

**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 January 25, 2021.

*Compliance Date:* SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to the rules by May 25, 2022; provided, however, that SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to §§ 43.4(h) and 43.6 of this final rule by May 25, 2023.

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**SUPPLEMENTARY INFORMATION:****I. Background****II. Amendments to Part 43****A. § 43.1—Purpose, Scope, and Rules of Construction**

- B. § 43.2—Definitions
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**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.<sup>1</sup> Part 43 requires swap counterparties, SEFs, and

DCMs to report publicly reportable swap transactions to SDRs.<sup>2</sup> Subject to certain exceptions, SDRs are required to publicly disseminate this swap transaction and pricing data in real-time.<sup>3</sup>

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 completing that review, DMO announced<sup>4</sup> its Roadmap to Achieve High Quality Swaps Data (“Roadmap”),<sup>5</sup> 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], and [PPSs] by clarifying obligations and identifying those distinct types of transactions to increase the utility of the real-time public tape.”<sup>6</sup>

In February 2020, the Commission proposed certain changes to part 43 (“Proposal”) <sup>7</sup> 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

<sup>2</sup> 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) through (3) and (b)(1).

<sup>3</sup> See *id.*; 17 CFR 43.4.

<sup>4</sup> 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/ido/groups/public/@lrelettergeneral/documents/letter/17-33.pdf>.

<sup>5</sup> The Roadmap is available at [https://www.cftc.gov/sites/default/files/ido/groups/public/@newsroom/documents/file/dmo\\_swapdataplan071017.pdf](https://www.cftc.gov/sites/default/files/ido/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf). Comment letters are available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824>.

<sup>6</sup> Roadmap at 11.

<sup>7</sup> See Real-Time Public Reporting Requirements, 85 FR 21516 (Apr. 17, 2020).

<sup>1</sup> Commission regulations referred to herein are found at 17 CFR chapter I.

Proposal.<sup>8</sup> After considering the comments, the Commission is adopting portions of the rules as proposed; 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),<sup>9</sup> 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 redesignating existing § 43.1(c), entitled “Rules of construction,” as § 43.1(b). The first sentence of existing § 43.1(c) states that the examples 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.<sup>10</sup> 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 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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> The NFP Electric Associations and CME both believe “execution date” should not reference to a time and note that the reference to eastern time is inconsistent with the execution data elements in appendix A that reference UTC.<sup>14</sup>

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<sup>15</sup> 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 17 CFR 1.3, and that is registered with the Commission pursuant to CEA section 5h and 17 CFR part 37.

The Commission is adding a definition of “swap transaction and

<sup>8</sup> 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”); 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.

<sup>9</sup> 7 U.S.C. 1a(47).

<sup>10</sup> The Commission discusses the changes to appendix A in section III below.

<sup>11</sup> The Commission discusses the regulations for PPSs in section II.C.2.

<sup>12</sup> GFMA at 4.

<sup>13</sup> 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.

<sup>14</sup> NFP Electric Associations at 7; CME at 2.

<sup>15</sup> The Commission discusses the data elements in appendix A in section III below.

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<sup>16</sup> 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;”<sup>17</sup> “pricing event;”<sup>18</sup> “prime broker;”<sup>19</sup> “prime brokerage agency arrangement;”<sup>20</sup> “prime brokerage agent;”<sup>21</sup> and “trigger swap.”<sup>22</sup> These definitions are all

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> The Commission proposed to define pricing event as the completion of the negotiation of the material economic terms and pricing of a trigger swap.

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> The Commission proposed to define trigger swap as a swap: (1) That is executed pursuant to

related to 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<sup>23</sup>

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,” “large notional off-facility swap” (LNOFS), and “block trade” in § 43.2.<sup>24</sup> The Commission discusses the three definitions together, as the changes are inter-connected.

The Commission first proposed changing the “block trade” definition in a November 2018 rule proposal.<sup>25</sup> Then, in January 2020, the Commission published a proposal to revise condition (2) of the block trade definition in § 43.2 to state that: Is executed on the trading

one or more prime brokerage agency arrangements; (2) to which a prime broker is a 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 an SDR pursuant to parts 43 and 45.

<sup>23</sup> 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.

<sup>24</sup> 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 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.

<sup>25</sup> 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.

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.<sup>26</sup> 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.<sup>27</sup> In the Proposal, the Commission also proposed to incorporate condition (3) of the existing “block trade” definition<sup>28</sup> into condition (1), which would apply to “off-facility swaps.”<sup>29</sup> Condition (1) would make the separate definition of “large notional off-facility swap” unnecessary.

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.<sup>30</sup> 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

<sup>26</sup> 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”).

<sup>27</sup> 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.

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

<sup>29</sup> 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.

<sup>30</sup> See 7 U.S.C. 7b–3(e).

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.<sup>31</sup> 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.<sup>32</sup>

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 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.<sup>33</sup> However, since the Commission is not changing § 43.5,<sup>34</sup> 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."<sup>35</sup>

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), or occurs away from the SEF's or DCM's trading system or 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 appropriate minimum block size 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.<sup>36</sup> 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' . . . ." <sup>37</sup> 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.<sup>38</sup> Citadel, ISDA-SIFMA, IECA, and Chris Barnard

all generally support the 2020 SEF NPRM's changes.<sup>39</sup> Similarly, FIA agrees with the Commission "that block trades executed on a SEF's non-[order] [book] trading system or platform would allow FCMs to conduct pre-execution risk-based limit screenings in accordance with [§] 1.73."<sup>40</sup> 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."<sup>41</sup>

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.<sup>42</sup> By exposing a swap transaction that is above the appropriate minimum block size to the entire market through the use of a SEF order book,<sup>43</sup> 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 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

<sup>39</sup> Citadel at 1; ISDA-SIFMA at 1; IECA at 1-3; Chris Barnard at 1.

<sup>40</sup> 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.

<sup>41</sup> 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."

<sup>42</sup> The Commission notes that trades above the appropriate minimum block size 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.

<sup>43</sup> 17 CFR 37.3(a)(3) ("Order Books").

<sup>31</sup> SEF Core Principles Final Rule, 78 FR at 33498, 33562, and 33563 (June 4, 2013).

<sup>32</sup> 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.

<sup>33</sup> 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.

<sup>34</sup> The Commission discusses § 43.5 in section II.E below.

<sup>35</sup> The Commission is making non-substantive edits to the definition for clarity.

<sup>36</sup> ICI at 4.

<sup>37</sup> NFP Electric Associations at 7.

<sup>38</sup> 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.

“confirmation” at the end of the current definition<sup>44</sup> 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<sup>45</sup> 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.<sup>46</sup> 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 Associations support the alignment of defined terms and concepts between part 45 and part 43, such as the common definition of “execution.”<sup>47</sup>

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<sup>48</sup> 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 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.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup> 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 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.<sup>52</sup> 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.<sup>53</sup>

<sup>51</sup> 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.

<sup>52</sup> 77 FR 1182 at 1187 (Jan. 9, 2012).

<sup>53</sup> 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

<sup>44</sup> “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).

<sup>45</sup> 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 execution occurs simultaneous with or immediately following the affirmation of the swap.

<sup>46</sup> The Commission discusses the proposed removal of “affirmation” in section II.B.3.

<sup>47</sup> NFP Electric Associations at 6.

<sup>48</sup> The Commission is also changing “registered SEF” to “SEF” throughout part 43. The Commission discusses this change in section II.C.1.a.

<sup>49</sup> 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.”

<sup>50</sup> 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.

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.<sup>54</sup> Similarly, Clarus believes providers of portfolio compressions should report trade level details to SDRs for public dissemination.<sup>55</sup> 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,<sup>56</sup> and that the CEA requires the public dissemination of all swaps,<sup>57</sup> 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.<sup>58</sup> The Commission agrees with 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).<sup>59</sup> Further, DTCC believes it is unclear whether the term "holiday" as used in the "business day" definition in § 1.3 has an identical meaning as existing § 43.2.<sup>60</sup>

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 volume, ASATP after the time at which the swap transaction has been executed.<sup>61</sup> 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 declines to adopt the proposal to remove these definitions from § 43.2.

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 disseminate" as the standard by which SDRs must publish data.<sup>62</sup> 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) Through (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)

<sup>61</sup> 7 U.S.C. 2(a)(13)(A).

<sup>62</sup> The term "widely published" is also used in existing § 43.6(g)(4) for currency conversions.

evaluation of whether or not the platform operating such risk 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).

<sup>54</sup> NFP Electric Associations at 6.

<sup>55</sup> Clarus at 2.

<sup>56</sup> 2012 Real-Time Public Reporting Final Rule at 77 FR 1187 (Jan. 9, 2012).

<sup>57</sup> *Id.* at 1223.

<sup>58</sup> ICE DCOs at 2; CME at 7–8. The commenters believe including such swaps could result in front-running as the default management processes may span multiple days. ICE DCOs believe DCO default management swaps may be impractical for part 43 reporting because they can be executed at the portfolio level.

<sup>59</sup> DTCC at 2.

<sup>60</sup> *Id.*

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.

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) through (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) through (6) to reflect that, with respect to the transactions and persons covered by proposed § 43.3(a)(2) through (6), the provisions thereof apply instead of the general 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) through (6) be done in the manner set forth in proposed § 43.3(d).<sup>63</sup>

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. The Commission is replacing all references to registered SDRs with references to SDRs in § 43.3(a) specifically and throughout part 43.<sup>64</sup> 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) through (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 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.<sup>65</sup>

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 execution, and sets out the reporting hierarchy for these publicly reportable swap transactions.<sup>66</sup>

The Commission is clarifying in § 43.3(a)(3)(iii) through (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) through (6), the Commission is introducing proposed § 43.3(a)(3) with “except as otherwise provided in paragraphs (a)(4) through (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) through (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 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).<sup>67</sup>

**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

<sup>67</sup> 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.

<sup>63</sup> The Commission discusses § 43.3(d) in section II.C.8 below.

<sup>64</sup> To limit repetition, the Commission will not discuss this change repeatedly throughout this release.

<sup>65</sup> To limit repetition, the Commission will not discuss this change throughout this release.

<sup>66</sup> The Commission did not propose substantive amendments to the reporting hierarchy.



certain swap terms to an SDR ASAP after execution of the transaction. Market participants raised concerns with complying with the ASAP requirement for a category of swaps with respect to which one or more terms are unknown at the time the swap is executed.<sup>68</sup>

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 p.m. 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 p.m. eastern time on the execution 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 ASAP after such item is determined.<sup>69</sup> 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.<sup>70</sup>

#### 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.<sup>71</sup> 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).<sup>72</sup> DTCC recommends minimizing carve-outs for strict validation rules wherever possible to avoid deviating from standardization and creating additional complexities.<sup>73</sup>

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.<sup>74</sup> 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.<sup>75</sup>

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.<sup>76</sup>

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.<sup>77</sup> 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.<sup>78</sup> 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 information from being prematurely disseminated and used to front run the fund’s trades.<sup>79</sup>

ISDA–SIFMA strongly agree with the proposal.<sup>80</sup> GFMA supports the ISDA–SIFMA response.<sup>81</sup>

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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

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.<sup>85</sup>

The Commission received one comment maintaining that the proposal lacked needed explanation. Better Markets comments that the Commission’s general description 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.<sup>86</sup> 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.<sup>87</sup>

The Commission received one comment regarding an alternative proposal of reporting PPSs ASAP 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.<sup>88</sup> 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

<sup>68</sup> 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/>.

<sup>69</sup> 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 ASAP 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 ASAP after it is determined.

<sup>70</sup> 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 ASAP and then report the variable terms later ASAP after each item is determined.

<sup>71</sup> Citadel at 10.

<sup>72</sup> *Id.*

<sup>73</sup> DTCC at 2.

<sup>74</sup> Better Markets at 8.

<sup>75</sup> *Id.*

<sup>76</sup> SIFMA AMG at 6.

<sup>77</sup> ICI at 8.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> ISDA–SIFMA at 50.

<sup>81</sup> GFMA at 14.

<sup>82</sup> CME at 3–4.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> FIA at 11.

<sup>86</sup> Better Markets at 8.

<sup>87</sup> *Id.*

<sup>88</sup> ISDA–SIFMA at 50.



particular large notional trade the following day.<sup>89</sup> 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).<sup>90</sup>

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 comments that PPS reporting under part 43 should be delayed until (a) the price is 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 comments 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.<sup>91</sup> 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.<sup>92</sup>

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 comments 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.<sup>93</sup>

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 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.<sup>94</sup> 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.<sup>95</sup> CME opposes additional data elements related to PPSs as they are of no value to market participants.<sup>96</sup> 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.<sup>97</sup>

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.<sup>98</sup> 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.<sup>99</sup>

The Commission received one comment addressing an inconsistency with proposed validations. CME comments that the proposed PPS reporting process is inconsistent with the validations proposed in the Proposal.<sup>100</sup> 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.<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> 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.<sup>104</sup> CME suggests that the Commission identify 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).<sup>105</sup>

### 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

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 51.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> CME at 4.

<sup>97</sup> *Id.*

<sup>98</sup> ISDA–SIFMA at 56–57.

<sup>99</sup> *Id.*

<sup>100</sup> CME at 4.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

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) through (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.<sup>106</sup> 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.<sup>107</sup> 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.<sup>108</sup>

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) through (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”).

<sup>106</sup> ICE DCOs at 2; CME at 7–8.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

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.<sup>109</sup> In 2017, DMO announced its intention to review the reporting regulations addressing ongoing issues of reporting prime brokerage transactions.<sup>110</sup> 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 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;<sup>111</sup> (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 parts 43 and 45. 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, 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;<sup>112</sup> 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 such

<sup>109</sup> 7 U.S.C. 2(a)(13)(B).

<sup>110</sup> 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/@lrllettergeneral/documents/letter/12-53.pdf> (“NAL No. 12–53”).

<sup>111</sup> 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.

<sup>112</sup> A “partial reverse give-up” is described below in section II.C.4.b.

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.<sup>113</sup>

<sup>113</sup> 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) through (3), as applicable, depending on the facts and circumstances.

## 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) through (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, 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.<sup>114</sup>

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.<sup>115</sup> 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.”<sup>116</sup>

The Commission received an additional two comments that support the proposal but also suggest

<sup>114</sup> Citadel at 10.

<sup>115</sup> CME at 5.

<sup>116</sup> FXPA at 4.

modifications. ISDA–SIFMA support the proposed treatment of mirror swaps as non-publicly reportable swap transactions.<sup>117</sup> 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.<sup>118</sup>

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.<sup>119</sup> 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.<sup>120</sup>

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.<sup>121</sup> 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 negative effect of limiting PB client access to non-SD liquidity.<sup>122</sup> 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.<sup>123</sup>

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.<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup>

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.<sup>127</sup> 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.<sup>128</sup>

GFMA supports ISDA–SIFMA's response and similarly believes that the above modifications to the proposal are necessary.<sup>129</sup>

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 comments that clause (3) of the proposed “Mirror Swap” definition appears to adequately address such a possibility.<sup>130</sup>

ISDA–SIFMA support the Commission's proposed definition for “prime broker” and believes it accurately describes the term as understood in common industry practice.<sup>131</sup> 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.”<sup>132</sup> 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.<sup>133</sup> 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.<sup>134</sup>

The Commission received one comment specifically regarding costs and benefits. ISDA–SIFMA comments 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.<sup>135</sup> 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.<sup>136</sup> 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.<sup>137</sup>

### 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.<sup>138</sup>

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*.<sup>139</sup> The Commission concludes, as informed by commenters, that price discovery will be enhanced by excluding mirror swaps from 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

<sup>117</sup> ISDA–SIFMA at 51–53, 64–66.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> ISDA–SIFMA at 64.

<sup>122</sup> *Id.*

<sup>123</sup> ISDA–SIFMA at 51–53, 64–66.

<sup>124</sup> ISDA–SIFMA at 52.

<sup>125</sup> ISDA–SIFMA at 66.

<sup>126</sup> ISDA–SIFMA at 52–53.

<sup>127</sup> ISDA–SIFMA at 51–53.

<sup>128</sup> *Id.*

<sup>129</sup> GFMA at 1, 5–6.

<sup>130</sup> ISDA–SIFMA at 53.

<sup>131</sup> ISDA–SIFMA at 53–54.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> ISDA–SIFMA at 65.

<sup>135</sup> ISDA–SIFMA at 57.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 58.

<sup>138</sup> In addition, the Commission made minor non-substantive technical edits for clarity.

<sup>139</sup> 7 U.S.C. 2(a)(13)(B) (emphasis added).

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 suggests 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.<sup>140</sup>

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) through (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 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.<sup>141</sup> 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.

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 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)

<sup>140</sup> 7 U.S.C. 2(a)(13)(B).

<sup>141</sup> In addition, the Commission made minor non-substantive technical edits for clarity.

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 parts 43 and 45. 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 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.<sup>142</sup> 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 proposed mirror swap definition or, as a result, § 43.3(a)(6), and therefore reportable under § 43.3(a)(1) through (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 an 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 45.9 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.<sup>143</sup> 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)<sup>144</sup> 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.

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 the 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).<sup>145</sup> 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.<sup>146</sup> To the extent the requirements overlap, the Commission clarifies SDRs can apply the controls

<sup>142</sup> 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.

<sup>143</sup> Markit at 8.

<sup>144</sup> 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).

<sup>145</sup> 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.

<sup>146</sup> DTCC at 3.



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).<sup>147</sup> Existing § 43.3(d)(2) specifies that SDRs must make “publicly disseminated”<sup>148</sup> swap transaction and pricing data “freely available and readily accessible” to the public.

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 at 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.<sup>149</sup> Most SDRs currently make historical swap transaction and pricing data available on their websites for market participants to download, save, and analyze.<sup>150</sup> 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 SDRs to make public data available on their websites free for one year.<sup>151</sup> In particular, Citadel believes SDRs should be required to make available at least one year of historical data free of charge.<sup>152</sup> 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).”<sup>153</sup> 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 Commission in place of existing § 43.3(d)(1).<sup>154</sup> 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).<sup>155</sup>

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).

The Commission received one comment<sup>156</sup> 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.<sup>157</sup> 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.

<sup>147</sup> 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.

<sup>148</sup> 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.

<sup>149</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1183.

<sup>150</sup> 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/#>.

<sup>151</sup> Citadel at 11; CME at 8; DTCC at 3.

<sup>152</sup> Citadel at 11.

<sup>153</sup> 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.

<sup>154</sup> The Commission is relocating the requirement in existing § 43.3(d)(1) to the definition of “publicly disseminate” in § 43.2.

<sup>155</sup> The Commission is relocating the requirement in existing § 43.3(d)(2) to § 43.3(c)(1) and (2).

<sup>156</sup> 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.

<sup>157</sup> DTCC at 4.

#### 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.<sup>158</sup>

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 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.<sup>159</sup> 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,

<sup>158</sup> 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.

<sup>159</sup> 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.

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 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.<sup>160</sup> 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

The Commission is removing the timestamp requirements in existing § 43.3(h)(1) through (4).<sup>161</sup> Existing § 43.3(h)(1) through (4) sets forth timestamp requirements for registered entities, SDs, and MSPs for all publicly reportable swap transactions.<sup>162</sup>

<sup>160</sup> NFP Electric Associations at 6–7.

<sup>161</sup> 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 (May 13, 2019).

<sup>162</sup> SEFs and DCMs must timestamp swap transaction and pricing data relating to a publicly reportable swap transaction with the date and time,

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).<sup>163</sup> Therefore, § 43.3(h)(1) through (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.<sup>164</sup> In a separate release, the Commission is adding part 43 swap transaction and pricing data to the recordkeeping requirement in § 49.12(b)(1) for SDRs.<sup>165</sup> SEFs, DCMs, SDs, and MSPs have similar recordkeeping requirements for swaps.<sup>166</sup> As a result, SEFs, DCMs, SDs, MSPs, and SDRs have to maintain timestamps they disseminate as part of recordkeeping requirements separate

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).

<sup>163</sup> The Commission discusses appendix A in section III below.

<sup>164</sup> See § 45.2(f) and (g) (containing recordkeeping requirements for SDRs); see also § 49.12(a) (referencing part 45 recordkeeping requirements). In the May 2019 notice of proposed rulemaking relating to the Commission’s SDR regulations in parts 23, 43, 45, and 49, 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 (May 13, 2019).

<sup>165</sup> 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 (May 13, 2019).

<sup>166</sup> 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.

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) Through (e)—Public Dissemination, Additional Swap Information, Anonymity, and Unique Product Identifiers**

The Commission is adopting several changes to § 43.4(a) through (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 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.<sup>167</sup> 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) through (d) as § 43.4(a) through (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.<sup>168</sup> As discussed below in section III, the UPI will be addressed in the

swap transaction and pricing data elements in appendix A.<sup>169</sup>

The Commission is adopting its proposed changes to § 43.4(d)(4) with modifications. The Commission proposed removing § 43.4(d)(4)(i) through (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 commodity asset class that either reference one of the contracts described in appendix B to part 43<sup>170</sup> or that are economically related to such contracts.<sup>171</sup>

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

positions of counterparties are not disclosed.<sup>172</sup> 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.<sup>173</sup> 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.<sup>174</sup> 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.<sup>175</sup> 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.<sup>176</sup> The Commission is re-designating § 43.4(f) as § 43.4(d)<sup>177</sup> 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).<sup>178</sup> The Commission is also changing existing § 43.4(g), titled “Public dissemination of rounded notional or principal amounts,” which states that 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

<sup>167</sup> 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).

<sup>168</sup> 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.

<sup>169</sup> In addition, the Commission is making technical non-substantive edits to § 43.4(a) for clarity.

<sup>170</sup> See existing § 43.4(d)(4)(ii)(A).

<sup>171</sup> See existing § 43.4(d)(4)(ii)(B).

<sup>172</sup> NFP Electric Associations at 7.

<sup>173</sup> CME at 10.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> See existing § 43.4(f)(1)–(2).

<sup>177</sup> This is due to removing § 43.4(a) and (e), and re-designating § 43.4(b) through (d) as § 43.4(a) through (c).

<sup>178</sup> This is a result of re-designating § 43.4(f) as § 43.4(d).

then sets out the rules for rounding. The Commission is rephrasing § 43.4(g), re-designated as § 43.4(e), to state that 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 § 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.<sup>179</sup>

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) through (7) (*i.e.*, § 43.4(f)(1) through (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

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 as § 43.4(g), while adding the new updated regulations for cap sizes during the post-initial period that were proposed in the Proposal to new § 43.4(h). The Commission discusses the new regulations in this section.

First, the Commission is re-designating existing § 43.4(h)(1) (regulations for initial cap sizes) as § 43.4(g).<sup>180</sup> Existing § 43.4(h) requires the Commission to establish initial cap sizes<sup>181</sup> and post-initial cap sizes.<sup>182</sup> 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).<sup>183</sup> The Commission was to publish post-initial cap sizes on its website at <https://www.cftc.gov>,<sup>184</sup> and the caps were to be effective on the first day of the second month following the date of publication.<sup>185</sup>

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 existing § 43.4(h)(2) through (4). As discussed above, to avoid removing regulations needed during the compliance period until market participants need to comply with the regulations for post-initial cap sizes, the Commission is retaining the substance of § 43.4(h)(1) in new § 43.4(g) (titled “Initial cap sizes”) in its regulations.

Second, the Commission is establishing cap sizes for each of the proposed new swap categories set forth in proposed § 43.6(c)(1)(i) (interest rate (“IRS”)), (c)(2)(i) through (xii) (credit (“CDS”)), (c)(4)(i) (foreign exchange (“FX”)), and (c)(5)(i) (other commodity) using the 75-percent notional amount calculation.<sup>186</sup> 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.<sup>187</sup> 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 categories set forth in proposed § 43.6(c)(1)(i).<sup>188</sup> The Commission is

<sup>180</sup> 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).

<sup>181</sup> Initial cap sizes for each swap category are the greater of the initial appropriate minimum block size for the respective swap category in existing appendix F of part 43 or the respective cap sizes in § 43.4(h)(1)(i) through (v). 17 CFR 43.4(h)(1). If appendix F did not provide an initial appropriate minimum block size 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) through (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 (Jan. 9, 2012).

<sup>182</sup> Before the Proposal, the Commission had not yet established post-initial cap sizes.

<sup>183</sup> 17 CFR 43.4(h)(2).

<sup>184</sup> 17 CFR 43.4(h)(3).

<sup>185</sup> 17 CFR 43.4(h)(4).

<sup>186</sup> See section II.F.4 below for a discussion of the process to determine appropriate minimum block size. 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).

<sup>187</sup> New § 43.4(h) would reference the regulations containing the categories for swaps with limited trading activity: § 43.6(c)(1)(ii) (IRS); § 43.6(c)(2)(xiii) (CDS); § 43.6(c)(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.

<sup>188</sup> 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.

<sup>179</sup> 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.

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 substance of the current requirements in re-designated § 43.4(h)(9) and (10), in section II.F.1 below.

Separately, the Commission 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 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.<sup>189</sup> 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.<sup>190</sup>

The Commission received two comments requesting faster removal. Citadel recommends the Commission

consider publishing full, uncapped notionals of block trades three months after execution.<sup>191</sup> 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.<sup>192</sup>

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.<sup>193</sup> GFMA notes large trades, such as those facilitating merger and acquisition transactions, are illiquid and potentially sensitive in nature, and the ability to successfully manage risk could be compromised if a cap is removed, even after time.<sup>194</sup>

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.<sup>195</sup> 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 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.<sup>196</sup>

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) Through (h)—Removal of Certain Regulations Related to Time Delays*

###### *a. Proposal*

The Commission proposed removing existing § 43.5(c) through (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 principal amount above the corresponding appropriate minimum block size, 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 appropriate minimum block size 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 appropriate minimum

<sup>191</sup> Citadel at 8.

<sup>192</sup> Clarus at 2.

<sup>193</sup> GFMA at 8.

<sup>194</sup> *Id.*

<sup>195</sup> 7 U.S.C. 2(a)(13)(E)(i).

<sup>189</sup> DTCC at 4.

<sup>190</sup> MFA at 3.

<sup>196</sup> The Commission discusses the definition of "large notional off-facility swap" in section II.B.2 above.

block sizes.<sup>197</sup> Because the Commission has now established appropriate minimum block sizes by swap category,<sup>198</sup> existing § 43.5(c) is technically no longer applicable.

Existing § 43.5(d) through (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.<sup>199</sup> Since the phasing in of the time delays in existing § 43.5(d) through (h) is complete, the Commission proposed to remove the text remaining from the phase-in concept.

Existing § 43.5(d) through (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 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.<sup>200</sup> 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.<sup>201</sup> The Commission did so in furtherance 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.<sup>202</sup> 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.<sup>203</sup> 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.<sup>204</sup> 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.

#### 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.<sup>205</sup> ACLI similarly supports the proposed 48 hour delay, but comments that it can take days or weeks to execute large hedging programs.<sup>206</sup> 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.<sup>207</sup>

Other commenters express concern that the proposed delay would have negative impacts on transparency, price discovery, and liquidity.<sup>208</sup>

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.<sup>209</sup> FIA PTG similarly believes this information asymmetry created by the proposal would be significant and impact related futures, options, and cash products.<sup>210</sup> Healthy Markets, SMU, and TRP believe the information asymmetry would benefit large liquidity providers at the expense of other market participants.<sup>211</sup> Citadel believes the information asymmetry also benefits current liquidity providers by increasing barriers to entry for potential new liquidity providers.<sup>212</sup>

<sup>197</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217 (Jan. 9, 2012) (stating “it is possible that compliance with part 43 may be required before the establishment of appropriate minimum block sizes for certain asset classes and/or groupings of swaps within an asset class”).

<sup>198</sup> See § 43.6 (setting forth the block sizes for various swap categories).

<sup>199</sup> Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217 (Jan. 9, 2012).

<sup>200</sup> 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).

<sup>201</sup> 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).

<sup>202</sup> 78 FR 32870 (May 31, 2013).

<sup>203</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1216 (Jan. 9, 2012).

<sup>204</sup> Roadmap at 11.

<sup>205</sup> FXPA at 2–3; GFMA at 1,8–9.

<sup>206</sup> ACLI at 2.

<sup>207</sup> *Id.* at 2–3.

<sup>208</sup> Better Markets, Carnegie Mellon, Chris Barnard, CHS, Citadel, Clarus, FIA PTG, Healthy Markets, ICI, MFA, MIT, SIFMA AMG, SMU, TRP, and Vanguard.

<sup>209</sup> Citadel at 6.

<sup>210</sup> FIA at 2.

<sup>211</sup> Healthy Markets at 2,7; SMU at 3; TRP at 2–3.

<sup>212</sup> Citadel at 7–8.

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.<sup>213</sup> FIA PTG notes the same.<sup>214</sup> 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.<sup>215</sup>

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.<sup>216</sup> 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.<sup>217</sup> <sup>218</sup> Carnegie Mellon notes the lack of academic studies or evidence to support substantial dissemination delays.<sup>219</sup> 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.<sup>220</sup>

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.<sup>221</sup> 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.<sup>222</sup> Vanguard believes a 48-hour delay is unwarranted based upon current market liquidity, at least for IRS

in the most liquid currencies.<sup>223</sup> ICI similarly comments that a “one size fits all” delay does not reflect differences in liquidity among different types of swaps.<sup>224</sup> 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.<sup>225</sup> 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.<sup>226</sup>

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 appropriate minimum block size, it does not appear that the proposed substantial delay is necessary.<sup>227</sup> Better Markets and Citadel cite swaps data maintained by Clarus for their assertions that all market risks are adequately hedged within current deferral periods.<sup>228</sup> TRP similarly comments that there is no indication that liquidity providers are unwilling to make markets because the current reporting delays are too short.<sup>229</sup> TRP notes studies indicating that market liquidity, especially for on-SEF transactions, has been consistently improving.<sup>230</sup> Citadel and Clarus further note that more block trades were executed in March 2020 than any prior month.<sup>231</sup> 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.<sup>232</sup>

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 market

volatility.<sup>233</sup> Healthy Markets comments the proposed delay would similarly hamper efforts to comply with best execution obligations.<sup>234</sup>

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.<sup>235</sup>

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.<sup>236</sup> Chris Barnard comments that harmonization should be reversed, with other authorities shortening their public reporting delays.<sup>237</sup>

FXPA comments that a 48-hour delay would better align with MiFID II requirements.<sup>238</sup> 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.<sup>239</sup> Citadel and Clarus comment that there is insufficient post-trade transparency in Europe, and thus harmonization with European regulations regarding transparency is not desirable.<sup>240</sup> 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.<sup>241</sup>

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

<sup>213</sup> Citadel at 3.

<sup>214</sup> FIA PTG at 2–3.

<sup>215</sup> CHS at 2.

<sup>216</sup> Better Markets at 5; Carnegie Mellon at 2–4; Citadel at 5; MIT at 1–2; SMU at 4–5.

<sup>217</sup> Better Markets at 5; Carnegie Mellon at 2–4; Citadel at 3; FIA PTG at 1; Healthy Markets at 7.

<sup>218</sup> 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.

<sup>219</sup> Carnegie Mellon at 3.

<sup>220</sup> SMU at 4–7.

<sup>221</sup> Clarus at 2; MFA at 2; TRP at 3.

<sup>222</sup> Citadel at 4; ICI at 7; Vanguard at 5–6.

<sup>223</sup> Vanguard at 6.

<sup>224</sup> ICI at 7.

<sup>225</sup> TRP at 2.

<sup>226</sup> FIA PTG at 2.

<sup>227</sup> Clarus at 6.

<sup>228</sup> Better Markets at 6; Citadel at 4.

<sup>229</sup> TRP at 2.

<sup>230</sup> *Id.*

<sup>231</sup> Citadel at 4; Clarus at 6.

<sup>232</sup> Citadel at 8.

<sup>233</sup> Better Markets at 2; Citadel at 6, 7; Healthy Markets at 4; MFA at 2.

<sup>234</sup> Healthy Markets at 4.

<sup>235</sup> CME at 11.

<sup>236</sup> Better Markets at 7.

<sup>237</sup> Chris Barnard at 2.

<sup>238</sup> FXPA at 2–3.

<sup>239</sup> Citadel at 6–7.

<sup>240</sup> Citadel at 6–7; Clarus at 8.

<sup>241</sup> SIFMA AMG at 5.



APA.<sup>242</sup> 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.<sup>243</sup> 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.<sup>244</sup>

#### 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 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, U.S. 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) through (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 reference and support 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.”<sup>245</sup> 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 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 appropriate minimum block size 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 appropriate minimum block sizes.<sup>246</sup> Because the Commission has now established appropriate minimum block sizes by swap category,<sup>247</sup> 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) through (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<sup>248</sup>

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

<sup>246</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217 (Jan. 9, 2012) (stating “it is possible that compliance with part 43 may be required before the establishment of appropriate minimum block sizes for certain asset classes and/or groupings of swaps within an asset class”).

<sup>247</sup> See § 43.6 (setting forth the appropriate minimum block sizes for various swap categories).

<sup>248</sup> Existing § 43.6 was adopted in the Block Trade Rule.

<sup>242</sup> Healthy Markets at 6.

<sup>243</sup> TRP at 2.

<sup>244</sup> Better Markets at 3.

<sup>245</sup> 78 FR 32870 (May 31, 2013).

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, including the existing swap categories, while adding the new updated regulations for appropriate minimum block sizes during the post-initial period that were proposed in the Proposal, including the new swap categories. The Commission discusses the new regulations in this section.

#### 1. § 43.6(a)

Existing § 43.6(a) states that the Commission shall establish the appropriate minimum block size 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, as applicable. Existing § 43.6(f) contains requirements for the Commission to update the block thresholds annually. Existing § 43.6(f)(1) through (3) requires the Commission to establish post-initial appropriate minimum block size 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 appropriate minimum block size on its website. Existing § 43.6(f)(5) specifies that unless otherwise indicated on the Commission's website, the post-initial appropriate minimum block size 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 appropriate minimum block size 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 appropriate minimum block size 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.<sup>249</sup> 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.<sup>250</sup> 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.<sup>251</sup>

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.<sup>252</sup> 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.<sup>253</sup> The Commission recognizes 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(h)(2). Similarly, the Commission is maintaining the current requirement to establish appropriate minimum block size 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(g)(2).<sup>254</sup>

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.<sup>255</sup> 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 following publication, given the highly technical nature of the changes, that appropriate minimum block size is delegated to Commission staff, and that implementation could require a longer amount of time.<sup>256</sup> 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

<sup>249</sup> GFMA at 7, 10.

<sup>250</sup> *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.

<sup>251</sup> CME at 9–10.

<sup>252</sup> Proposal at 85 FR 21532 (Apr. 17, 2020).

<sup>253</sup> *See id.*

<sup>254</sup> The Commission discusses the renumbering changes to § 43.6 throughout the following sections.

<sup>255</sup> *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.

<sup>256</sup> DTCC at 5–6.

to monitor the Commission's website.<sup>257</sup> ISDA–SIFMA (Blocks) believe block and cap threshold changes should go through notice and comment, regardless of changes to the categories or methodologies.<sup>258</sup> SIFMA AMG requests the Commission adopt a 30-day notice and public comment period and a three month implementation period following any appropriate minimum block size or cap size changes.<sup>259</sup>

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.<sup>260</sup> 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 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.<sup>261</sup> 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 appropriate minimum block size when warranted and as necessary to respond to such circumstances.<sup>262</sup> 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

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 appropriate minimum block size.<sup>263</sup>

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 appropriate minimum block size, 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 (“USI”); terminated 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.<sup>264</sup> For example, on September 27, 2018, CDXYH 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)<sup>265</sup> 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.<sup>266</sup> The Commission agrees with ICI and, for the reasons the Commission discusses 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.<sup>267</sup> 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

<sup>264</sup> The analysis did not show similar patterns in the option swap categories, and the Commission is not adjusting options thresholds for roll periods.

<sup>265</sup> In the Proposal, the Commission proposed removing the existing swap categories in § 43.6(b) and replacing them with new swap categories. As explained above, the Commission has decided to leave the existing regulation for initial appropriate minimum block sizes, including the existing swap categories, in § 43.6 to avoid removing regulations that are still needed during the compliance period for any changes to § 43.6. As a result, the Commission is leaving the existing swap categories as § 43.6(b) and renaming them “Initial swap categories,” and adding the new swap categories for the post-initial appropriate minimum block sizes in § 43.6(c) (titled “Post-initial swap categories”).

<sup>266</sup> ICI at 4–5.

<sup>267</sup> Citadel at 9.

<sup>257</sup> *Id.*

<sup>258</sup> ISDA–SIFMA (Blocks) at 7–8.

<sup>259</sup> SIFMA AMG at 4.

<sup>260</sup> See also Block Trade Rule at 78 FR 32903 (May 31, 2013).

<sup>261</sup> ISDA–SIFMA (Blocks) at 7–8.

<sup>262</sup> Block Trade Rule at 78 FR 32903 (May 31, 2013).

<sup>263</sup> See Block Trade Rule at 78 FR 32872 (May 31, 2013).

in a reporting delay for swaps that are currently reported in real time.<sup>268</sup>

As explained above, the Commission believes the new swap categories are better calibrated and will result in more reliable appropriate minimum block sizes. As explained below, the Commission believes setting the appropriate minimum 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 appropriate minimum block size. 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 appropriate minimum 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 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<sup>269</sup> and nine

tenor ranges,<sup>270</sup> for a total of 135 swap categories. The proposed nine tenor ranges were the same nine tenor ranges in existing § 43.6(b)(1)(i)(A) through (I). The proposed top 15 currencies added the currencies of Brazil, Chile, the Czech Republic, India and Mexico and removed the currencies of Switzerland 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 appropriate minimum block size to zero to make each transaction eligible for delayed dissemination.<sup>271</sup>

The Commission is adopting the new IRS categories as proposed, but numbered as § 43.6(c) in the regulations. 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 appropriate minimum block sizes 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 an appropriate minimum block size of zero will address the swaps for which there is not enough activity for the Commission to compute a reliable and robust appropriate minimum block size.

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.<sup>272</sup> 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.<sup>273</sup> ACLI requests that interest rate products with a tenor of 10 years and greater be made into a separate category because they have a different sensitivity to risks than shorter-dated interest rate products.<sup>274</sup>

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 appropriate minimum block size; and (2) minimizing the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.<sup>275</sup> 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 appropriate minimum block size 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 appropriate minimum 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 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 CDXY 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

European Union, Great Britain, India, Japan, Mexico, New Zealand, South Africa, South Korea, Sweden, or the United States.

<sup>270</sup> See proposed § 43.6(b)(1)(i)(B)(1) through (9).

<sup>271</sup> See proposed § 43.6(e)(4), discussed below in section II.F.4.

<sup>272</sup> SIFMA AMG at 6.

<sup>273</sup> ISDA–SIFMA (Blocks) at 6–7. The Commission discusses the ISDA–SIFMA (Blocks) comment with respect to CDS in the following section.

<sup>274</sup> ACLI at 3–4.

<sup>275</sup> Proposal at 85 FR 21534 (Apr. 17, 2020).

<sup>268</sup> *Id.*

<sup>269</sup> See proposed § 43.6(b)(1)(i)(A)(1) through (15). These 15 currencies are the currencies of Australia, Brazil, Canada, Chile, Czech Republic, the

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 CDX Emerging Markets 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 appropriate minimum block size to zero to make them eligible for delayed dissemination.<sup>276</sup>

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) CDX Emerging Markets; and (v) CMBX.<sup>277</sup> 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 an appropriate minimum block size of zero will address these swaps for which there is not enough activity for the Commission to compute a reliable and robust appropriate minimum block size.

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 scope of data was overly inclusive and not representative of all swaps in a particular swap category, especially with CDS.<sup>278</sup> First, ISDA–SIFMA (Blocks) believe including swaps with optionality skewed block and cap sizes because non-delta–1 products<sup>279</sup> 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.<sup>280</sup> ISDA–SIFMA (Blocks) believe this is shown by, for example, the proposed appropriate minimum block size for CDXIG being \$550 million notional, while the proposed appropriate minimum block size for CDXEM, whose markets have very little option activity, as \$51 million notional.<sup>281</sup> ISDA–SIFMA (Blocks) also believe the data set inappropriately included CDS rolls.<sup>282</sup> 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 appropriate minimum block sizes by excluding such products from its data sets; or (2) create new categories that would distinguish between these products.<sup>283</sup>

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 distribution of trade sizes between non-option and option CDS products.<sup>284</sup> 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 appropriate minimum 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 appropriate minimum block sizes primarily on periods of high or low volatility would lead to appropriate minimum block sizes that are inappropriate under most market conditions; thus, the adopted appropriate minimum 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 appropriate minimum block sizes for stressed market conditions. By their nature, markets may be stressed for different reasons and to different levels, and thus, the appropriate minimum block sizes cannot be determined in advance.

#### c. Equity Asset Class

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).<sup>285</sup>

The Commission received one comment on the equity asset class. ICI requests the Commission consider whether to include appropriate minimum block size for equity swaps because the assumption that a highly liquid underlying cash market negates the need for an appropriate minimum block size does not hold true.<sup>286</sup> 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

<sup>276</sup> See proposed § 43.6(e)(4), discussed below in section II.F.4.

<sup>277</sup> 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.

<sup>278</sup> ISDA–SIFMA (Blocks) at 6–7.

<sup>279</sup> 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).

<sup>280</sup> ISDA–SIFMA (Blocks) at 6–7.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> *Id.* at 7.

<sup>284</sup> 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.

<sup>285</sup> As explained above, due to renumbering issues, the regulations for post-initial appropriate minimum block sizes in the equity asset class will be found at § 43.6(c)(3), even though the Commission proposed leaving them in § 43.6(b)(3).

<sup>286</sup> ICI at 5.

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<sup>287</sup> paired with another super major currency, a major currency,<sup>288</sup> or a currency of Brazil, China, Czech Republic, Hungary, Israel, Mexico, Poland, Russia, and Turkey; or (ii) unique currency combinations not included in § 43.6(b)(4)(i).<sup>289</sup>

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 appropriate 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 appropriate

minimum block size to zero to make these swaps eligible for delayed dissemination.<sup>290</sup>

The Commission is adopting the new FX swap categories as proposed, with technical modifications to re-designate/re-number certain requirements, as discussed above. For FX, the 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 an appropriate minimum block size of zero will address these swaps for which there is not enough activity for the Commission to compute a reliable and robust appropriate minimum block size.

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.<sup>291</sup>

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.<sup>292</sup> 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.<sup>293</sup> 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 these currencies would now fall into the “limited trading activity” bucket, which GFMA believes is surprising.<sup>294</sup> 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.<sup>295</sup>

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 appropriate minimum 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 appropriate minimum block size and (2) minimizing the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.<sup>296</sup>

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 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<sup>297</sup> 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.<sup>298</sup> Swaps outside of

<sup>287</sup> § 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).

<sup>288</sup> § 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).

<sup>289</sup> See 17 CFR 43.6(b)(4).

<sup>290</sup> See proposed § 43.6(e)(4) (re-designated as § 43.6(g)(4)), discussed below in section II.F.4.

<sup>291</sup> FXPA at 2.

<sup>292</sup> GFMA at 9.

<sup>293</sup> GFMA at 7, 10.

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> See Block Trade Rule at 32872.

<sup>297</sup> Appendix B to part 43 lists 42 swap categories based on such contracts.

<sup>298</sup> 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

§ 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.<sup>299</sup>

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.<sup>300</sup> 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 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 appropriate minimum block size. The Commission proposed adding a swap category in § 43.6(b)(5)(ii) for relatively illiquid other commodity swaps and setting the appropriate minimum block size for these swaps at zero.<sup>301</sup>

The Commission is adopting the new other commodity swap categories as proposed in § 43.6(c).<sup>302</sup> 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 appropriate minimum block size and (2) minimizing the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.<sup>303</sup> 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 appropriate minimum 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 electricity products.<sup>304</sup> 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.<sup>305</sup>

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 appropriate minimum block sizes 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.<sup>306</sup>

For the initial period,<sup>307</sup> the Commission has used the 50-percent notional amount calculation to determine the appropriate minimum block size.<sup>308</sup> For the post-initial period, existing § 43.6(f)(2) required the Commission to use the 67-percent notional amount calculation.<sup>309</sup> 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 appropriate minimum block size calculated using the 50-percent notional amount calculation.<sup>310</sup> For post-initial cap sizes, existing § 43.4(h) required the Commission to use the 75-percent notional amount calculation for all swap categories.<sup>311</sup>

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 appropriate minimum block size 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) and (2), respectively. However, as discussed above, to avoid removing regulations that still need to be effective during 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 appropriate minimum block size equal to that amount.

<sup>307</sup> 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.

<sup>308</sup> See § 43.6(e).

<sup>309</sup> See § 43.6(f)(2).

<sup>310</sup> See § 43.4(h)(1).

<sup>311</sup> See § 43.4(h)(2)(ii). As discussed above in section II.D.4, the Commission is adopting some changes to the process to determine cap sizes in § 43.4(h), but will use the 75-percent notional amount calculation for cap sizes.

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.

<sup>299</sup> 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 appropriate minimum block size 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 78 FR 32888 (May 31, 2013).

<sup>300</sup> This was a structural change to reflect the proposed removal of existing appendices A through C.

<sup>301</sup> See proposed § 43.6(e)(4), discussed below in section II.F.4.

<sup>302</sup> Due to the re-numbering described throughout this section, the post-initial appropriate minimum block sizes will be re-numbered as § 43.6(c) instead of § 43.6(b) as the Commission proposed in the Proposal.

<sup>303</sup> See Block Trade Rule at 78 FR 32872 (May 31, 2013).

<sup>304</sup> ICE SDR at 8.

<sup>305</sup> *Id.*

<sup>306</sup> 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



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). In addition, due to retaining the existing swap categories in § 43.6(b), the Commission is renumbering § 43.6(c) as § 43.6(d).

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) through (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 appropriate minimum block sizes.<sup>312</sup> 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,<sup>313</sup> or if the notional amount is already significant “to” two digits, increase the notional amount to the next highest rounding point of two significant digits.<sup>314</sup> 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).

<sup>313</sup> 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.

<sup>314</sup> See Block Trade Rule at 78 FR 32892 (May 31, 2013), 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.”

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 appropriate minimum block size in the initial<sup>315</sup> and post-initial period. Existing § 43.6(f) directs the Commission to establish the post-initial appropriate minimum block size by swap categories.<sup>316</sup> The regulation directs the Commission to update those appropriate minimum block sizes no less than once each calendar year thereafter.<sup>317</sup> For the swap categories listed in existing § 43.6(e)(1), § 43.6(f)(2) requires the Commission to apply the 67-percent notional amount calculation.<sup>318</sup> Swaps in the FX category in existing § 43.6(b)(4)(ii) are to be eligible for block trade or LNOFS treatment, as applicable.<sup>319</sup> Existing § 43.6(f)(4) directs the Commission to publish the post-initial appropriate minimum block sizes on its website and states the appropriate minimum block sizes will be effective on the first day of the second month following the date of publication.<sup>320</sup>

Prior to the Proposal, the Commission had not published any post-initial appropriate minimum block sizes. 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),<sup>321</sup>

<sup>315</sup> The initial period ended April 10, 2014 when SDRs had collected one year’s worth of reliable data.

<sup>316</sup> See § 43.6(f)(1).

<sup>317</sup> *Id.*

<sup>318</sup> See § 43.6(f)(2).

<sup>319</sup> See § 43.6(f)(3).

<sup>320</sup> See § 43.6(f)(5).

<sup>321</sup> In place of existing § 43.6(e), the Commission is adding the regulations that specify there are no appropriate minimum block sizes for swaps in the

<sup>312</sup> See Block Trade Rule at 78 FR 32895 (May 31, 2013).

while updating the regulations for appropriate minimum block sizes during the post-initial period that were proposed in the Proposal in renumbered § 43.6(g). The Commission discusses the new regulations in § 43.6(g) in this section.

Renumbered § 43.6(g)(1) will state the Commission shall establish appropriate minimum block size, by swap categories, as described in § 43.6(g)(2) through (6). Renumbered § 43.6(g)(2) states the Commission shall determine the appropriate minimum block size for the swap categories described in § 43.6(c)(1)(i), (c)(2)(i) through (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 appropriate minimum block size for any swap category described in § 43.6(c)(1)(i), the Commission shall assign an appropriate minimum block size of zero to such category.<sup>322</sup> 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).<sup>323</sup>

New § 43.6(g)(3) sets forth the method for determining appropriate minimum block sizes for FX swaps. New § 43.6(g)(3) specifies that the parties to an FX swap described in § 43.6(c)(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(c)(4)(i). If either notional amount paired with USD is greater than the block threshold, the swap described in § 43.6(c)(4)(ii) will qualify for block treatment.

As discussed above in section II.F.2, the Commission is setting the appropriate minimum block size of all

swaps in certain swap categories<sup>324</sup> at zero and treating them as block trades in proposed § 43.6(g)(4). Finally, the Commission is keeping existing § 43.6(f)(5), renumbered as § 43.6(g)(6), which provides the effective date of post-initial appropriate minimum block sizes.

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.<sup>325</sup> The Commission anticipated that this enhanced transparency would improve market integrity and price discovery, while reducing information asymmetries enjoyed by market makers in predominately opaque swap markets.<sup>326</sup> 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.<sup>327</sup> 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.<sup>328</sup>

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.<sup>329</sup>

When the Commission promulgated existing § 43.6(f)(2), it recognized that increasing the appropriate minimum block size 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.<sup>330</sup> 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 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.<sup>331</sup> 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.<sup>332</sup> 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.<sup>333</sup>

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

equity asset class. This means the Commission has to move existing § 43.6(e) and (f) to § 43.6(f) and (g).

<sup>322</sup> The proposed appropriate minimum block size tables published by the Commission indicated that the 67-percent notional amount calculation does not result in an appropriate minimum block size for 15 IRS categories. There was insufficient swap transaction and pricing data for the Commission to determine an appropriate minimum block size for those 15 IRS categories. The Commission is setting the appropriate minimum block size for such IRS categories at zero, the same appropriate minimum block size being assigned to other IRS with limited trading activity.

<sup>323</sup> The Commission discusses this decision in section II.F.1 above.

<sup>324</sup> These categories of swaps are in § 43.6(c)(1)(ii), (c)(2)(xiii), (c)(4)(iii), and (c)(5)(ii).

<sup>325</sup> 78 FR 32893, 32894 (May 31, 2013).

<sup>326</sup> *Id.* at 32894.

<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

<sup>329</sup> See, e.g., MIT at 1–2; Carnegie Mellon at 2–4; SMU at 4–5; and Citadel at 5.

<sup>330</sup> 78 FR 32919–20 (May 31, 2013).

<sup>331</sup> *Id.* at 32920.

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

was in 2013. The ability of traders to profitably anticipate the hedging demands resulting from LNOFSs (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-initial appropriate minimum block size at the same time they have to come into compliance with significant aspects of some of the additional changes to § 43.6, including the new swap categories. As a result, the Commission is providing 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.<sup>334</sup> Chris Barnard supports raising the thresholds from 50% notional to a minimum of 67% notional based on updated analysis.<sup>335</sup> Citadel supports the move from 50% to 67% to balance market transparency and information leakage risks, unlike the current approach, where one-half of trading

activity (by notional) is eligible for a public reporting deferral.<sup>336</sup> Citadel further notes this approach is more consistent with the European approach.<sup>337</sup> Clarus believes the proposal will remove information asymmetries from the markets.<sup>338</sup>

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.<sup>339</sup> 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.<sup>340</sup> 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.<sup>341</sup>

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 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.<sup>342</sup> As noted above, the Commission also determined that it will not establish appropriate minimum block sizes for stressed market conditions. By their nature, markets may be stressed for different reasons and to different levels, and thus, the

appropriate minimum 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 appropriate minimum block size is now justified, or, if justified, what percentage change is justified.<sup>343</sup> 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.<sup>344</sup> 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.<sup>345</sup>

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).<sup>346</sup> 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

<sup>336</sup> Citadel at 9.

<sup>337</sup> *Id.*

<sup>338</sup> Clarus at 2.

<sup>339</sup> PIMCO at 3-4.

<sup>340</sup> *Id.*

<sup>341</sup> SIFMA AMG at 2-4.

<sup>342</sup> 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/>.

<sup>343</sup> Vanguard at 3.

<sup>344</sup> ISDA-SIFMA (Blocks) at 3-4.

<sup>345</sup> ICI at 6-7.

<sup>346</sup> 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.

<sup>334</sup> Better Markets at 2.

<sup>335</sup> Chris Barnard at 1.

the trade execution requirement, will now be subject to the RFQ-to-three process.<sup>347</sup> Vanguard contends that for most product types, the magnitude of the proposed increase in appropriate minimum block size would have an adverse impact on liquidity with respect to existing block trades, which would no longer benefit from RFQ-to-one<sup>348</sup> and delayed reporting.<sup>349</sup> 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.<sup>350</sup>

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 appropriate minimum block size is being raised for relatively liquid products.

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.<sup>351</sup> 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.<sup>352</sup>

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,<sup>353</sup> 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 U.S. 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 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 appropriate minimum 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.<sup>354</sup> 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.<sup>355</sup> 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.<sup>356</sup> 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.<sup>357</sup> 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 appropriate minimum block size for such swaps.<sup>358</sup>

The Commission is neither persuaded by comments that appropriate minimum 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 appropriate minimum 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. 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 appropriate minimum 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.<sup>359</sup> 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.<sup>360</sup> GFMA believes more transparency for these less liquid currencies will create challenges for

<sup>347</sup> 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).

<sup>348</sup> 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.

<sup>349</sup> Vanguard at 3–4.

<sup>350</sup> ICI at 7.

<sup>351</sup> ISDA–SIFMA (Blocks) at 5.

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> *Id.* at 4.

<sup>355</sup> SIFMA AMG at 4.

<sup>356</sup> ISDA–SIFMA (Blocks) at 4.

<sup>357</sup> Credit Suisse at 3.

<sup>358</sup> ACLI at 3–4.

<sup>359</sup> GFMA at 7, 10.

<sup>360</sup> GFMA at 7–8.

market participants to hedge in these currencies.<sup>361</sup>

The Commission disagrees with GFMA's comment because the category includes less liquid currency pairs.<sup>362</sup> 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 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 appropriate minimum block size 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.<sup>363</sup> 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.<sup>364</sup> 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.”<sup>365</sup>

At this time, given the data available to it, the Commission disagrees with Clarus that the appropriate minimum block size 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.

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.<sup>366</sup>

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 appropriate minimum 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.”<sup>367</sup> 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.<sup>368</sup> GFMA believes the proposed zero appropriate minimum block size for the other currency bucket is “not unwelcome.”<sup>369</sup> FXPA supports the creation of a category for relatively low liquidity FX swaps that will benefit from an appropriate minimum block size of zero.<sup>370</sup>

With respect to the proposed zero appropriate minimum 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 appropriate minimum 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.<sup>371</sup> 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.<sup>372</sup>

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 § 43.6(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 appropriate minimum block size 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(h)(1)(i) to state if the parties make such an election, the reporting counterparty must notify the SEF or DCM.<sup>373</sup>

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-

<sup>361</sup> *Id.*

<sup>362</sup> GFMA at 7–8.

<sup>363</sup> Clarus at 8–9.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> PIMCO at 2.

<sup>367</sup> Clarus at 9.

<sup>368</sup> *Id.*

<sup>369</sup> GFMA at 7.

<sup>370</sup> FXPA at 2.

<sup>371</sup> GFMA at 9.

<sup>372</sup> *Id.*

<sup>373</sup> The Commission is also making minor non-substantive technical edits for clarity.

designated § 43.6(h)(1)(ii), but is removing the specific reference to § 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 appropriate minimum block size 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 appropriate minimum block size 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.<sup>374</sup> 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 retaining § 43.6(e) and (f).<sup>375</sup> The

Commission is also not adopting the proposal to remove existing § 43.6(h)(5) (which will now be in renumbered § 43.6(i)(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.<sup>376</sup>

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 not listed or offered for trading on a SEF or DCM.<sup>377</sup> 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.<sup>378</sup>

<sup>376</sup> See Block Trade Rule at 32904.

<sup>377</sup> 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/@lrllettergeneral/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).

<sup>378</sup> Block Trade Rule at 78 FR 32905 (May 31, 2013).

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.<sup>379</sup> 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)(6) 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.

The Commission received one comment on the proposed amendments to § 43.6(h), which will be adopted in § 43.6(i). 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.<sup>380</sup> 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.<sup>381</sup>

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 in renumbered § 43.6(i). 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)(6) 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 renumbering § 43.6(i) as § 43.6(j) in response to the changes above related to retaining certain existing regulations. In addition, to conform to the proposed revisions to § 43.6(i)—specifically the removal of the

<sup>379</sup> Proposal at 85 FR 21540 (Apr. 17, 2020).

<sup>380</sup> ICI at 9.

<sup>381</sup> *Id.*

<sup>374</sup> Chatham at 2.

<sup>375</sup> 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(i) to reflect the re-designation.

\$25 million threshold in existing § 43.6(i)(6)(ii)—the Commission is 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.<sup>382</sup> 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 § 43.6(e).<sup>383</sup> 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).<sup>384</sup>

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 update it<sup>385</sup> 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).

In adopting appendix A, 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.<sup>386</sup> 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 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.<sup>387</sup> The Commission proposed the swap transaction and pricing data elements to be publicly disseminated 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.<sup>388</sup> 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](http://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

<sup>387</sup> The Commission had intended that the data elements in appendix A 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 (Jan. 9, 2012) (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.

<sup>388</sup> 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 February 2020 notice of proposed rulemaking relating to the Commission’s regulations in parts 45, 46, and 49. See Swap Data Recordkeeping and Reporting Requirements, 85 FR 21578 (Apr. 17, 2020).

<sup>382</sup> See *id.*

<sup>383</sup> The Commission discusses the changes to post-initial appropriate minimum block sizes above in section II.F.3.

<sup>384</sup> The Commission discusses the changes to post-initial cap sizes above in section II.D.4.

<sup>385</sup> 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.

<sup>386</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1224 (Jan. 9, 2012).



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, the USI or unique transaction identifier (“UTI”), and the submitter. However, DMO noted these swap data elements separately in the technical specification published on <https://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<sup>389</sup> 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.<sup>390</sup> The Commission expects UPIs will be available within the next two years.<sup>391</sup> 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 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”).<sup>392</sup> 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 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.<sup>393</sup> 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 unclear how any additional clearing data elements would enhance transparency and price discovery.<sup>394</sup> ISDA–SIFMA comments that reporting terminated alpha swaps on the public tape would create a certain level of “noise” on the public tape with little incremental value.<sup>395</sup>

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.<sup>396</sup> 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.

<sup>389</sup> 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.

<sup>390</sup> 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/>.

<sup>391</sup> 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.

<sup>392</sup> 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>.

<sup>393</sup> Citadel at 10; Clarus at 10.

<sup>394</sup> CME at 11.

<sup>395</sup> ISDA–SIFMA at 54.

<sup>396</sup> 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.<sup>397</sup> 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.<sup>398</sup> 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.<sup>399</sup> 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.

### 4. Category: Notional Amounts and Quantities

The Commission proposed requiring SDRs publicly disseminate eleven data elements related to notional amounts and quantities.<sup>400</sup> 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.<sup>401</sup>

### 5. Category: Packages

The Commission proposed requiring SDRs to publicly disseminate four data elements related to package transactions.<sup>402</sup> 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 transactions that are executed using “list” functionality offered by a SEF, where several transactions are grouped together for pricing and execution purposes.<sup>403</sup>

ISDA–SIFMA do not support additional package related data elements being disseminated on the public tape because they are exceptionally complex.<sup>404</sup> 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.<sup>405</sup> 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.<sup>406</sup> 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.<sup>407</sup>

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. 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.<sup>408</sup> 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.<sup>409</sup> SDRs are currently publicly disseminating information related to prices, but the Commission proposed further standardizing how this information is reported across SDRs. The 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

<sup>397</sup> In appendix A, these data elements are: Action type (26); Event type (27); Event identifier (29); and Event timestamp (30).

<sup>398</sup> *Id.*

<sup>399</sup> Clarus at 2.

<sup>400</sup> 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).

<sup>401</sup> Notional amount schedule is three data elements in the CDE Technical Guidance.

<sup>402</sup> 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).

<sup>403</sup> Citadel at 10.

<sup>404</sup> ISDA–SIFMA at 55.

<sup>405</sup> *Id.*

<sup>406</sup> CME at 11.

<sup>407</sup> FXPA at 3.

<sup>408</sup> 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).

<sup>409</sup> 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).

rules permitting a delay for reporting PPS.<sup>410</sup>

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.<sup>411</sup> 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.<sup>412</sup>

The Commission is adopting the products data elements in appendix A as proposed. As explained above, the placeholder reflects the Commission's decision for 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.<sup>413</sup>

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.<sup>414</sup>

The Commission received one comment on the Prime broker transaction indicator data element. ISDA–SIFMA believe the prime broker transaction indicator should not be 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.<sup>415</sup>

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.<sup>416</sup> 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.<sup>417</sup>

The Commission is adopting the transaction-related data 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

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**.

election indicator (93); Effective date (94); Expiration date (95); Execution timestamp (96); Platform identifier (98); and Prime brokerage transaction indicator (99).

<sup>414</sup> The Commission discusses mirror swaps in section II.C.4 above.

<sup>415</sup> ISDA–SIFMA at 54.

<sup>416</sup> Citadel at 11.

<sup>417</sup> *Id.*

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.”<sup>418</sup> 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.<sup>419</sup>

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, extend a unified compliance date for this Final Rule that is 18 months from the date of publication in the **Federal Register**, which matches the compliance date for all three Roadmap proposals. To accommodate an extended compliance date for changes to the block thresholds and cap sizes in § 43.4(h) and § 43.6 discussed in the next section, the Commission encourages market participants to comply with the existing part 43 rules until the end of the 18-month compliance period.

#### B. Changes to the Appropriate Minimum Block Sizes and Cap Sizes

The Commission will extend the compliance date for the post-initial block thresholds and cap sizes in § 43.4(h) and § 43.6 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

<sup>410</sup> The Commission discusses PPS, including the indicator, in section II.C.2 above.

<sup>411</sup> In appendix A, these data elements are: Index factor (85); Embedded option type (86); and Unique product identifier (87).

<sup>412</sup> FXPA at 3.

<sup>413</sup> In appendix A, these data elements are: Non-standardized term indicator (92); Block trade

<sup>418</sup> ICE DCOs at 1–2.

<sup>419</sup> GFMA at 12.

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 appropriate minimum block sizes 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 appropriate minimum block sizes and cap sizes no less than once each calendar year, the additional twelve months will give the Commission the opportunity to recalculate the appropriate minimum block sizes 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 appropriate minimum block sizes 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, §§ 43.4(h) and 43.6 and the new, post-initial 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 a total of 30 months) 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.<sup>420</sup> 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.<sup>421</sup> The changes to part 43 adopted herein will have had a direct effect on the operations of DCMs, DCOs, MSPs, PBs,<sup>422</sup> reporting counterparties, SDs, SDRs, and SEFs. The Commission has previously certified that DCMs,<sup>423</sup> DCOs,<sup>424</sup> MSPs,<sup>425</sup> SDs,<sup>426</sup> SDRs<sup>427</sup>, and SEFs<sup>428</sup> are not small entities for purpose of the RFA.

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.<sup>429</sup> The Commission has previously certified that ECPs are not small entities for purposes of the RFA.<sup>430</sup>

<sup>421</sup> See Policy Statement and Establishment of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) ("1982 RFA Release").

<sup>422</sup> 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.

<sup>423</sup> See 1982 RFA Release.

<sup>424</sup> 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).

<sup>425</sup> See SD and MSP Recordkeeping, Reporting, and Duties Rules, 77 FR 20128, 20194 (Apr. 3, 2012) (basing determination in part on minimum capital requirements).

<sup>426</sup> See *id.*

<sup>427</sup> 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).

<sup>428</sup> See Core Principles and Other Requirements for SEFs, 78 FR 33476, 33548 (June 4, 2013).

<sup>429</sup> See 7 U.S.C. 2(e).

<sup>430</sup> 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 Wall Street Reform and Consumer Protection Act (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.

The Commission has analyzed swap data reported to each SDR<sup>431</sup> 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 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<sup>432</sup> 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 aggregate reporting burden for proposed § 43.3 and § 43.4 in the preamble and instead provided PRA

<sup>431</sup> 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.

<sup>432</sup> See 44 U.S.C. 3501.

<sup>420</sup> See 5 U.S.C. 601 *et seq.*

estimates for all of part 43. The Commission is now including PRA estimates for final § 43.3 and § 43.4 below.<sup>433</sup> 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

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.

<sup>433</sup> 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.

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.<sup>434</sup> 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

<sup>434</sup> 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.

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.

*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 Proposal 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 the cost for a reporting entity, including DCMs, DCOs, MSPs, non-SD/MSPs, SDs, and SEFs, to modify their systems and maintain those modifications going forward to adopt the Final Rule could range from \$24,000 to \$74,000. There are an estimated 1,732 reporting entities, for a total estimated cost of \$84,868,000. The estimated cost range is based 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 contained in part 43. The Commission estimates it would take a reporting entity an estimated total of 500 to 725 hours per reporting to perform the necessary tasks. The Commission estimates that the cost for an SDR to modify their systems, including their data reporting, ingestion, and validation systems, and maintain those modifications going forward may range from \$144,000 to \$510,000 per SDR. There are currently three SDRs, for an estimated total cost of \$981,000. The estimated cost range is based 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 contained in part 43. These numbers assume that each SDR will spend approximately 3,000–5,000 hours to establish a relational database to handle such tasks. 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 Proposal related to the modification or maintenance of systems in order to be in compliance with the proposed amendments to § 43.4. To avoid double-counting, the Commission included the costs associated with updates to § 43.3, discussed above, as they would be captured in the costs of updating systems based on the list of swap data elements in part 43. As noted above, the Commission is soliciting comments on the revised burden estimates for part 43 that are being adopted in the Final Rule.

## C. Cost-Benefit Considerations

### 1. Statutory and Regulatory Background

Section 15(a)<sup>435</sup> 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.<sup>436</sup> Specifically, these are the amendments to: § 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.<sup>437</sup> 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.<sup>438</sup> Relevant amendments below will list a low-to-high range of potential costs as 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

<sup>438</sup> 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](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 (Jan. 13, 2012) (using an adjustment factor of 1.3 for overhead and other benefits). These estimates are intended to reflect U.S. developer hourly rates market 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.

<sup>435</sup> 7 U.S.C. 19(a).

<sup>436</sup> 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 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.

<sup>437</sup> 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.

with or effect on U.S. commerce under CEA section 2(i).<sup>439</sup>

## 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.<sup>440</sup> 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 p.m. eastern time on the execution date.<sup>441</sup> 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 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.<sup>442</sup> 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.<sup>443</sup> 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.<sup>444</sup>

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.<sup>445</sup> Citadel believes an identifier would address the concern that the real-time publication of PPSs confuses market participants.<sup>446</sup>

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.<sup>447</sup> 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.<sup>448</sup>

<sup>442</sup> 85 FR at 21522 (Apr. 17, 2020).

<sup>443</sup> 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.

<sup>444</sup> The Commission discusses the data element for “post-priced swap indicator” in section III.

<sup>445</sup> Citadel at 10.

<sup>446</sup> *Id.*

<sup>447</sup> ISDA–SIFMA at 50.

<sup>448</sup> *Id.*

ISDA–SIFMA believe a T+1 cutoff will significantly reduce potential unnecessary hedging costs by reducing the number of PPSs reported without a price.<sup>449</sup>

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, 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.<sup>450</sup> CME believes there is no value in reporting swap transaction and pricing data prior to all variable terms being determined.<sup>451</sup> 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.

<sup>449</sup> *Id.*

<sup>450</sup> CME at 3–4, FIA at 11.

<sup>451</sup> CME at 3–4.

<sup>439</sup> 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 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).

<sup>440</sup> The Commission discusses PPSs further in section II.C.2 above.

<sup>441</sup> 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.



As noted above, this potentially conflicts with SDR standards, which often mandate values in certain fields, such as fields related to prices. Perhaps reflecting 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 is 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.<sup>452</sup>

*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 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.<sup>453</sup> 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 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.<sup>454</sup> 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.<sup>455</sup> Also, these commenters believe the prices disseminated for

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.

<sup>454</sup> ICE DCOs at 2; CME at 7–8.

<sup>455</sup> *Id.*

default management swaps would be irrelevant as the prices are affected by the DCO's priority to take timely action.<sup>456</sup>

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.

*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.<sup>457</sup>

#### iii. § 43.3(a)(6)—Prime Broker Swaps

Final § 43.3(a)(6) establishes rules for publicly reporting PB swaps.<sup>458</sup> 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: A trigger swap with its customer,

<sup>456</sup> *Id.*

<sup>457</sup> The Commission estimates for PRA purposes that there would be no burden incurred by market participants, as discussed in the PRA section.

<sup>458</sup> 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.

<sup>452</sup> 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.

<sup>453</sup> For example, PPSs are not standardized in how they are reported. If, for example, all PPSs

and a flip-side mirror swap with a third party, often referred to as an executing broker;<sup>459</sup> 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.<sup>460</sup> 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.<sup>461</sup> 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.<sup>462</sup> 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 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.<sup>463</sup> 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.<sup>464</sup> This creates challenges for anyone seeking to use swap transaction and pricing data for analysis or historical studies of market activity.

Pursuant to new § 43.3(a)(6)(i), a mirror swap would fall outside the obligations for ASATP reporting and SDR public dissemination,<sup>465</sup> 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.<sup>466</sup> 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,<sup>467</sup> 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 preclude it from speaking to mirror swap percentages and that it is "difficult to quantifying the cost or benefit in monetary terms."<sup>468</sup>

**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 conclusion.<sup>469</sup>

<sup>459</sup> 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.

<sup>460</sup> As ISDA-SIFMA notes, these arrangements may involve multiple mirror swaps associated with a trigger swap. See ISDA-SIFMA at 58.

<sup>461</sup> 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.

<sup>462</sup> § 43.3(a)(1) and (b)(2).

<sup>463</sup> 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.

<sup>464</sup> The swap transaction and pricing data elements in appendix A would include a new data element "Prime brokerage transaction indicator."

<sup>465</sup> See § 43.3(a)(1) and (b)(2).

<sup>466</sup> Citadel at 10; CME at 5; FXPA at 4; ISDA-SIFMA at 51–53, 64–66; GFMA at 1, 5–6.

<sup>467</sup> Citadel at 10.

<sup>468</sup> ISDA-SIFMA at 58.

<sup>469</sup> 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"); GFMA at 6 (supporting ISDA-SIFMA response); CME at 5 (it "does not

Rather, inclusion of such duplicative records can distort price discovery by creating a false impression of market volume at a particular price.<sup>470</sup>

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 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.<sup>471</sup>

believe that publishing information regarding mirror swaps would provide any information of value to market participants").

<sup>470</sup> 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.'").

<sup>471</sup> FXPA at 4.

*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;<sup>472</sup> (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 Commission views any lost-transparency cost from not requiring mirror swap reporting as largely theoretical.<sup>473</sup>

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.<sup>474</sup> This alternative would

<sup>472</sup> 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.

<sup>473</sup> 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.

<sup>474</sup> Citadel at 10.

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 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."<sup>475</sup>

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.<sup>476</sup> Trigger swap acceptance can happen in a variable timeframe that ISDA–SIFMA believes should not exceed T + 1 relative to the pricing event.<sup>477</sup> 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.<sup>478</sup> 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.

Notwithstanding potential costs, the Commission believes new § 43.3(a)(6) is warranted in light of the anticipated benefits.

<sup>475</sup> ISDA–SIFMA at 57.

<sup>476</sup> *Id.* at 52.

<sup>477</sup> *Id.* at 52, 66 n.113.

<sup>478</sup> *Id.* at 52.

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.<sup>479</sup> 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 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, 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.<sup>480</sup>

**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

<sup>479</sup> 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.

<sup>480</sup> The Commission believes the lack of specificity in reporting has encouraged using flexible APIs.

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.<sup>481</sup> 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.<sup>482</sup> 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.<sup>483</sup>

For reporting entities, ODT SMEs estimate the cost per reporting entity to range from \$24,000 to \$74,000.<sup>484</sup> 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.<sup>485</sup> These tasks

<sup>481</sup> 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.

<sup>482</sup> 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.

<sup>483</sup> 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.

<sup>484</sup> 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.

<sup>485</sup> 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

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.<sup>486</sup>

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 elements in appendix A, most of which the SDRs are already disseminating, would be a smaller portion of the costs just described.

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

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.

<sup>486</sup> 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.

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.<sup>487</sup> While the new data validation 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.<sup>488</sup>

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

<sup>487</sup> 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.

<sup>488</sup> 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](https://financialresearch.gov/financial-stability-reports/files/OFR_2015-Financial-Stability-Report_12-15-2015.pdf).

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 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.<sup>489</sup>

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<sup>490</sup>

i. § 43.4(f)—Process To Determine Appropriate Rounded Notional or Principal Amounts

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 appropriate minimum block sizes—thresholds determining whether a transaction qualifies as either a block trade or LNOFS<sup>491</sup> 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.<sup>492</sup> 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).<sup>493</sup>

The cornerstones of current § 43.6 are subsections (b) prescribing the swap categories for which appropriate minimum block sizes (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

<sup>491</sup> As defined in § 43.3(2), both block trades and LNOFSs must have a notional or principal amount above the appropriate minimum block size, 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.” Appropriate minimum block sizes are also at times referred to as “block thresholds” in this discussion.

<sup>492</sup> See current § 43.4(h), and amended § 43.4(g) as being adopted through this release.

<sup>493</sup> 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.

<sup>489</sup> DTCC at 4.

<sup>490</sup> The Commission discusses the costs and benefits related to cap size changes in § 43.4(h) in the block thresholds discussion in § 43.6.

methodologies and process for calculating appropriate minimum block size and cap sizes.<sup>494</sup>

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 go forward. The Commission provides additional background on its economic assessment of the updated § 43.6(c) swap categories, and their interplay with appropriate minimum block size 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 appropriate minimum block sizes 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 appropriate minimum block size 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.<sup>495</sup>

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.<sup>496</sup> 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.<sup>497</sup>

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).

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 appropriate minimum block size 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.<sup>498</sup> 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).<sup>499</sup> Finally, the Commission changed the swap categories related to “Other Commodity” to represent the underlying commodity instead of references to specific futures contracts and exchanges.

The adoption of § 43.6(c) will result in an appropriate minimum block size of zero for swaps excluded from the defined swap categories.<sup>500</sup> 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.<sup>501</sup> 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.<sup>502</sup>

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

<sup>498</sup> 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.

<sup>499</sup> While there are 84 current swap categories for FX, 40 of these have a block size of zero.

<sup>500</sup> 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.

<sup>501</sup> For example, the 15 currencies that are explicitly placed in a category make up 96% of the total population of IRS trades.

<sup>502</sup> 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.

<sup>494</sup> As discussed in section II.F.1, existing § 43.6(f)(1) through (3) requires the Commission to establish post-initial appropriate minimum block size 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).

<sup>495</sup> Proposal at 85 FR 21534 (Apr. 17, 2020).

<sup>496</sup> The same logic applies to cap size calculations.

<sup>497</sup> 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.



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.<sup>503</sup> Comments also addressed two significant alternatives: (1) Lowering appropriate minimum block size and cap thresholds rather than raising them,<sup>504</sup> and (2) risk-adjusting notional values before determining block and cap thresholds.<sup>505</sup> 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.<sup>506</sup> 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.<sup>507</sup>

**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—appropriate minimum block sizes 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).<sup>508</sup> The Commission extensively analyzed the costs and benefits of the 50-percent threshold and 67-percent threshold when it adopted the phased-in approach.<sup>509</sup> 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.<sup>510</sup>

**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 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.”<sup>511</sup> 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 appropriate minimum block size for JPY IRS swaps (also in the Super-Major category) is based largely on USD trades. The new categories, which separate JPY IRS from USD IRS will result in an appropriate minimum block size 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

<sup>503</sup> 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).

<sup>504</sup> 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.

<sup>505</sup> See, e.g., ISDA–SIFMA (Blocks) at 4; Credit Suisse at 3; and ACLI at 3–4.

<sup>506</sup> 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 appropriate minimum block size, 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.

<sup>507</sup> 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.

<sup>508</sup> The relative costs and benefits of not implementing the 67-percent and 75-percent notional amount calculations required under existing §§ 43.6(f)(1) through (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.

<sup>509</sup> 78 FR 32866 at 32918–24 (May 31, 2013). 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 appropriate minimum block sizes so as to mitigate any costs to market participants.

<sup>510</sup> 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).

<sup>511</sup> 78 FR at 32917 (May 31, 2013).

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.<sup>512</sup> 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 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.<sup>513</sup> 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 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.<sup>514</sup>

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 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.<sup>515</sup> The primary reason is the expected difficulty executing large trades between the existing 50-percent and new 67-percent block thresholds.<sup>516</sup> This section discusses the cost and benefits of this alternative 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

<sup>512</sup> 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>.

<sup>513</sup> 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.

<sup>514</sup> See ISDA–SIFMA at 6, Citadel at 9.

<sup>515</sup> 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."

<sup>516</sup> 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 appropriate minimum block size 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 significant increase in CDS, which is now no longer an accurate comparison as new option categories have dropped CDXIG from \$550mm to \$250mm.

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.<sup>517</sup> 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.<sup>518</sup> 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 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).<sup>519</sup> 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.<sup>520</sup> 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.<sup>521</sup> 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.<sup>522</sup> 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.<sup>523</sup>

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.<sup>524</sup> 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.<sup>525</sup> 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 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.<sup>526</sup> 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.<sup>527</sup>

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 appropriate minimum 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 50-percent notional amount calculation method as a conservative, transitional 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

<sup>517</sup> PIMCO at 2. Similar concerns were expressed in ICI at 7, Vanguard at 4, SIFMA AMG at 2–4, and ISDA–SIFMA at 5.

<sup>518</sup> 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.

<sup>519</sup> Korajczyk, Robert and Dermot Murphy (2019) “High-Frequency Market Making to Large Institutional Traders” *Rev. of Fin. Stud.*, 32, 1034–10.

<sup>520</sup> See *id.*

<sup>521</sup> See van Kervel, Vincent and Albert Menkveld (2019), “High-Frequency Trading around Large Institutional Orders”, *J. of Fin.*, 74, 1091–1137.

<sup>522</sup> See Friederich, Sylvain and Richard Payne (2014) “Trading Anonymity and Order Anticipation”, *J. of Fin. Markets*, 21, 1–24.

<sup>523</sup> 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.

<sup>524</sup> See, e.g., Citadel at 9; GFMA at 7, 10; ICI at 4–5; SIFMA AMG at 6.

<sup>525</sup> MIT at 1–2; Carnegie Mellon at 2–4; SMU at 4–5; and Citadel at 5.

<sup>526</sup> 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.

<sup>527</sup> 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.

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 appropriate minimum block size 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.<sup>528</sup> 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 thresholds will be more responsive to liquidity needs, including through separate option and non-option CDS categories, adjusting certain CDS appropriate minimum 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 appropriate minimum 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

<sup>528</sup> 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.

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.<sup>529</sup> 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.<sup>530</sup> 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.

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.

#### List of Subjects in 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 Pub. L. 111–203, 124 Stat. 1376 (2010).

- 2. Amend § 43.1 by removing paragraphs (b) and (d), re-designating paragraph (c) as paragraph (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.

*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.

<sup>529</sup> See, e.g., ISDA–SIFMA at 2.

<sup>530</sup> See, e.g., SIFMA AMG at 3–4; PIMCO at 2–4.

*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.

*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 broker swap* means any swap to which a swap dealer acting in the capacity as prime broker is a party.

*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.

*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
- a. Revising paragraphs (a) through (d), and (f),
- b. Removing paragraphs (g) and (h),
- c. Re-designating paragraph (i) as paragraph (g),
- d. Revising 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 p.m. 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 p.m. eastern time on the execution date, the reporting counterparty shall report to a swap data repository by 11:59:59 p.m. 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 17 CFR chapter I.

(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 paragraph.

(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 (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) through (5) 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) through (5) of this section.—

(1) 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:

(i) USD 250 million for swaps with a tenor greater than zero up to and including two years;

(ii) USD 100 million for swaps with a tenor greater than two years up to and including ten years; and

(iii) USD 75 million for swaps with a tenor greater than ten years.

(2) 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.

(3) 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.

(4) 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.

(5) 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, post-initial cap sizes as described in paragraphs (h)(2) through (8) of this section.

(2) The Commission shall determine post-initial cap sizes for the swap categories described in paragraphs (c)(1)(i), (c)(2)(i) through (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 (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(d)(2).

(3) The Commission shall determine the post-initial 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) The Commission shall publish post-initial cap sizes on its website at <http://www.cftc.gov>.

(10) 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 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. 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 paragraphs (d) through (h) of this section.

(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 this paragraph (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 paragraph 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 17 CFR chapter I, and this paragraph shall not apply to those swaps that are required to be cleared under section 2(h)(2) of the Act and 17 CFR chapter I 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 17 CFR chapter I, 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 this paragraph (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 17 CFR chapter I, in which neither party is a swap dealer or major swap participant, shall receive a time delay as follows:

(i)–(ii) [Reserved]

(iii) The time delay for public dissemination of swap transaction and pricing data for all swaps described in this paragraph (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)–(2) [Reserved]

(3) The time delay for public dissemination of swap transaction and pricing data for all swaps described in this paragraph (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)–(2) [Reserved]

(3) The time delay for public dissemination of swap transaction and pricing data for all swaps described in this paragraph (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)–(2) [Reserved]

(3) The time delay for public dissemination transaction and pricing data for all swaps described in this paragraph (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, as applicable, in accordance with the provisions set forth in paragraph (d), (e), (f), (g), (h), or (i) 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 CDX Emerging Markets 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 paragraph (d)(1) of this section with 75-percent in place of 67-percent.

(3) *50-percent notional amount calculation.* The Commission shall use the procedure set out in paragraph (d)(1) of this section 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 (f)(1) of this section, for any publicly reportable swap transaction that falls within the swap categories described in paragraph (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 (g)(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 (g)(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) 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. 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.

(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(d).

(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.

(i) *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 (i)(6)(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.

(j) *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 17 CFR chapter I. 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 (j)(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**

BILLING CODE 6351-01-P

#	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.	✓	✓	✓	✓	✓
	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.	✓	✓	✓	✓	✓



#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		<p>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.</p> <p>The time element is as specific as technologically practicable.</p>					
<b>Category: Notional amounts and quantities</b>							
31	Notional amount	<p>For each leg of the transaction, where applicable:</p> <ul style="list-style-type: none"> <li>- for OTC derivative transactions negotiated in monetary amounts, amount specified in the contract.</li> <li>- 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.</li> </ul> <p>In addition:</p> <ul style="list-style-type: none"> <li>• For OTC derivative transactions with a notional amount schedule, the initial notional amount, agreed by the counterparties at the inception of the transaction, is reported in this data element.</li> <li>• For OTC foreign exchange options, in addition to this data element, the amounts are reported using the data elements Call amount and Put amount.</li> <li>• 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);</li> <li>• Where the notional amount is not known when a new transaction is reported, the notional amount is updated as it becomes available.</li> </ul>	✓	✓	✓	✓	✓
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	<p>For each leg of the transaction, where applicable:</p> <ul style="list-style-type: none"> <li>for OTC derivative transactions negotiated in monetary amounts with a notional amount schedule:</li> <li>• Notional amount which becomes effective on the associated unadjusted effective date.</li> </ul> <p>The initial notional amount and associated unadjusted effective and end date are reported as</p>	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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.	✓	✓	✓	✓	✓
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).					✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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 notional quantity is updated as it becomes available.				✓	✓
<b>Category: Packages</b>							
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 <ul style="list-style-type: none"> <li>• no package is involved, or</li> <li>• package transaction spread is used</li> </ul> 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: <ul style="list-style-type: none"> <li>• no package is involved, or</li> <li>• Package transaction spread is used, or</li> <li>• Package transaction price notation = 3</li> </ul>	✓	✓	✓	✓	✓
49	Package transaction price notation	Manner in which the Package transaction price is expressed.	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		This data element is not applicable if <ul style="list-style-type: none"> <li>• no package is involved, or</li> <li>• Package transaction spread is used</li> </ul>					
50	Package transaction spread	<p>Traded price of the entire package in which the reported derivative transaction is a component of a package transaction.</p> <p>Package transaction price when the price of the package is expressed as a spread, difference between two reference prices.</p> <p>This data element is not applicable if <ul style="list-style-type: none"> <li>• no package is involved, or</li> <li>• Package transaction price is used</li> </ul> </p> <p>Spread and related data elements of the transactions (spread currency, Spread notation) that represent individual components of the package are reported when available.</p> <p>Package transaction spread may not be known when a new transaction is reported but may be updated later.</p>	✓	✓	✓	✓	✓
51	Package transaction spread currency	<p>Currency in which the Package transaction spread is denominated.</p> <p>This data element is not applicable if <ul style="list-style-type: none"> <li>• no package is involved, or</li> <li>• Package transaction price is used, or</li> <li>• Package transaction spread notation = 3, or = 4</li> </ul> </p>	✓	✓	✓	✓	✓
52	Package transaction spread notation	<p>Manner in which the Package transaction spread is expressed.</p> <p>This data element is not applicable if <ul style="list-style-type: none"> <li>• no package is involved, or</li> <li>• Package transaction price is used.</li> </ul> </p>	✓	✓	✓	✓	✓
<b>Category: Payments</b>							
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.	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
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 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	✓	✓		✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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.					
	<b>Category: Prices</b>						
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 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				✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		<p>interpreted as the price of the transaction.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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 may be interpreted as the price of the transaction.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul> <p>Where the price is not known when a new transaction is reported, the price is updated as it becomes available.</p> <p>For transactions that are part of a package, this data element contains the price of the component transaction where applicable.</p>					
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	<p>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),</p> <ul style="list-style-type: none"> <li>• spread on the individual floating leg(s) index</li> </ul>	✓	✓		✓	✓



#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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 <ul style="list-style-type: none"> <li>• 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 WCS is priced at 43 USD and WTI is priced at 52 USD.</li> </ul>					
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	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• For volatility and variance swaps and similar products, the volatility strike price is reported in this data element.</li> </ul>	✓	✓	✓	✓	✓
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.	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
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 currency	For options and swaptions of all asset classes, 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.	✓	✓	✓	✓	✓
<b>Category: Product</b>							
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.	✓	✓	✓	✓	✓
<b>Category: Settlement</b>							
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).	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	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 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.	✓	✓	✓	✓	✓

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■ 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. Revise 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 September 24, by the Commission.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

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

## Appendices to Real-Time Public Reporting Requirements—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

### Appendix 1—Commission Voting Summary

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

### Appendix 2—Statement of Chairman Heath P. Tarbert

I am pleased to support today's final swap data reporting rules under Parts 43, 45, and 49 of the CFTC's regulations, which are foundational to effective oversight of the derivatives markets. As I noted when these rules were proposed in February, "[d]ata is the lifeblood of our markets."<sup>1</sup> Little did I know just how timely that statement would prove to be.

#### COVID-19 Crisis and Beyond

In the month following our data rule proposals, historic volatility caused by the coronavirus pandemic rocketed through our derivatives markets, affecting nearly every asset class.<sup>2</sup> I said at the time that while our margin rules acted as "shock absorbers" to cushion the impact of volatility, the Commission was also considering data rules that would expand our insight into potential systemic risk. In particular, the data rules "would for the first time require the reporting of margin and collateral data for uncleared swaps . . . significantly strengthen[ing] the CFTC's ability to monitor for systemic risk" in those markets.<sup>3</sup> Today we complete those rules, shoring up the data-based reporting systems that can help us identify—and quickly respond to—emerging systemic threats.

But data reporting is not just about mitigating systemic risk. Vibrant derivatives markets must be open and free, meaning transparency is a critical component of any reporting system. Price discovery requires robust public reporting that supplies market participants with the information they need to price trades, hedge risk, and supply liquidity. Today we double down on transparency, ensuring that public reporting of swap transactions is even more accurate and timely. In particular, our final rules adjust certain aspects of the Part 43 proposal's block-trade<sup>4</sup> reporting rules to improve transparency in our markets. These changes have been carefully considered to

enhance clarity, one of the CFTC's core values.<sup>5</sup>

Promoting clarity in our markets also demands that we, as an agency, have clear goals in mind. Today's final swap data reporting rules reflect a hard look at the data we need and the data we collect, building on insights gleaned from our own analysis as well as feedback from market participants. The key point is that more data does not necessarily mean better information. Instead, the core of an effective data reporting system is focus.

As Aesop reminds us, "Beware lest you lose the substance by grasping at the shadow."<sup>6</sup> Today's final swap data reporting rules place substance first, carefully tailoring our requirements to reach the data that really matters, while removing unnecessary burdens on our market participants. As Bill Gates once remarked, "My success, part of it certainly, is that I have focused in on a few things."<sup>7</sup> So too are the final swap data reporting rules limited in number. The Part 45 Technical Specification, for example, streamlines hundreds of different data fields currently required by swap data repositories into 128 that truly advance the CFTC's regulatory goals. This focus will simplify the data reporting process without undermining its effectiveness, thus fulfilling the CFTC's strategic goal of enhancing the regulatory experience for market participants at home and abroad.<sup>8</sup>

That last point is worth highlighting: Our final swap data reporting rules account for market participants both within and outside the United States. A diversity of market participants, some of whom reside beyond our borders and are accountable to foreign regulatory regimes, contribute to vibrant derivatives markets. But before today, inconsistent international rules meant some swap dealers were left to navigate what I have called "a byzantine maze of disparate data fields and reporting timetables" for the very same swap.<sup>9</sup> While perfect alignment may not be possible or even desirable, the final rules significantly harmonize reportable data fields, compliance timetables, and implementation requirements to advance our global markets. Doing so brings us closer to realizing the CFTC's vision of being the global standard for sound derivatives regulation.<sup>10</sup>

#### Overview of the Swap Data Reporting Rules

It is important to understand the specific function of each of the three swap data

reporting rules, which together form the CFTC's reporting system. First, Part 43 relates to the *real-time public reporting* of swap pricing and transaction data, which appears on the "public tape." Swap dealers and other reporting parties supply Part 43 data to swap data repositories (SDRs), which then make the data public. Part 43 includes provisions relating to the treatment and public reporting of large notional trades (blocks), as well as the "capping" of swap trades that reach a certain notional amount.

Second, Part 45 relates to the *regulatory reporting* of swap data to the CFTC by swap dealers and other covered entities. Part 45 data provides the CFTC with insight into the swaps markets to assist with regulatory oversight. A Technical Specification available on the CFTC's website<sup>11</sup> includes data elements that are unique to CFTC reporting, as well as certain "Critical Data Elements," which reflect longstanding efforts by the CFTC and other regulators to develop global guidance for swap data reporting.<sup>12</sup>

Finally, Part 49 requires *data verification* to help ensure that the data reported to SDRs and the CFTC in Parts 43 and 45 is accurate. The final Part 49 rule will provide enhanced and streamlined oversight of SDRs and data reporting generally. In particular, Part 49 will now require SDRs to have a mechanism by which reporting counterparties can access and verify the data for their open swaps held at the SDR. A reporting counterparty must compare the SDR data with the counterparty's own books and records, correcting any data errors with the SDR.

#### Systemic Risk Mitigation

Today's final swap data reporting rules are designed to fulfill our agency's first Strategic Goal: To strengthen the resilience and integrity of our derivatives markets while fostering the vibrancy.<sup>13</sup> The Part 45 rule requires swap dealers to report uncleared margin data for the first time, enhancing the CFTC's ability to "to monitor systemic risk accurately and to act quickly if cracks begin to appear in the system."<sup>14</sup> As Justice Brandeis famously wrote in advocating for transparency in organizations, "sunlight is the best disinfectant."<sup>15</sup> So too it is for financial markets: The better visibility the CFTC has into the uncleared swaps markets, the more effectively it can address what until

<sup>1</sup> Statement of Chairman Heath P. Tarbert in Support of Proposed Rules on Swap Data Reporting (Feb. 20, 2020), <https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement022020> (hereinafter, Tarbert, Proposal Statement).

<sup>2</sup> See Heath P. Tarbert, Volatility Ain't What it Used to Be, Wall Street Journal (Mar. 23, 2020), <https://www.wsj.com/articles/volatility-aint-what-it-used-to-be-11585004897?mod=searchresults&page=1&pos=1> (hereinafter Tarbert, Volatility).

<sup>3</sup> *Id.*

<sup>4</sup> The final rule's definition of "block trade" is provided in regulation 43.2.

<sup>5</sup> See CFTC Core Values, <https://www.cftc.gov/About/Mission/index.htm>.

<sup>6</sup> Aesop, "The Dog and the Shadow," The Harvard Classics, <https://www.bartleby.com/17/1/3.html>.

<sup>7</sup> ABC News, One-on-One with Bill Gates (Feb. 21, 2008), <https://abcnews.go.com/WNT/CEOProfiles/story?id=506354&page=1>.

<sup>8</sup> See CFTC Strategic Plan 2020–2024, at 4 (discussing Strategic Goal 3), [https://www.cftc.gov/media/3871/CFTC2020\\_2024StrategicPlan/download](https://www.cftc.gov/media/3871/CFTC2020_2024StrategicPlan/download).

<sup>9</sup> Tarbert, Proposal Statement, *supra* note 1.

<sup>10</sup> See CFTC Vision Statement, available at <https://www.cftc.gov/About/AboutTheCommission#:~:text=CFTC%20Vision%20Statement,standard%20for%20sound%20derivatives%20regulation>.

<sup>11</sup> See CFTC, Technical Specification Document, [https://www.cftc.gov/media/3496/DMO\\_Part43\\_45TechnicalSpecification022020/download](https://www.cftc.gov/media/3496/DMO_Part43_45TechnicalSpecification022020/download).

<sup>12</sup> Since November 2014, the CFTC and regulators in other jurisdictions have collaborated through the Committee on Payments and Market Infrastructures ("CPMI") and the International Organization of Securities Commissions ("IOSCO") working group for the harmonization of key over-the-counter ("OTC") derivatives data elements ("Harmonisation Group"). The Harmonisation Group developed global guidance for key OTC derivatives data elements, including the Unique Transaction Identifier, the Unique Product Identifier, and critical data elements other than UTI and UPI.

<sup>13</sup> See CFTC Strategic Plan, *supra* note 7, at 5.

<sup>14</sup> Tarbert, Proposal Statement, *supra* note 1, note 2.

<sup>15</sup> Hon. Louis D. Brandeis, *Other People's Money* 62 (National Home Library Foundation ed. 1933).

now has been “a black box of potential systemic risk.”<sup>16</sup>

### Doubling Down on Transparency

Justice Brandeis’s words also resonate across other areas of the final swap data reporting rules. The final swap data reporting rules enhance transparency to the public of pricing and trade data.

#### 1. Blocks and Caps

A critical aspect of the final Part 43 rule is the issue of block trades and dissemination delays. When the Part 43 proposal was issued, I noted that “[o]ne of the issues we are looking at closely is whether a 48-hour delay for block trade reporting is appropriate.”<sup>17</sup> I encouraged market participants to “provide comment letters and feedback concerning the treatment of block delays.”<sup>18</sup> Market participants responded with extensive feedback, much of which advocated for shorter delays in making block trade data publicly available. I agree with this view, and support a key change in the final Part 43 rule. Rather than apply the proposal’s uniform 48-hour dissemination delay on block trade reporting, the final rule returns to bespoke public reporting timeframes that consider liquidity, market depth, and other factors unique to specific categories of swaps. The result is shorter reporting delays for most block trades.

The final Part 43 rule also changes the threshold for block trade treatment, raising the amount needed from a 50% to 67% notional calculation. It also increases the threshold for capping large notional trades from 67% to 75%. These changes will enhance market transparency by applying a stricter standard for blocks and caps, thereby enhancing public access to swap trading data. At the same time, the rule reflects serious consideration of how these thresholds are calculated, particularly for block trades. In excluding certain option trades and CDS trades around the roll months from the 67% notional threshold for blocks, the final rule helps ensure that dissemination delays have their desired effect of preventing front-running and similar disruptive activity.

#### 2. Post-Priced and Prime-Broker Swaps

The swaps market is highly complex, reflecting a nearly endless array of transaction structures. Part 43 takes these differences into account in setting forth the public reporting requirements for price and transaction data. For example, post-priced swaps are valued after an event occurs, such as the ringing of the daily closing bell in an equity market. As it stands today, post-priced swaps often appear on the public tape with no corresponding pricing data—rendering the data largely unusable. The final Part 43 rule addresses this data quality issue and improves price discovery by requiring post-priced swaps to appear on the public tape after pricing occurs.

The final Part 43 rule also resolves an issue involving the reporting of prime-brokerage swaps. The current rule requires that

offsetting swaps executed with prime brokers—in addition to the initial swap reflecting the actual terms of trade—be reported on the public tape. This duplicative reporting obfuscates public pricing data by including prime-broker costs and fees that are unrelated to the terms of the swap. As I explained when the rule was proposed, cluttering the public tape with duplicative or confusing data can impair price discovery.<sup>19</sup> The final Part 43 rule addresses this issue by requiring that only the initial “trigger” swap be reported, thereby improving public price information.

#### 3. Verification and Error Correction

Data is only as useful as it is accurate. The final Part 49 rule establishes an efficient framework for verifying SDR data accuracy and correcting errors, which serves both regulatory oversight and public price discovery purposes.

### Improving the Regulatory Experience

Today’s final swap data reporting rules improve the regulatory experience for market participants at home and abroad in several key ways, advancing the CFTC’s third Strategic Goal.<sup>20</sup> Key examples are set forth below.

#### 1. Streamlined Data Fields

As I stated at the proposal stage, “[s]implicity should be a central goal of our swap data reporting rules.”<sup>21</sup> This sentiment still holds true, and a key improvement to our final Part 45 Technical Specification is the streamlining of reportable data fields. The current system has proven unworkable, leaving swap dealers and other market participants to wander alone in the digital wilderness, with little guidance about the data elements that the CFTC actually needs. This uncertainty has led to “a proliferation of reportable data fields” required by SDRs that “exceed what market participants can readily provide and what the [CFTC] can realistically use.”<sup>22</sup>

We resolve this situation today by replacing the sprawling mass of disparate SDR fields—sometimes running into the hundreds or thousands—with 128 that are important to the CFTC’s oversight of the swaps markets. These fields reflect an honest look at the data we are collecting and the data we can use, ensuring that our market participants are not burdened with swap reporting obligations that do not advance our statutory mandates.

#### 2. Regulatory Harmonization

The swaps markets are integrated and global; our data rules must follow suit.<sup>23</sup> To that end, the final Part 45 rule takes a sensible approach to aligning the CFTC’s data reporting fields with the standards set by international efforts. Swap data reporting is an area where harmonization simply makes sense. The costs of failing to harmonize are high, as swap dealers and other reporting parties must provide entirely different data

sets to multiple regulators for the very same swap.<sup>24</sup> A better approach is to conform swap data reporting requirements where possible.

Data harmonization is not just good for market participants: It also advances the CFTC’s vision of being the global standard for sound derivatives regulation.<sup>25</sup> The CFTC has a long history of leading international harmonization efforts in data reporting, including by serving as a co-chair of the Committee on Payments and Infrastructures and the International Organization of Securities Commissioners (CPMI-IOSCO) working group on critical data elements (CDE) in swap reporting.<sup>26</sup> I am pleased to support a final Part 45 rule that advances these efforts by incorporating CDE fields that serve our regulatory goals.

In addition to certain CDE fields, the final Part 45 rule also adopts other important features of the CPMI-IOSCO Technical Guidance, such as the use of a Unique Transaction Identifier (UTI) system in place of today’s Unique Swap Identifier (USI) system. This change will bring the CFTC’s swap data reporting system in closer alignment with those of other regulators, leading to better data sharing and lower burdens on market participants.

Last, the costs of altering data reporting systems makes implementation timeframes especially important. To that effect, the CFTC has worked with ESMA to bring our jurisdictions’ swap data reporting compliance timetables into closer harmony, easing transitions to new reporting systems.

#### 3. Verification and Error Correction

The final Part 49 rule has changed since the proposal stage to facilitate easier verification of SDR data by swap dealers. Based on feedback we received, the final rule now requires SDRs to provide a mechanism for swap dealers and other reporting counterparties to access the SDR’s data for their open swaps to verify accuracy and address errors. This approach replaces a message-based system for error identification and correction, which would have produced significant implementation costs without improving error remediation. The final rule achieves the goal—data accuracy—with fewer costs and burdens.<sup>27</sup>

#### 4. Relief for End Users

I have long said that if our derivatives markets are not working for agriculture, then

<sup>24</sup> See *id.*

<sup>25</sup> See CFTC Vision Statement, <https://www.cftc.gov/About/AboutTheCommission#:~:text=CFTC%20Vision%20Statement,standard%20for%20sound%20derivatives%20regulation>.

<sup>26</sup> The CFTC also co-chaired the Financial Stability Board’s working group on UTI and UPI governance.

<sup>27</sup> Limiting error correction to open swaps—versus all swaps that a reporting counterparty may have entered into at any point in time—is also a sensible approach to addressing risk in the markets. The final Part 49 rule limits error correction to errors discovered prior to the expiration of the five-year recordkeeping period in regulation 45.2, ensuring that market participants are not tasked with addressing old or closed transactions that pose no active risk.

<sup>16</sup> Tarbert, Proposal Statement, *supra* note 1.

<sup>17</sup> Tarbert, Proposal Statement, *supra* note 1, note 14.

<sup>18</sup> *Id.*

<sup>19</sup> Tarbert, Proposal Statement, *supra* note 1.

<sup>20</sup> CFTC Strategic Plan, *supra* note 7, at 7.

<sup>21</sup> Tarbert, Proposal Statement, *supra* note 1.

<sup>22</sup> *Id.*

<sup>23</sup> See Tarbert, Proposal Statement, *supra* note 1.

they are not working at all.<sup>28</sup> While swaps are often the purview of large financial institutions, they also provide critical risk-management functions for end users like farmers, ranchers, and manufacturers. Our final Part 45 rule removes the requirement that end users report swap valuation data, and it provides them with a longer “T+2” timeframe to report the data that is required. I am pleased to support these changes to end-user reporting, which will help ensure that our derivatives markets work for all Americans, advancing another CFTC strategic goal.<sup>29</sup>

### Conclusion

The derivatives markets run on data. They will be even more reliant on it in the future, as digitization continues to sweep through society and industry. I am pleased to support the final rules under Parts 43, 45, and 49, which will help ensure that the CFTC’s swap data reporting systems are effective, efficient, and built to last.

### Appendix 3—Supporting Statement of Commissioner Brian Quintenz

The Commodity Exchange Act (CEA) specifically directs the Commission to ensure that real-time public reporting requirements for swap transactions (i) do not identify the participants; (ii) specify the criteria for what constitutes a block trade and the appropriate time delay for reporting such block trades, and (iii) take into account whether public disclosure will materially reduce market liquidity.<sup>1</sup> The Commission has long recognized the intrinsic tension between the policy goals of enhanced transparency versus market liquidity. In fact, in 2013, the Commission noted that the optimal point in this interplay between enhanced swap transaction transparency and the potential that, in certain circumstances, this enhanced transparency could reduce market liquidity “defies precision.”<sup>2</sup> I agree with the Commission that the ideal balance between transparency and liquidity is difficult to ascertain and necessarily requires not only robust data but also the exercise of reasoned judgement, particularly in the swaps marketplace with a finite number of institutional investors trading hundreds of thousands of products, often by appointment.

Unfortunately, I fear the balance struck in this rule misses that mark. The final rule before us today clearly favors transparency over market liquidity, with the sacrifice of the latter being particularly more acute given the nature of the swaps market. In this final rule, the Commission asserts that the increased transparency resulting from higher block trade thresholds and cap sizes will lead to increased competition, stimulate more trading, and enhance liquidity and pricing.

That is wishful thinking, which is no basis upon which to predicate a final rule. As numerous commenters pointed out, this increased transparency comes directly at the expense of market liquidity, competitive pricing for end-users, and the ability of dealers to efficiently hedge their large swap transactions. While the Commission hopes the 67% block calculation will bring about the ample benefits it cites, I think the exact opposite is the most probable outcome. I remain unconvinced that the move from the 50% notional amount calculation for block sizes to the 67% notional amount calculation is necessary or appropriate. Unfortunately, the decision to retain the 67% calculation, which was adopted in 2013 but never implemented, was not seriously reconsidered in this rule.

Instead, in the final rule, the Commission asserts that it “extensively analyzed the costs and benefits of the 50-percent threshold and 67-percent threshold when it adopted the phased-in approach” in 2013. Respectfully, I believe that statement drastically inflates the Commission’s prior analysis. I have no doubt the Commission “analyzed” the costs and benefits in 2013 to the best of its ability. However, the reality is that in 2013, as the Commission acknowledged in its own cost-benefit analysis, “in a number of instances, the Commission lacks the data and information required to precisely estimate costs, *owing to the fact that these markets do not yet exist or are not yet fully developed.*”<sup>3</sup> In 2013, the Commission was just standing up its SEF trading regime, had not yet implemented its trade execution mandate, and had adopted interim time delays for all swaps—meaning that, in 2013 when it first adopted this proposal, no swap transaction data was publicly disseminated in real time. Seven years later, the Commission has a robust, competitive SEF trading framework and a successful real-time reporting regime that results in 87% of IRS trades and 82% of CDS trades being reported in real time. In light of the sea change that has occurred since 2013, I believe the Commission should have undertaken a comprehensive review of whether the transition to a 67% block trade threshold was appropriate.

In my opinion, the fact that currently 87% of IRS and 82% of CDS trades are reported in real time is evidence that the transparency policy goals underlying the real-time reporting requirements have already been achieved. In 2013, the Commission, quoting directly from the Congressional Record, noted that when it considered the benefits and effects of enhanced market transparency, the “guiding principle in setting appropriate block trade levels [is that] the *vast majority of swap transactions* should be exposed to the public market through exchange trading.”<sup>4</sup> The current block sizes have resulted in *exactly that—the vast majority of trades being reported in real time*. The final rule, acknowledging these impressively high percentages, nevertheless concludes that because less than half of total IRS and CDS

*notional* amounts is reported in real time, additional trades should be forced into real-time reporting. I reach the exact opposite conclusion. By my logic, the 13% of IRS and 18% of CDS trades that currently receive a time delay represent roughly *half of notional* for those asset classes. In other words, these trades are *huge*. In my view, these trades are exactly the type of outsized transactions that Congress appropriately decided should receive a delay from real-time reporting.

Despite my reservations, I am voting for the real-time reporting rule before the Commission today for several reasons. First, I worked hard to ensure that this final rule contains many significant improvements from the initial draft we were first presented, as well as the original proposal which I supported. For example, in order to make sure the CDS swap categories are representative, the Commission established additional categories for CDS with optionality. In addition, the Commission is also providing guidance that certain risk-reduction exercises, which are not arm’s length transactions, are not publicly reportable swap transactions, and therefore should be excluded from the block size calculations.

Second, while most of the changes to the part 43 rules will have a compliance period of 18 months, compliance with the new block and cap sizes will not be required until one year later, providing market participants with a 30-month compliance period and the Commission with an extra 12 months to revisit this issue with actual data analysis, as good government and well-reasoned public policy demands. This means that when any final block and cap sizes go into effect for the amended swap categories, it will be with the benefit of cleaner, more precise data resulting from our part 43 final rule improvements adopted today. It is my firm expectation that DMO staff will review the revised block trade sizes, in light of the new data, at that time to ensure they are appropriately calibrated for each swap category. In addition, as required by the rule, DMO will publish the revised block trade and cap sizes the month before they go effective. I am hopeful that with the benefit of time, cleaner data and public comment, the Commission can, if necessary, re-calibrate the minimum block sizes to ensure they strike the appropriate balance built into our statute between the liquidity needs of the market and transparency. To the extent market participants also have concerns about maintaining the current time delays for block trades given the move to the 67% calculation, I encourage them to reach out to DMO and my fellow Commissioners during the intervening 30-month window. That time frame is more than enough to further refine the reporting delays, as necessary, for the new swap categories based on sound data.

### Appendix 4—Concurring Statement of Commissioner Rostin Behnam

I respectfully concur in the Commission’s amendments to its regulations regarding real-time public reporting, recordkeeping, and swap data repositories. The three rules being finalized together today are the culmination of a multi-year effort to streamline, simplify,

<sup>28</sup> Opening Statement of Chairman Heath P. Tarbert Before the April 22 Agricultural Advisory Committee Meeting (April 22, 2020), <https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement042220>.

<sup>29</sup> CFTC Strategic Plan, *supra* note 7, at 6.

<sup>1</sup> CEA Section 2(a)(13)(E).

<sup>2</sup> Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866, 32917 (May 31, 2013).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 32870 n.41 (quoting from the Congressional Record—Senate, S5902, S5922 (July 15, 2010) (emphasis added)).



and internationally harmonize the requirements associated with reporting swaps. Today's actions represent the end of a long procedural road at the Commission, one that started with the Commission's 2017 Roadmap to Achieve High Quality Swap Data.<sup>5</sup>

But the road really goes back much further than that, to the time prior to the 2008 financial crisis, when swaps were largely exempt from regulation and traded exclusively over-the-counter.<sup>6</sup> Lack of transparency in the over-the-counter swaps market contributed to the financial crisis because both regulators and market participants lacked the visibility necessary to identify and assess swaps market exposures, counterparty relationships, and counterparty credit risk.<sup>7</sup>

In the aftermath of the financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 (Dodd-Frank Act).<sup>8</sup> The Dodd-Frank Act largely incorporated the international financial reform initiatives for over-the-counter derivatives laid out at the 2009 G20 Pittsburgh Summit, which sought to improve transparency, mitigate systemic risk, and protect against market abuse.<sup>9</sup> With respect to data reporting, the policy initiative developed by the G20 focused on establishing a consistent and standardized global data set across jurisdictions in order to support regulatory efforts to timely identify systemic risk. The critical need and importance of this policy goal given the consequences of the financial crisis cannot be overstated.

Among many critically important statutory changes, which have shed light on the over-the-counter derivatives markets, Title VII of the Dodd-Frank Act amended the Commodity Exchange Act ("CEA" or "Act") and added a new term to the Act: "real-time public reporting."<sup>10</sup> The Act defines that term to mean reporting "data relating to swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed."<sup>11</sup>

As we amend these rules, I think it is important that we keep in mind the Dodd-Frank Act's emphasis on transparency, and

what transpired to necessitate that emphasis. However, the Act is also clear that its purpose, in regard to transparency and real time public reporting, is to authorize the Commission to make swap transaction and pricing data available to the public "as the Commission determines appropriate to enhance price discovery."<sup>12</sup> The Act expressly directs the Commission to specify the criteria for what constitutes a block trade, establish appropriate time delays for disseminating block trade information to the public, and "take into account whether the public disclosure will materially reduce market liquidity."<sup>13</sup> So, as we keep Congress's directive regarding public transparency (and the events that necessitated that directive) in mind as we promulgate rules, we also need to be cognizant of instances where public disclosure of the details of large transactions in real time will materially reduce market liquidity. This is a complex endeavor, and the answers vary across markets and products. I believe that these final rules strike an appropriate balance.

Today's final rules amending the swap data and recordkeeping and reporting requirements also culminate a multi-year undertaking by dedicated Commission staff and our international counterparts working through the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions working group for the harmonization of key over-the-counter derivatives data elements. The amendments benefit from substantial public consultation as well as internal data and regulatory analyses aimed at determining, among other things, how the Commission can meet its current data needs in support of its duties under the CEA. These include ensuring the financial integrity of swap transactions, monitoring of substantial and systemic risks, formulating bases for and granting substituted compliance and trade repository access, and entering information sharing agreements with fellow regulators.

I wish to thank the responsible staff in the Division of Market Oversight, as well as in the Offices of International Affairs, Chief Economist, and General Counsel for their efforts and engagement over the last several years as well as their constructive dialogues with my office over the last several months. Their timely and fulsome responsiveness amid the flurry of activity at the Commission as we continue to work remotely is greatly appreciated.

The final rules should improve data quality by eliminating duplication, removing alternative or adjunct reporting options, utilizing universal data elements and identifiers, and focusing on critical data elements. To the extent the Commission is moving forward with mandating a specific data standard for reporting swap data to swap data repositories ("SDRs"), and that the standard will be ISO 20022, I appreciate the Commission's thorough discussion of its rationale in support of that decision. I also commend Commission staff for its demonstrated expertise in incorporating the

mandate into the regulatory text in a manner that provides certainty while acknowledging that the chosen standard remains in development.

The rules provide clear, reasonable and universally acceptable reporting deadlines that not only account for the minutiae of local holidays, but address the practicalities of common market practices such as allocation and compression exercises.

I am especially pleased that the final rules require consistent application of rules across SDRs for the validation of both Part 43 and Part 45 data submitted by reporting counterparties. I believe the amendments to part 49 set forth a practical approach to ensuring SDRs can meet the statutory requirement to confirm the accuracy of swap data set forth in CEA section 21(c)<sup>14</sup> without incurring unreasonable burdens.

I appreciate that the Commission considered and received comments regarding whether to require reporting counterparties to indicate whether a specific swap: (1) Was entered into for dealing purposes (as opposed to hedging, investing, or proprietary trading); and/or (2) needs not be considered in determining whether a person is a swap dealer or need not be counted towards a person's *de minimis* threshold for purposes of determining swap dealer status under Commission regulations.<sup>15</sup> While today's rules may not be the appropriate means to acquire such information, I continue to believe that that the Commission's ongoing surveillance for compliance with the swap dealer registration requirements could be enhanced through data collection and analysis.

Thank you again to the staff who worked on these rules. I support the overall vision articulated in these several rules and am committed to supporting the acquisition and development of information technology and human resources needed for execution of that vision. As data forms the basis for much of what we do here at the Commission, especially in terms of identifying, assessing, and monitoring risk, I look forward to future discussions with staff regarding how the CFTC's Market Risk Advisory Committee which I sponsor may be of assistance.

## Appendix 5—Statement of Commissioner Dawn D. Stump

I have often referenced the need for a review of policies as per the wishes of the G-20 Leaders' Statement from the Pittsburgh

<sup>5</sup> Roadmap to Achieve High Quality Swap Data, available at [http://www.cftc.gov/ido/groups/public/@newsroom/documents/file/dmo\\_swapdataplan071017.pdf](http://www.cftc.gov/ido/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf).

<sup>6</sup> See Commodity Futures Modernization Act of 2000, Public Law 106-554, 114 Stat. 2763 (2000).

<sup>7</sup> See The Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (Official Government Edition), at 299, 352, 363-364, 386, 621 n. 56 (2011), available at <https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>.

<sup>8</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>9</sup> G20, Leaders' Statement, The Pittsburgh Summit (Sept. 24-25, 2009) at 9, available at [https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh\\_summit\\_leaders\\_statement\\_250909.pdf](https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf).

<sup>10</sup> 7 U.S.C. 2(a)(13)(A).

<sup>11</sup> Id.

<sup>12</sup> 7 U.S.C. 2(a)(13)(B).

<sup>13</sup> 7 U.S.C. 2(a)(13)(C)(ii-iv).

<sup>14</sup> 7 U.S.C. 24a(c)(2).

<sup>15</sup> Commission staff has identified the lack of these fields as limiting constraints on the usefulness of SDR data to identify which swaps should be counted towards a person's *de minimis* threshold, and the ability to precisely assess the current *de minimis* threshold or the impact of potential changes to current exclusions. See De Minimis Exception to the Swap Dealer Definition, 83 FR 27444, 27449 (proposed June 12, 2018); Swap Dealer De Minimis Exception Final Staff Report at 19 (Aug. 15, 2016); (Nov. 18, 2015), available at [https://www.cftc.gov/sites/default/files/ido/groups/public/@swaps/documents/file/dfreport\\_sddeminis081516.pdf](https://www.cftc.gov/sites/default/files/ido/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf); Swap Dealer De Minimis Exception Preliminary Report at 15 (Nov. 18, 2015), available at [https://www.cftc.gov/sites/default/files/ido/groups/public/@swaps/documents/file/dfreport\\_sddeminis\\_1115.pdf](https://www.cftc.gov/sites/default/files/ido/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf).

Summit in 2009, which included an expectation that members would “assess regularly implementation and whether it is sufficient to improve transparency in the derivatives markets, mitigate systemic risk, and protect against market abuse.”<sup>1</sup> Today, the Commission finds itself debating a challenging issue with a robust history. In order to properly assess whether we are making the right choices, I prefer to consider where we have come from. Luckily, the history of prior Commissions’ deliberations and transparency of regulatory rule-writing efforts affords us such an opportunity for a look back.

Prior to the Dodd-Frank Act<sup>2</sup> and enactment of the CFTC’s swap data reporting regulations, there was very limited, if any, public transparency and price discovery in swaps markets. Today, under the initial calculation applied for block sizes, Commission staff states that 87% of interest rate swap transactions and 82% of credit derivative swap transactions are reported in real time.

The Commission previously decided<sup>3</sup> that an initial calculation (50-percent threshold notional) was appropriate to determine block sizes, and that it would be followed by implementation of a higher block size threshold (67-percent threshold notional) when one year of reliable data from SDRs was available. That Commission was in the unenviable position of making policy determinations without the benefit of the relevant market structures being operational. The original block calculation and the associated sizes were determined before both the trading venues where swaps transact (Swap Execution Facilities, or SEFs) and the data warehouses that collect swaps market information reported to the Commission (Swap Data Repositories, or SDRs) were fully operational.

In the Dodd-Frank Act, Congress amended the Commodity Exchange Act (CEA) to require the Commission to “take into account whether the public disclosure will materially reduce market liquidity.”<sup>4</sup> Whether the Commission did (or was able to) make such an assessment in 2013, when it finalized the original process and treatment for block transactions, is debatable. I cannot say for certain whether the original calculation was appropriate. It was based on limited available data, such as public data that was not applicable to our jurisdictional swaps markets. It was constructed well before the regulations it impacted, the SEF trading mandate. And the data that it should have relied on, from SDRs, was not available, much less reliable. The Commission based its determination of block size, and the resulting SEF execution methods, on a calculation

contrived without the benefit of data from SEFs or SDRs.

Despite many years of experience with SEFs and SDRs since then, the Commission is today choosing to continue down the previously determined path of raising block sizes instead of leveraging data. Commenters, including entities responsible for providing liquidity and entities utilizing swaps to perform risk management, expressed concerns that increasing the block size thresholds would negatively impact the swaps market and raise costs for end users. Yet, we are moving forward to further limit the number of transactions that can receive block treatment under real time reporting, and the resulting allowable methods of execution if a swap is included in the SEF mandate. That is, we are raising the threshold largely because a previous Commission decided to do so many years ago.

Though I may not be happy that this Commission is left to grapple with an arbitrary metric set by a former Commission in 2013, even that Commission recognized the importance of considering data before proceeding. The original block rules spoke of the Commission updating the threshold once it had one year’s worth of reliable data. No Commission has ever updated the calculation to adopt higher block sizes, and one would reasonably expect this is due to a lack of reliable data. Today, the Commission is rectifying data reliability challenges by adopting a robust set of rule amendments to improve the quality of swap data reporting, but chooses not to re-assess the block size thresholds with the improved data that will result from those new rules. Perhaps that data will show that we have gone too low or too high in setting the thresholds. I would prefer not to predetermine the outcome until we can ascertain and evaluate the improved data.

The Commission proposed an updated list of categories and refreshed block sizes in February 2020. In the interim period, changes, some that I hope will yield positive results, have been made to affect the categories, calculations, and, as a result, the actual block sizes. However, the lack of transparency concerns me. I believe in this case, it would benefit the Commission to hear from market participants as to their views on the changes to all of these parameters.

I believe that the driving force behind the substantial rewrite of the swap data reporting rule set we are adopting today is that the Commission is not confident in the quality of SDR data, and that an overhaul is needed to provide the CFTC with complete and accurate information for data-driven policy decision making. I feel strongly that the vast majority of the rule amendments before the Commission today will improve the quality of the data reported to SDRs and available for our analysis. I am encouraged that after the 18-month compliance date, staff will be able to better review reliable data and inform the Commission of their analysis as it pertains to block size. I believe the more prudent course of action would be to finalize the remainder of the rules before us today, but set aside any Commission action on block size, thereby preserving current block sizes until the Commission and the public can consider

these issues in light of the improved reporting rules and with the new, more reliable data that will result from those rules.

The Commission should incorporate reliable swaps data and what it has learned since the inception of SEFs to make a more fully informed decision on this very meaningful metric. The numbers established in 2013 were arbitrary, and eight years later a different Commission is now faced with reconciling that, still without the availability of reliable data. I believe it is equally unfair to leave another Commission, 30 months from now, with the same predicament. We should not be finalizing a rule to transition to the higher block size calculation today while dictating that other Commissioners implement our decision or have to deal with the consequences of our decision making that is based on contemporary, unreliable data.

It is unclear what, if any, Commission or staff analysis might transpire between the effective date of the swap data reporting rules (18 months) and the block size threshold compliance date (30 months). I intend to ensure that any input received will be taken seriously, notwithstanding its retrospective nature and the fact that it is well beyond many of our terms of office. I wish for the Commission to soon hold a formal forum to receive input from affected market participants, especially end users in these markets, such as those who manage teacher retirement and college savings plans for millions of Americans. It is that input, and reliable data reported pursuant to the enhanced reporting rules we are adopting today, on which the Commission’s block determinations should be based.

## Appendix 6—Statement of Commissioner Dan M. Berkovitz

### Introduction

I support today’s final rules amending the swap data reporting requirements in parts 43, 45, 46, and 49 of the Commission’s rules (the “Reporting Rules”). The amended rules provide major improvements to the Commission’s swap data reporting requirements. They will increase the transparency of the swap markets, enhance the usability of the data, streamline the data collection process, and better align the Commission’s reporting requirements with international standards.

The Commission must have accurate, timely, and standardized data to fulfill its customer protection, market integrity, and risk monitoring mandates in the Commodity Exchange Act (“CEA”).<sup>1</sup> The 2008 financial crisis highlighted the systemic importance of global swap markets, and drew attention to the opacity of a market valued notionally in the trillions of dollars. Regulators such as the CFTC were unable to quickly ascertain the exposures of even the largest financial institutions in the United States. The absence of real-time public swap reporting contributed to uncertainty as to market liquidity and pricing. One of the primary goals of the Dodd-Frank Act is to improve swap market transparency through both real-time public reporting of swap transactions

<sup>1</sup> See Leaders’ Statement from the 2009 G–20 Summit in Pittsburgh, Pa. at 9 (Sept. 24–25, 2009), available at [https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh\\_summit\\_leaders\\_statement\\_250909.pdf](https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf).

<sup>2</sup> Public Law 111–203, 124 Stat. 1376 (2010).

<sup>3</sup> Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866 (May 31, 2013).

<sup>4</sup> CEA Section 2(a)(13)(E)(iv), 7 U.S.C. 2(a)(13)(E)(iv).

<sup>1</sup> See CEA section 3b.

and “regulatory reporting” of complete swap data to registered swap data repositories (“SDRs”).<sup>2</sup>

As enacted by the Dodd-Frank Act, CEA section 2(a)(13)(G) directs the CFTC to establish real-time and comprehensive swap data reporting requirements, on a swap-by-swap basis. CEA section 21 establishes SDRs as the statutory entities responsible for receiving, storing, and facilitating regulators’ access to swap data. The Commission began implementing these statutory directives in 2011 and 2012 in several final rules that addressed regulatory and real-time public reporting of swaps; established SDRs to receive data and make it available to regulators and the public; and defined certain swap dealer (“SD”) and major swap participant (“MSP”) reporting obligations.<sup>3</sup>

The Commission was the first major regulator to adopt data repository and swap data reporting rules. Today’s final rules are informed by the Commission’s and the market’s experience with these initial rules. Today’s revisions also reflect recent international work to harmonize and standardize data elements.

### Part 43 Amendments (Real-Time Public Reporting)

#### *Benefits of Real Time Public Reporting*

Price transparency fosters price competition and reduces the cost of hedging. In directing the Commission to adopt real-time public reporting regulations, the Congress stated “[t]he purpose of this section is to authorize 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.”<sup>4</sup> For real-time data to be useful for price discovery, SDRs must be able to report standardized, valid, and timely data. The reported data should also reflect the large majority of swaps executed within a particular swap category. The final Reporting Rules for part 43 address a number of infirmities in the current rules affecting the aggregation, validation, and timeliness of the data. They also provide pragmatic solutions to several specific reporting issues, such as the treatment of prime broker trades and post-priced swaps.

#### *Block Trade Reporting*

The Commission’s proposed rule for block trades included two significant amendments to part 43: (1) Refined swap categories for calculating blocks; and (2) a single 48-hour time-delay for reporting all blocks. In addition, the proposed rule would give effect to increased block trade size thresholds from 50% to 67% of a trimmed (excluding outliers) trade data set as provided for in the original part 43. The increases in the block sizing thresholds and the refinement of swap

categories were geared toward better meeting the statutory directives to the Commission to enhance price discovery through real-time reporting while also providing appropriate time delays for the reporting of swaps with very large notional amounts, *i.e.*, block trades.

Although I supported the issuance of the proposed rule, I outlined a number of concerns with the proposed blanket 48-hour delay. As described in the preamble to the part 43 final rule, a number of commenters supported the longer delay as necessary to facilitate the laying off of risk resulting from entering into swaps in illiquid markets or with large notional amounts. Other commenters raised concerns that such a broad, extended delay was unwarranted and could impede, rather than foster, price discovery. The delay also would provide counterparties to large swaps with an information advantage during the 48-hour delay.

The CEA directs the Commission to provide for both real-time reporting and appropriate block sizes. In developing the final rule the Commission has sought to achieve these objectives.

As described in the preamble, upon analysis of market data and consideration of the public comments, the Commission has concluded that the categorization of swap transactions and associated block sizes and time delay periods set forth in the final rule strikes an appropriate balance to achieve the statutory objectives of enhancing price discovery, not disclosing “the business transactions and market positions of any person,” preserving market liquidity, and providing appropriate time delays for block transactions. The final part 43 includes a mechanism for regularly reviewing swap transaction data to refine the block trade sizing and reporting delays as appropriate to maintain that balance.

#### *Consideration of Additional Information Going Forward*

I have consistently supported the use of the best available data to inform Commission rulemakings, and the periodic evaluation and updating of those rules, as new data becomes available. The preamble to the final rules for part 43 describes how available data, analytical studies, and public comments informed the Commission’s rulemaking. Following press reports about the contents of the final rule, the Commission recently has received comments from a number of market participants raising issues with the reported provisions in the final rule. These commenters have expressed concern that the reported reversion of the time delays for block trades to the provisions in the current regulations, together with the 67% threshold for block trades, will impair market liquidity, increase costs to market participants, and not achieve the Commission’s objectives of increasing price transparency and competitive trading of swaps. Many of these commenters have asked the Commission to delay the issuance of the final rule or to propose the part 43 amendments for additional public comments.

I do not believe it would be appropriate for the Commission to withhold the issuance of

the final rule based on these latest comments and at this late stage in the process. The Commission has expended significant time and resources in analyzing data and responding to the public comments received during the public comment period. As explained in the preamble, the Commission is already years behind its original schedule for revising the block thresholds. I therefore do not support further delay in moving forward on these rules.

Nonetheless, I also support evaluation and refinement of the block reporting rules, if appropriate, based upon market data and analysis. The 30-month implementation schedule for the revised block sizes provides market participants with sufficient time to review the final rule and analyze any new data. Market participants can then provide their views to the Commission on whether further, specific adjustments to the block sizes and/or reporting delay periods may be appropriate for certain instrument classes. This implementation period is also sufficient for the Commission to consider those comments and make any adjustments as may be warranted. The Commission should consider any such new information in a transparent, inclusive, and deliberative manner. Amended part 43 also provides a process for the Commission to regularly review new data as it becomes available and amend the block size thresholds and caps as appropriate.

#### *Cross Border Regulatory Arbitrage Risk*

The International Swaps and Derivatives Association, Inc. (“ISDA”) and the Securities Industry and Financial Markets Association (“SIFMA”) commented that higher block size thresholds may put swap execution facilities (“SEFs”) organized in the United States at a competitive disadvantage as compared to European trading platforms that provide different trading protocols and allow longer delays in swap trade reporting. SIFMA and ISDA commented that the higher block size thresholds might incentivize swap dealers to move at least a portion of their swap trading from United States SEFs to European trading platforms. They also noted that this regulatory arbitrage activity could apply to swaps that are subject to mandatory exchange trading. Importantly, European platforms allow a non-competitive single-quote trading mechanism for these swaps while U.S. SEFs are required to maintain more competitive request-for-quotes mechanisms from at least three parties. The three-quote requirement serves to fulfill important purposes delineated in the CEA to facilitate price discovery and promote fair competition.

The migration of swap trading from SEFs to non-U.S. trading platforms to avoid U.S. trade execution and/or swap reporting requirements would diminish the liquidity in and transparency of U.S. markets, to the detriment of many U.S. swap market participants. Additionally, as the ISDA/SIFMA comment letter notes, it would provide an unfair competitive advantage to non-U.S. trading platforms over SEFs registered with the CFTC, who are required to abide by CFTC regulations. Such migration

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Public Law 111–203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”), available at <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>.

<sup>3</sup> Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012); and Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

<sup>4</sup> CEA section 2(13)(B) (emphasis added).

would fragment the global swaps market and undermine U.S. swap markets.<sup>5</sup>

I have supported the Commission's substituted compliance determinations for foreign swap trading platforms in non-U.S. markets where the foreign laws and regulations provide for comparable and comprehensive regulation. Substituted compliance recognizes the interests of non-U.S. jurisdictions in regulating non-U.S. markets and allows U.S. firms to compete in those non-U.S. markets. However, substituted compliance is *not* intended to encourage—or permit—regulatory arbitrage or circumvention of U.S. swap market regulations. If swap dealers were to move trading activity away from U.S. SEFs to a foreign trading platform for regulatory arbitrage purposes, such as, for example, to avoid the CFTC's transparency and trade execution requirements, it would undermine the goals of U.S. swap market regulation, and constitute the type of fragmentation of the swaps markets that our cross-border regime was meant to mitigate. It also would undermine findings by the Commission that the non-U.S. platform is subject to regulation that is as comparable and comprehensive as U.S. regulation, or that the non-U.S. regime achieves a comparable outcome.

The Commission should be vigilant to protect U.S. markets and market participants. The Commission should monitor swap data to identify whether any such migration from U.S. markets to overseas markets is occurring and respond, if necessary, to protect the U.S. swap markets.

#### **Part 45 (Swap Data Reporting), Part 46 (Pre-Enactment and Transition Swaps), and Part 49 (Swap Data Repositories) Amendments**

I also support today's final rules amending the swap data reporting, verification, and SDR registration requirements in parts 45, 46, and 49 of the Commission's rules. These regulatory reporting rules will help ensure that reporting counterparties, including SDs, MSPs, designated contract markets ("DCMs"), SEFs, derivatives clearing organizations ("DCOs"), and others report accurate and timely swap data to SDRs. Swap data will also be subject to a periodic verification program requiring the cooperation of both SDRs and reporting counterparties. Collectively, the final rules create a comprehensive framework of swap data standards, reporting deadlines, and data validation and verification procedures for all reporting counterparties.

The final rules simplify the swap data reports required in part 45, and organize them into two report types: (1) "Swap creation data" for new swaps; and (2) "swap continuation data" for changes to existing swaps.<sup>6</sup> The final rules also extend the

deadline for SDs, MSPs, SEFs, DCMs, and DCOs to submit these data sets to an SDR, from "as soon as technologically practicable" to the end of the next business day following the execution date (T + 1). Off-facility swaps where the reporting counterparty is not an SD, MSP, or DCO must be reported no later than T + 2 following the execution date.

The amended reporting deadlines will result in a moderate time window where swap data may not be available to the Commission or other regulators with access to an SDR. However, it is likely that they will also improve the accuracy and reliability of data. Reporting parties will have more time to ensure that their data reports are complete and accurate before being transmitted to an SDR.<sup>7</sup>

The final rules in part 49 will also promote data accuracy through validation procedures to help identify errors when data is first sent to an SDR, and periodic reconciliation exercises to identify any discrepancies between an SDR's records and those of the reporting party that submitted the swaps. The final rules provide for less frequent reconciliation than the proposed rules, and depart from the proposal's approach to reconciliation in other ways that may merit future scrutiny to ensure that reconciliation is working as intended. Nonetheless, the validation and periodic reconciliation required by the final rule is an important step in ensuring that the Commission has access to complete and accurate swap data to monitor risk and fulfill its regulatory mandate.

The final rules also better harmonize with international technical standards, the development of which included significant Commission participation and leadership. These harmonization efforts will reduce complexity for reporting parties without significantly reducing the specific data elements needed by the Commission for its purposes. For example, the final rules adopt the Unique Transaction Identifier and related rules, consistent with CPMI-IOSCO technical standards, in lieu of the Commission's previous Unique Swap Identifier. They also adopt over 120 distinct data elements and definitions that specify information to be reported to SDRs. Clear and well-defined data standards are critical for the efficient analysis of swap data across many hundreds of reporting parties and multiple SDRs. Although data elements may not be the most riveting aspect of Commission policy making, I support the Commission's determination to focus on these important, technical elements as a necessary component of any effective swap data regime.

#### **Conclusion**

Today's Reporting Rules are built upon nearly eight years of experience with the current reporting rules and benefitted from

eliminate optional "state data" reporting, which resulted in extensive duplicative reports crowding SDR databases, and often included no new information.

<sup>7</sup> The amended reporting deadlines are also consistent with comparable swap data reporting obligations under the Securities and Exchange Commission's and European Securities and Markets Authority's rules.

extensive international coordination. The amendments make important strides toward fulfilling Congress's mandate to bring transparency and effective oversight to the swap markets. I commend CFTC staff, particularly in Division of Market Oversight and the Office of Data and Technology, who have worked on the Reporting Rules over many years. Swaps are highly variable and can be difficult to represent in standardized data formats. Establishing accurate, timely, and complete swap reporting requirements is a difficult, but important function for the Commission and regulators around the globe. This proposal offers a number of pragmatic solutions to known issues with the current swap data rules. For these reasons, I am voting for the final Reporting Rules.

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## **COMMODITY FUTURES TRADING COMMISSION**

### **17 CFR Parts 45, 46, and 49**

**RIN 3038–AE31**

### **Swap Data Recordkeeping and 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 swap data recordkeeping and reporting 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, streamline the requirements for reporting new swaps, define and adopt swap data elements that harmonize with international technical guidance, and reduce reporting burdens for reporting counterparties that are neither SDs nor MSPs.

**DATES:** *Effective Date:* The effective date for this final rule is January 25, 2021.

*Compliance Date:* SDRs, SEFs, DCMs, reporting counterparties, and non-reporting counterparties must comply with the amendments to the rules by May 25, 2022.

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<sup>5</sup> In my dissenting statement on the Commission's recent revisions to its cross-border regulations, I detailed a number of concerns with how those revisions could provide legal avenues for U.S. swap dealers to migrate swap trading activity currently subject to CFTC trade execution requirements to non-U.S. markets that would not be subject to those CFTC requirements.

<sup>6</sup> Swap creation data reports replace primary economic terms ("PET") and confirmation data previously required in part 45. The final rules also