada, Chile, China,

Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico,

New Zealand, Peru, Philippines, Russia, South Korea, and Taiwan.

(iii) Other swap categories in the foreign exchange asset class not covered in

paragraph (c)(4)(i) or (ii) of this section.

(5) *Other commodity asset class.* Swaps in the other commodity asset class shall

be grouped into swap categories as follows:

(i) For swaps that have a physical commodity underlier listed in appendix D of

this part, by the relevant physical commodity underlier; or

(ii) Other commodity swaps that are not covered in paragraph (c)(5)(i) of this

section.

(d) *Methodologies to determine appropriate minimum block sizes and cap sizes.*

In determining appropriate minimum block sizes and cap sizes for publicly reportable

swap transactions, the Commission shall utilize the following statistical calculations—

(1) *67-percent notional amount calculation.* The Commission shall use the

following procedure in determining the 67-percent notional amount calculation:

(i) For each relevant swap category, select all reliable SDR data for at least a one-

year period;

(ii) Convert the notional amount to the same currency or units and use a trimmed

data set;

(iii) Determine the sum of the notional amounts of swaps in the trimmed data set;

(iv) Multiply the sum of the notional amount by 67 percent;

(v) Rank order the observations by notional amount from least to greatest;

(vi) Calculate the cumulative sum of the observations until the cumulative sum is

equal to or greater than the 67-percent notional amount calculated in paragraph (d)(1)(iv)

of this section;

(vii) Select the notional amount associated with that observation;

(viii) Round the notional amount of that observation up to two significant digits,

or if the notional amount associated with that observation is already significant to only

two digits, increase that notional amount to the next highest rounding point of two

significant digits; and

(ix) Set the appropriate minimum block size at the amount calculated in paragraph

(d)(1)(viii) of this section.

(2) *75-percent notional amount calculation.* The Commission shall use the

procedure set out in § 43.6(d)(1) with 75-percent in place of 67-percent.

(3) *50-percent notional amount calculation.* The Commission shall use the

procedure set out in § 43.6(d)(1) with 50-percent in place of 67-percent.

(e) *No appropriate minimum block sizes for swaps in the equity asset class.*

Publicly reportable swap transactions in the equity asset class shall not be treated as block

trades or large notional off-facility swaps.

(f) *Initial appropriate minimum block sizes.* Prior to the Commission making a

determination as described in paragraph (g)(1) of this section, the following initial

appropriate minimum block sizes shall apply:

(1) *Prescribed appropriate minimum block sizes.* Except as otherwise provided in

paragraph (e)(1) of this section, for any publicly reportable swap transaction that falls

within the swap categories described in paragraphs (b)(1), (b)(2), (b)(4)(i), (b)(5)(i) or

(b)(5)(ii) of this section, the initial appropriate minimum block size for such publicly

reportable swap transaction shall be the appropriate minimum block size that is in

appendix F of this part.

(2) *Certain swaps in the foreign exchange and other commodity asset classes*. All

swaps or instruments in the swap categories described in paragraphs (b)(4)(ii) and

(b)(5)(iii) of this section shall be eligible to be treated as a block trade or large notional

off-facility swap, as applicable.

(3) *Exception*. Publicly reportable swap transactions described in paragraph

(b)(5)(i) of this section that are economically related to a futures contract in appendix B

of this part shall not qualify to be treated as block trades or large notional off-facility

swaps (as applicable), if such futures contract is not subject to a designated contract

market's block trading rules.

(g) *Post-initial process to determine appropriate minimum block sizes*. (1) *Post-

initial period*. The Commission shall establish, by swap categories, the appropriate

minimum block sizes as described in paragraphs (g)(2) through (6) of this section. No

less than once each calendar year thereafter, the Commission shall update the post-initial

appropriate minimum block sizes.

(2) *Post-initial appropriate minimum block sizes for certain swaps*. The

Commission shall determine post-initial appropriate minimum block sizes for the swap

categories described in paragraphs (c)(1)(i), (c)(2)(i) through (xii), (c)(4)(i), and (c)(5)(i)

of this section by utilizing a one-year window of swap transaction and pricing data

corresponding to each relevant swap category reviewed no less than once each calendar

year, and by applying the 67-percent notional amount calculation to such data. If the

Commission is unable to determine an appropriate minimum block size for any swap

category described in paragraph (c)(1)(i) of this section, the Commission shall assign a

block size of zero to such swap category.

(3) *Certain swaps in the foreign exchange asset class*. The parties to a swap in

the foreign exchange asset class described in paragraph (c)(4)(ii) of this section may elect

to receive block treatment if the notional amount of either currency in the exchange is

greater than the minimum block size for a swap in the foreign exchange asset class

between the respective currency, in the same amount, and U.S. dollars described in

paragraph (c)(4)(i) of this section.

(4) All swaps or instruments in the swap category described in paragraphs

(c)(1)(ii), (c)(2)(xiii), (c)(4)(iii), and (c)(5)(ii) of this section shall have a block size of

zero and be eligible to be treated as a block trade or large notional off-facility swap, as

applicable.

(5) *Commission publication of post-initial appropriate minimum block sizes.* The

Commission shall publish the appropriate minimum block sizes determined pursuant to

paragraph (f)(1) of this section on its website at *http://www.cftc.gov*.

(6) *Effective date of post-initial appropriate minimum block sizes*. Unless

otherwise indicated on the Commission's website, the post-initial appropriate minimum

block sizes described in paragraph (f)(1) of this section shall be effective on the first day

of the second month following the date of publication.

(h) *Required notification—*(1) *Block trades entered into on a trading system or*

platform, that is not an order book as defined in § 37.3(a)(3) of a swap execution facility,

or pursuant to the rules of a swap execution facility or designated contract market. (i)

The parties to a publicly reportable swap transaction may elect to have a publicly reportable swap transaction treated as a block trade if such swap: (A) is executed on the trading system or platform, that is not an order book as defined in § 37.3(a)(3) of this chapter of a swap execution facility, or pursuant to the rules of a swap execution facility or designated contract market; and (B) that has a notional amount at or above the appropriate minimum block size. If the parties make such an election, the reporting counterparty shall notify the swap execution facility or designated contract market, as applicable, of the parties' election.

(ii) The swap execution facility or designated contract market, as applicable, shall notify the swap data repository of such a block trade election when reporting the swap transaction and pricing data to such swap data repository in accordance with this part.

(iii) The swap execution facility or designated contract market, as applicable, shall not disclose swap transaction and pricing data relating to a block trade subject to the block trade election prior to the expiration of the applicable delay set forth in § 43.5(c).

(2) *Large notional off-facility swap election.* The parties to a publicly reportable swap transaction that is an off-facility swap and that has a notional amount at or above the appropriate minimum block size may elect to have the publicly reportable swap transaction treated as a large notional off-facility swap. If the parties make such an election, the reporting counterparty for such publicly reportable swap transaction shall notify the applicable swap data repository of the reporting counterparty's election when reporting the swap transaction and pricing data in accordance with this part.

(h) *Special provisions relating to appropriate minimum block sizes and cap sizes.* The following special rules shall apply to the determination of appropriate minimum block sizes and cap sizes—

(1) *Swaps with optionality.* The notional amount of a swap with optionality shall equal the notional amount of the component of the swap that does not include the option component.

(2) *Swaps with composite reference prices.* The parties to a swap transaction with composite reference prices may elect to apply the lowest appropriate minimum block size or cap size applicable to one component reference price's swap category of such publicly reportable swap transaction.

(3) *Notional amounts for physical commodity swaps.* Unless otherwise specified in this part, the notional amount for a physical commodity swap shall be based on the notional unit measure utilized in the related futures contract or the predominant notional unit measure used to determine notional quantities in the cash market for the relevant, underlying physical commodity.

(4) *Currency conversion.* Unless otherwise specified in this part, when the appropriate minimum block size or cap size for a publicly reportable swap transaction is denominated in a currency other than U.S. dollars, parties to a swap and registered entities may use a currency exchange rate that is widely published within the preceding two business days from the date of execution of the swap transaction in order to determine such qualification.

(5) *Successor currencies.* For currencies that succeed a super-major currency, the appropriate currency classification for such currency shall be based on the corresponding

nominal gross domestic product classification (in U.S. dollars) as determined in the most

recent World Bank, World Development Indicator at the time of succession. If the gross

domestic product of the country or nation utilizing the successor currency is:

(i) Greater than $2 trillion, then the successor currency shall be included among

the super-major currencies;

(ii) Greater than $500 billion but less than $2 trillion, then the successor currency

shall be included among the major currencies; or

(iii) Less than $500 billion, then the successor currency shall be included among

the non-major currencies.

(6) *Aggregation.* The aggregation of orders for different accounts in order to

satisfy the minimum block trade size or the cap size requirement is permitted for publicly

reportable swap transactions only if each of the following conditions is satisfied:

(i) The aggregation of orders is done by a person who:

(A) Is a commodity trading advisor registered pursuant to section 4n of the Act, or

exempt from such registration under the Act, or a principal thereof, and who has

discretionary trading authority or directs client accounts;

(B) Is an investment adviser who has discretionary trading authority or directs

client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter; or

(C) Is a foreign person who performs a similar role or function as the persons

described in paragraph (g)(5)(i)(A) or (B) of this section and is subject as such to foreign

regulation;

(ii) The aggregated transaction is reported pursuant to this part and part 45 of this chapter as a block trade or large notional off-facility swap, as applicable, subject to the cap size thresholds;

(iii) The aggregated orders are executed as one swap transaction; and

(iv) Aggregation occurs on a designated contract market or swap execution facility if the swap is listed for trading by a designated contract market or swap execution facility.

(h) *Eligible block trade parties.* (1) Parties to a block trade shall be "eligible contract participants," as defined in section 1a(18) of the Act and the Commission's regulations. However, a designated contract market may allow:

(i) A commodity trading advisor registered pursuant to section 4n of the Act, or exempt from registration under the Act, or a principal thereof, and who has discretionary trading authority or directs client accounts,

(ii) An investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or

(iii) A foreign person who performs a similar role or function as the persons described in paragraph (h)(1)(i) or (ii) of this section and is subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants.

(2) A person transacting a block trade on behalf of a customer shall receive prior written instruction or consent from the customer to do so. Such instruction or consent may be provided in the power of attorney or similar document by which the customer

provides the person with discretionary trading authority or the authority to direct the

trading in its account.

7.   Amend § 43.7 by revising paragraphs (a)(1) through (3) and adding paragraph

(a)(4) to read as follows:

§ 43.7 Delegation of authority.

(a) * * *

(1) To publish the technical specification providing the form and manner for

reporting and publicly disseminating the swap transaction and pricing data elements in

appendix A of this part as described in § 43.3(d)(1) and 43.4(a);

(2) To determine cap sizes as described in § 43.4(g) and (h);

(3) To determine whether swaps fall within specific swap categories as described

in § 43.6(b) and (c); and

(4) To determine and publish post-initial appropriate minimum block sizes as

described in § 43.6(g).

* * * * *

8.   Revise appendix A to part 43 to read as follows:

Appendix A to Part 43 – Swap Transaction and Pricing Data Elements

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	Category: Clearing						
1	Cleared	Indicator of whether the transaction has been cleared, or is intended to be cleared, by a central counterparty.	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
Category: Custom baskets							
25	Custom basket indicator	Indicator of whether the swap transaction is based on a custom basket.	✓	✓	✓	✓	✓
Category: Events							
26	Action type	Type of action taken on the swap transaction or type of end-of-day reporting. Actions may include, but are not limited to, new, modify, correct, error, terminate, revive, transfer out, valuation, and collateral.	✓	✓	✓	✓	✓
27	Event type	Explanation or reason for the action being taken on the swap transaction. Events may include, but are not limited to, trade, novation, compression or risk reduction exercise, early termination, clearing, exercise, allocation, clearing and allocation, credit event, transfer.	✓	✓	✓	✓	✓
28	Amendment indicator	Indicator of whether the modification of the swap transaction reflects newly agreed upon term(s) from the previously negotiated terms.	✓	✓	✓	✓	✓
30	Event timestamp	Date and time of occurrence of the event as determined by the reporting counterparty or a service provider. In the case of a clearing event, date and time when the original swap is accepted by the derivative clearing organization (DCO) for clearing and recorded by the DCO's system should be reported in this data element. The time element is as specific as technologically practicable.	✓	✓	✓	✓	✓
Category: Notional amounts and quantities							
31	Notional amount	For each leg of the transaction, where applicable: - for OTC derivative transactions negotiated in monetary amounts, amount specified in the contract. - for OTC derivative transactions negotiated in non-monetary amounts, refer to appendix to the swap data technical specification for converting notional amounts for non-monetary amounts. In addition: • For OTC derivative transactions with a notional	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	**IR**	**FX**	**EQ**	**CO**
		amount schedule, the initial notional amount, agreed by the counterparties at the inception of the transaction, is reported in this data element. • For OTC foreign exchange options, in addition to this data element, the amounts are reported using the data elements Call amount and Put amount. • For amendments or lifecycle events, the resulting outstanding notional amount is reported; (steps in notional amount schedules are not considered to be amendments or lifecycle events); • Where the notional amount is not known when a new transaction is reported, the notional amount is updated as it becomes available.					
32	Notional currency	For each leg of the transaction, where applicable: currency in which the notional amount is denominated.	✓	✓	✓	✓	✓
33	Notional amount schedule - notional amount in effect on associated effective date	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Notional amount which becomes effective on the associated unadjusted effective date. The initial notional amount and associated unadjusted effective and end date are reported as the first values of the schedule. This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The currency of the varying notional amounts in the schedule is reported in Notional currency.	✓	✓	✓	✓	✓
34	Notional amount schedule - unadjusted effective date of the notional amount	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Unadjusted date on which the associated notional amount becomes effective This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The currency of the varying notional amounts in the schedule is reported in Notional currency.	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
35	Notional amount schedule - unadjusted end date of the notional amount	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: •Unadjusted end date of the notional amount (not applicable if the unadjusted end date of a given schedule's period is back-to-back with the unadjusted effective date of the subsequent period). This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The currency of the varying notional amounts in the schedule is reported in Notional currency.	✓	✓	✓	✓	✓
36	Call amount	For foreign exchange options, the monetary amount that the option gives the right to buy.	✓	✓	✓	✓	✓
37	Call currency	For foreign exchange options, the currency in which the Call amount is denominated.	✓	✓	✓	✓	✓
38	Put amount	For foreign exchange options, the monetary amount that the option gives the right to sell.	✓	✓	✓	✓	✓
39	Put currency	For foreign exchange options, the currency in which the Put amount is denominated.	✓	✓	✓	✓	✓
40	Notional quantity	For each leg of the swap transaction, where applicable, for swap transactions negotiated in non-monetary amounts with fixed notional quantity for each schedule period (i.e., 50 barrels per month). The frequency is reported in Quantity frequency and the unit of measure is reported in Quantity unit of measure.					✓
41	Quantity frequency	The rate at which the quantity is quoted on the swap transaction. e.g., hourly, daily, weekly, monthly.					✓
42	Quantity frequency multiplier	The number of time units for the Quantity frequency					✓
43	Quantity unit of measure	For each leg of the transaction, where applicable: unit of measure in which the Total notional quantity and Notional quantity are expressed.				✓	✓
44	Total notional quantity	For each leg of the transaction, where applicable: aggregate Notional quantity of the underlying asset for the term of the transaction. Where the Total notional quantity is not known when a new transaction is reported, the Total				✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	**IR**	**FX**	**EQ**	**CO**
		notional quantity is updated as it becomes available.					
	Category: Packages						
45	Package indicator	Indicator of whether the swap transaction is part of a package transaction.	✓	✓	✓	✓	✓
47	Package transaction price	Traded price of the entire package in which the reported derivative transaction is a component. This data element is not applicable if • no package is involved, or • package transaction spread is used Prices and related data elements of the transactions (Price currency, Price notation, Price unit of measure) that represent individual components of the package are reported when available. The Package transaction price may not be known when a new transaction is reported but may be updated later.	✓	✓	✓	✓	✓
48	Package transaction price currency	Currency in which the Package transaction price is denominated. This data element is not applicable if: • no package is involved, or • Package transaction spread is used, or • Package transaction price notation = 3	✓	✓	✓	✓	✓
49	Package transaction price notation	Manner in which the Package transaction price is expressed. This data element is not applicable if • no package is involved, or • Package transaction spread is used	✓	✓	✓	✓	✓
50	Package transaction spread	Traded price of the entire package in which the reported derivative transaction is a component of a package transaction. Package transaction price when the price of the package is expressed as a spread, difference between two reference prices. This data element is not applicable if • no package is involved, or • Package transaction price is used	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		Spread and related data elements of the transactions (spread currency, Spread notation) that represent individual components of the package are reported when available. Package transaction spread may not be known when a new transaction is reported but may be updated later.					
51	Package transaction spread currency	Currency in which the Package transaction spread is denominated. This data element is not applicable if • no package is involved, or • Package transaction price is used, or • Package transaction spread notation = 3, or = 4	✓	✓	✓	✓	✓
52	Package transaction spread notation	Manner in which the Package transaction spread is expressed. This data element is not applicable if • no package is involved, or • Package transaction price is used.	✓	✓	✓	✓	✓
	Category: Payments						
53	Day count convention	For each leg of the transaction, where applicable: day count convention (often also referred to as day count fraction or day count basis or day count method) that determines how interest payments are calculated. It is used to compute the year fraction of the calculation period, and indicates the number of days in the calculation period divided by the number of days in the year.	✓	✓	✓	✓	✓
55	Floating rate reset frequency period	For each floating leg of the swap transaction, where applicable, time unit associated with the frequency of resets, e.g., day, week, month, year or term of the stream.	✓	✓	✓	✓	✓
56	Floating rate reset frequency period multiplier	For each floating leg of the swap transaction, where applicable, number of time units (as expressed by the Floating rate reset frequency period) that determines the frequency at which periodic payment dates for reset occur. For example, a transaction with reset payments occurring every two months is represented with a Floating rate reset frequency period of "MNTH" (monthly) and a	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		Floating rate reset frequency period multiplier of 2. This data element is not applicable if the Floating rate reset frequency period is "ADHO." If Floating rate reset frequency period is "TERM," then the Floating rate reset frequency period multiplier is 1. If the reset frequency period is intraday, then the Floating rate reset frequency period is "DAIL" and the Floating rate reset frequency period multiplier is 0.					
57	Other payment type	Type of Other payment amount. Option premium payment is not included as a payment type as premiums for option are reported using the option premium dedicated data element.	✓	✓	✓	✓	✓
58	Other payment amount	Payment amounts with corresponding payment types to accommodate requirements of transaction descriptions from different asset classes.	✓	✓	✓	✓	✓
59	Other payment currency	Currency in which Other payment amount is denominated.	✓	✓	✓	✓	✓
63	Payment frequency period	For each leg of the transaction, where applicable: time unit associated with the frequency of payments, e.g., day, week, month, year or term of the stream.	✓	✓		✓	✓
64	Payment frequency period multiplier	For each leg of the transaction, where applicable: number of time units (as expressed by the Payment frequency period) that determines the frequency at which periodic payment dates occur. For example, a transaction with payments occurring every two months is represented with a Payment frequency period of "MNTH" (monthly) and a Payment frequency period multiplier of 2. This data element is not applicable if the Payment frequency period is "ADHO." If Payment frequency period is "TERM," then the Payment frequency period multiplier is 1. If the Payment frequency is intraday, then the Payment frequency period is "DAIL" and the Payment frequency multiplier is 0.	✓	✓		✓	✓
	Category: Prices						
65	Exchange rate	Exchange rate between the two different currencies specified in the OTC derivative transaction agreed by the counterparties at the inception of the transaction, expressed as the rate of exchange from converting the unit currency into the quoted			✓		

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency; USD 1 = EUR 0.9426.					
66	Exchange rate basis	Currency pair and order in which the exchange rate is denominated, expressed as unit currency/quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency, USD 1 = EUR 0.9426.			✓		
67	Fixed rate	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments, per annum rate of the fixed leg(s).	✓	✓			✓
68	Post-priced swap indicator	Indicator of whether the swap transaction satisfies the definition of "post-priced swap" in § 43.2(a) of the Commission's regulations.	✓	✓	✓	✓	✓
69	Price	Price specified in the OTC derivative transaction. It does not include fees, taxes or commissions. For commodity fixed/float swaps and similar products with periodic payments, this data element refers to the fixed price of the fixed leg(s). For commodity and equity forwards and similar products, this data element refers to the forward price of the underlying or reference asset. For equity swaps, portfolios swaps, and similar products, this data element refers to the initial price of the underlying or reference asset. For contracts for difference and similar products, this data element refers to the initial price of the underlier. This data element is not applicable to: • Interest rate swaps and forward rate agreements, as it is understood that the information included in the data elements Fixed rate and Spread may be interpreted as the price of the transaction. • Interest rate options and interest rate swaptions as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. • Commodity basis swaps and the floating leg of commodity fixed/float swaps as it is understood that the information included in the data element Spread				✓	✓

#	Data Element Name	Definition for Data Element	CR	IR	FX	EQ	CO
		may be interpreted as the price of the transaction. • Foreign exchange swaps, forwards and options, as it is understood that the information included in the data elements Exchange rate, Strike price, and Option premium may be interpreted as the price of the transaction. • Equity options as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. • Credit default swaps and credit total return swaps, as it is understood that the information included in the data elements Fixed rate, Spread and Upfront payment (Other payment type: Upfront payment) may be interpreted as the price of the transaction. • Commodity options, as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. Where the price is not known when a new transaction is reported, the price is updated as it becomes available. For transactions that are part of a package, this data element contains the price of the component transaction where applicable.					
70	Price currency	Currency in which the price is denominated. Price currency is only applicable if Price notation = 1.				✓	✓
71	Price notation	Manner in which the price is expressed.				✓	✓
72	Price unit of measure	Unit of measure in which the price is expressed.				✓	✓
73	Spread	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments (e.g., interest rate fixed/float swaps, interest rate basis swaps, commodity swaps), • spread on the individual floating leg(s) index reference price, in the case where there is a spread on a floating leg(s). For example, USD-LIBOR-BBA plus .03 or WTI minus USD 14.65; or • difference between the reference prices of the two floating leg indexes. For example, the 9.00 USD "Spread" for a WCS vs. WTI basis swap where	✓	✓		✓	✓

#	Data Element Name	Definition for Data Element	CR	IR	FX	EQ	CO
		WCS is priced at 43 USD and WTI is priced at 52 USD.					
74	Spread currency	For each leg of the transaction, where applicable: currency in which the spread is denominated. This data element is only applicable if Spread notation = 1.	✓	✓		✓	✓
75	Spread notation	For each leg of the transaction, where applicable: manner in which the spread is expressed.	✓	✓		✓	✓
76	Strike price	• For options other than FX options, swaptions and similar products, price at which the owner of an option can buy or sell the underlying asset of the option. • For foreign exchange options, exchange rate at which the option can be exercised, expressed as the rate of exchange from converting the unit currency into the quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency; USD 1 = EUR 0.9426. Where the strike price is not known when a new transaction is reported, the strike price is updated as it becomes available. • For volatility and variance swaps and similar products, the volatility strike price is reported in this data element.	✓	✓	✓	✓	✓
77	Strike price currency/currency pair	For equity options, commodity options, and similar products, currency in which the strike price is denominated. For foreign exchange options: Currency pair and order in which the strike price is expressed. It is expressed as unit currency/quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency, USD 1 = EUR 0.9426 Strike price currency/currency pair is only applicable if Strike price notation = 1.	✓	✓	✓	✓	✓
78	Strike price notation	Manner in which the strike price is expressed.	✓	✓	✓	✓	✓
79	Option premium amount	For options and swaptions of all asset classes, monetary amount paid by the option buyer. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
80	Option premium	For options and swaptions of all asset classes,	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	currency	currency in which the option premium amount is denominated. This data element is not applicable if the instrument is not an option or does not embed any optionality.					
82	First exercise date	First unadjusted date during the exercise period in which an option can be exercised. For European-style options, this date is same as the Expiration date. For American-style options, the first possible exercise date is the unadjusted date included in the Execution timestamp. For knock-in options, where the first exercise date is not known when a new transaction is reported, the first exercise date is updated as it becomes available. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
	Category: Product						
85	Index factor	The index version factor or percent, expressed as a decimal value, that multiplied by the Notional amount yields the notional amount covered by the seller of protection for credit default swap.	✓				
86	Embedded option type	Type of option or optional provision embedded in a contract.	✓	✓	✓	✓	✓
87	Unique Product Identifier UPI	A unique set of characters that represents a particular OTC derivative. The Commission will designate a UPI pursuant to § 45.7.	✓	✓	✓	✓	✓
	Category: Settlement						
89	Settlement currency	Currency for the cash settlement of the transaction when applicable. For multi-currency products that do not net, the settlement currency of each leg. This data element is not applicable for physically settled products (e.g., physically settled swaptions).	✓	✓	✓	✓	✓
90	Settlement location	Place of settlement of the transaction as stipulated in the contract. This data element is only applicable for transactions that involve an offshore currency (i.e. a currency which is not included in the ISO 4217 currency list, for example CNH).	✓	✓	✓	✓	✓
	Category: Transaction related						
92	Non-standardized term indicator	Indicator of whether the swap transaction has one or more additional term(s) or provision(s), other than	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		those disseminated to the public pursuant to part 43, that materially affect(s) the price of the swap transaction.					
93	Block trade election indicator	Indicator of whether an election has been made to report the swap transaction as a block transaction by the reporting counterparty or as calculated either by the swap data repository acting on behalf of the reporting counterparty or by using a third party.	✓	✓	✓	✓	✓
94	Effective date	Unadjusted date at which obligations under the OTC derivative transaction come into effect, as included in the confirmation.	✓	✓	✓	✓	✓
95	Expiration date	Unadjusted date at which obligations under the OTC derivative transaction stop being effective, as included in the confirmation. Early termination does not affect this data element.	✓	✓	✓	✓	✓
96	Execution timestamp	Date and time a transaction was originally executed, resulting in the generation of a new UTI. This data element remains unchanged throughout the life of the UTI.	✓	✓	✓	✓	✓
98	Platform identifier	Identifier of the trading facility (e.g., exchange, multilateral trading facility, swap execution facility) on which the transaction was executed.	✓	✓	✓	✓	✓
99	Prime brokerage transaction indicator	Indicator of whether the swap transaction satisfies the definition of "mirror swap" or "trigger swap" in § 43.2(a) of the Commission's regulations.	✓	✓	✓	✓	✓

9.   Revise Appendix C to Part 43 to read as follows:

APPENDIX C TO PART 43—TIME DELAYS FOR PUBLIC DISSEMINATION

The tables below provide clarification of the time delays for public dissemination set forth in §43.5. The first row of each table describes the asset classes to which each chart applies. The column entitled "Time Delay for Public Dissemination" indicates the precise length of time delay, starting upon execution, for the public dissemination of such swap transaction and pricing data by a swap data repository.

Table C1. Block Trades Executed on or Pursuant to the Rules of a Swap Execution Facility or Designated Contract Market (Illustrating §43.5(d))

ALL ASSET CLASSES

Time delay for public dissemination
15 minutes.

Table C2. Large Notional Off-Facility Swaps Subject to the Mandatory Clearing Requirement With at Least One Swap Dealer or Major Swap Participant Counterparty (Illustrating §43.5(e)(2))

Table C2 excludes off-facility swaps that are excepted from the mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations and those off-facility swaps that are required to be cleared under Section 2(h)(2) of the Act and Commission regulations but are not cleared.

ALL ASSET CLASSES

Time delay for public dissemination
15 minutes.

Table C3. Large Notional Off-Facility Swaps Subject to the Mandatory Clearing Requirement in Which Neither Counterparty Is a Swap Dealer or Major Swap Participant (Illustrating §43.5(e)(3))

Table C3 excludes off-facility swaps that are excepted from the mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations and those swaps that are required to be cleared under Section 2(h)(2) of the Act and Commission regulations but are not cleared.

ALL ASSET CLASSES

Time delay for public dissemination
1 hour.

Table C4. Large Notional Off-Facility Swaps Not Subject to the Mandatory Clearing Requirement With at Least One Swap Dealer or Major Swap Participant Counterparty (Illustrating §43.5(f))

Table C4 includes large notional off-facility swaps that are not subject to the mandatory clearing requirement or are exempt from such mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations.

INTEREST RATES, CREDIT, FOREIGN EXCHANGE, EQUITY ASSET CLASSES

Time delay for public dissemination

30 minutes.

Table C5. Large Notional Off-Facility Swaps Not Subject to the Mandatory Clearing Requirement With at Least One Swap Dealer or Major Swap Participant Counterparty (Illustrating §43.5(g))

Table C5 includes large notional off-facility swaps that are not subject to the mandatory clearing requirement or are excepted from such mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations.

OTHER COMMODITY ASSET CLASS

Time delay for public dissemination
2 hours.

Table C6. Large Notional Off-Facility Swaps Not Subject to the Mandatory Clearing Requirement in Which Neither Counterparty Is a Swap Dealer or Major Swap Participant (Illustrating §43.5(h))

Table C6 includes large notional off-facility swaps that are not subject to the mandatory clearing requirement or are exempt from such mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations.

ALL ASSET CLASSES

Time delay for public dissemination
24 business hours.

10.   Revise Appendix D to Part 43 to read as follows:

Appendix D to Part 43—Other Commodity Swap Categories

Commodity: Metals

Aluminum

Copper

Gold

Lead

Nickel

Silver

Virtual

Zinc

Commodity: Energy

Electricity

Fuel Oil

Gasoline- RBOB

Heating Oil

Natural Gas

Oil

Commodity: Agricultural

Corn

Soybean

Coffee

Wheat

Cocoa

Sugar

Cotton

Soymeal

Soybean oil

Cattle

Hogs

11.   Amend the title and introductory text to appendix E to part 43 to read as follows:

Appendix E to Part 43—Other Commodity Geographic Identification for Public

Dissemination Pursuant to § 43.4(c)(4)(iii)

Swap data repositories are required by § 43.4(c)(4)(iii) to publicly disseminate

any specific delivery point or pricing point associated with publicly reportable swap

transactions in the "other commodity" asset class pursuant to Tables E1 and E2 in this

appendix. If the underlying asset of a publicly reportable swap transaction described in §

43.4(c)(4)(iii) has a delivery or pricing point that is located in the United States, such

information shall be publicly disseminated pursuant to the regions described in Table E1

in this appendix. If the underlying asset of a publicly reportable swap transaction

described in § 43.4(c)(4)(iii) has a delivery or pricing point that is not located in the

United States, such information shall be publicly disseminated pursuant to the countries

or sub-regions, or if no country or sub-region, by the other commodity region, described

in Table E2 in this appendix.

Table E1. U.S. Delivery or Pricing Points

Other Commodity Group

        Region

Natural Gas and Related Products

        Midwest

        Northeast

        Gulf

        Southeast

Western

Other—U.S.

Petroleum and Products

New England (PADD 1A)

Central Atlantic (PADD 1B)

Lower Atlantic (PADD 1C)

Midwest (PADD 2)

Gulf Coast (PADD 3)

Rocky Mountains (PADD 4)

West Coast (PADD 5)

Other—U.S.

Electricity and Sources

Florida Reliability Coordinating Council (FRCC)

Midwest Reliability Organization (MRO)

Northeast Power Coordinating Council (NPCC)

Reliability First Corporation (RFC)

SERC Reliability Corporation (SERC)

Southwest Power Pool, RE (SPP)

Texas Regional Entity (TRE)

Western Electricity Coordinating Council (WECC)

Other—U.S.

All Remaining Other Commodities (Publicly disseminate the region. If pricing or delivery point is not region-specific, indicate "U.S.")

Region 1—(Includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

Region 2—(Includes New Jersey, New York)

Region 3—(Includes Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Region 4—(Includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Region 5—(Includes Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Region 6—(Includes Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Region 7—(Includes Iowa, Kansas, Missouri, Nebraska)

Region 8—(Includes Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Region 9—(Includes Arizona, California, Hawaii, Nevada)

Region 10—(Includes Alaska, Idaho, Oregon, Washington)

Table E2. Non-U.S. Delivery or Pricing Points

Other Commodity Regions

Country or Sub-Region

North America (Other than U.S.)

Canada

Mexico

Central America

South America

Brazil

Other South America

Europe

Western Europe

Northern Europe

Southern Europe

Eastern Europe (excluding Russia)

Russia

Africa

Northern Africa

Western Africa

Eastern Africa

Central Africa

Southern Africa

Asia-Pacific

Northern Asia (excluding Russia)

Central Asia

Eastern Asia

Western Asia

Southeast Asia

Australia/New Zealand/Pacific Islands

Issued in Washington, DC on [DATE], by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.