

# Rules and Regulations

Federal Register

Vol. 86, No. 2

Tuesday, January 5, 2021

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 620

RIN 3052-AD37

#### District Financial Reporting

**AGENCY:** Farm Credit Administration.

**ACTION:** Notification of effective date.

**SUMMARY:** The Farm Credit Administration (FCA or we) is amending our regulations governing how a Farm Credit bank presents information on its related associations when preparing annual bank financial statements on a stand-alone basis. The final rule provides two presentation options when disclosing related association financial information in an annual bank report: By footnote or attached in a supplement.

**DATES:** The regulation amending 12 CFR part 620 published on October 8, 2020 (85 FR 63428) is effective on December 4, 2020.

#### FOR FURTHER INFORMATION CONTACT:

*Technical information:* Joi Neal, Senior Accountant, Office of Regulatory Policy, (703) 883-4223, TTY (703) 883-4056, [nealj@fca.gov](mailto:nealj@fca.gov).

*Legal information:* Laura McFarland, Senior Counsel, Office of General Counsel, (703) 883-4020, TTY (703) 883-4056, [mcfarlandl@fca.gov](mailto:mcfarlandl@fca.gov).

**SUPPLEMENTARY INFORMATION:** On October 8, 2020, FCA issued a final rule to improve shareholder access to district financial information by providing an additional method of presenting financial information on a bank's related associations to those banks preparing annual financial statements on a stand-alone basis.

In accordance with 12 U.S.C. 2252(c)(1), the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulation is December 4, 2020.

Dated: December 7, 2020.

**Dale Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2020-27191 Filed 1-4-21; 8:45 am]

**BILLING CODE 6705-01-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 23

RIN 3038-AF08

#### Portfolio Reconciliation Requirements for Swap Dealers and Major Swap Participants—Revision of “Material Terms” Definition

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Interim final rule; request for comment.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is adopting, and invites comments on, an interim final rule (“Interim Final Rule”) to amend the definition of “material terms” to maintain current portfolio reconciliation requirements for swap dealers and major swap participants following the effective date of changes to a recently amended Commission regulation.

#### DATES:

*Effective Date.* This interim final rule is effective January 5, 2021.

*Comment Date:* Comments must be received on or before March 8, 2021.

Comments submitted by mail will be accepted as timely if they are postmarked on or before that date.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AF08, by any of the following methods:

- *CFTC Comments Portal:* <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.

- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

*Instructions:* All submissions received must include the agency name and RIN number for this rulemaking. For additional details on submitting comments, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Joshua Sterling, Director, (202) 418-6056, [jsterling@cftc.gov](mailto:jsterling@cftc.gov); Jacob Chachkin, Special Counsel, (202) 418-5496, [jchachkin@cftc.gov](mailto:jchachkin@cftc.gov); or Gregory Scopino, Special Counsel, [gscopino@cftc.gov](mailto:gscopino@cftc.gov), 202-418-5175, Market Participants Division (“MPD”), Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Commission regulation 23.502<sup>1</sup> requires swap dealers (“SDs”) and major swap participants (“MSPs”), as defined in § 1.3 of the Commission’s regulations,<sup>2</sup> to reconcile their swap portfolios with one another and provide non-SD and non-MSP counterparties with regular opportunities for portfolio reconciliation.<sup>3</sup> Commission regulation 23.500(i) defines “portfolio reconciliation” as any process by which the two counterparties to one or more swaps exchange the material terms and valuations of all swaps in the swap portfolio between the counterparties and resolve any identified discrepancy in such material terms and valuations.<sup>4</sup> Commission regulation 23.500(g) defines “material terms” to mean the minimum “primary economic terms” of a swap, as defined in appendix 1 of part 45 of the Commission’s regulations, with the exception of 24 enumerated terms that were excluded from the definition of “material terms” as part of a Commission effort to reduce the regulatory burden on SDs and MSPs by eliminating the need to reconcile data field terms that were static or did not

<sup>1</sup> 17 CFR 23.502. Commission regulations referred to herein are found at 17 CFR chapter I.

<sup>2</sup> 17 CFR 1.3.

<sup>3</sup> 17 CFR 23.502; see Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904, 55926 (Sept. 11, 2012) (“Portfolio Reconciliation Final Rule”).

<sup>4</sup> 17 CFR 23.500(i).

impact the valuation of swaps.<sup>5</sup> In explaining the rationale for requiring SDs and MSPs to engage in portfolio reconciliation, the Commission noted that portfolio reconciliation can identify and reduce overall risk “[b]y identifying and managing mismatches in key economic terms and valuation for individual transactions across an entire portfolio.”<sup>6</sup>

On September 17, 2020, the Commission adopted a final rule revising parts 45, 46 and 49 of its regulations on swap data recordkeeping and reporting requirements for swap data repositories (“SDRs”), derivatives clearing organizations (“DCOs”), swap execution facilities, derivatives contract markets, SDs, MSPs, and swap counterparties that are neither SDs nor MSPs (“SDR Rule”).<sup>7</sup> As part of the SDR Rule, the Commission made significant changes to appendix 1 of part 45 of the Commission regulations, which, as discussed above, is referenced in the definition of “material terms” set forth in Commission regulation 23.500(g). As a result of these changes, among other things, the new appendix 1 will no longer use the concept of “primary economic terms” and will no longer contain the data fields that are explicitly referenced in § 23.500(g).<sup>8</sup>

## II. Interim Final Rule

To maintain the status quo for portfolio reconciliation requirements under § 23.502 and ensure that SDs and MSPs can continue to engage in their required portfolio reconciliation exercises without disruption, in this Interim Final Rule the Commission is copying existing appendix 1 of part 45 as a new appendix 1 to subpart I of part 23, and amending § 23.500(g) to reference appendix 1 to subpart I of part 23 instead of appendix 1 to part 45.<sup>9</sup> By

doing so, the Commission will enable SDs and MSPs to avoid having to modify their portfolio reconciliation procedures and practices under § 23.502 despite the changes made by the SDR Rule. By this Interim Final Rule, the Commission is making technical organizational changes to its regulations to ensure that market participants will continue engaging in portfolio reconciliation exercises in their current manner, without disruption. Thus, the goal of these technical amendments is to maintain the Commission’s regulatory requirements in connection with portfolio reconciliation without change. Without these amendments, market participants would lack meaningful regulatory reference concerning how to perform portfolio reconciliation exercises in light of changes made to appendix 1 of part 45 by the SDR Rule.

## III. Public Participation

The Commission is issuing this Interim Final Rule to maintain the status quo for portfolio reconciliation requirements under § 23.502 and ensure that SDs and MSPs can continue to engage in their required portfolio reconciliation exercises without disruption, as discussed above. This approach enables these regulatory changes to take effect sooner than would be possible with the publication of a notice of proposed rulemaking in advance. Nonetheless, the Commission welcomes public comments from interested persons regarding any aspect of its consideration of, and the changes made by, this Interim Final Rule, as well as the following pertaining to potential additional amendments in the future.

Should the Commission propose modifying appendix 1 to subpart I of part 23 (as adopted by this Interim Final Rule) to make it more consistent with appendix 1 to part 45 (as amended by the SDR Rule) or make other changes? If yes, what specific modifications should the Commission propose and why? In addition, should the Commission provide that the reconciliation of a Unique Product Identifier (“UPI”) constitutes the reconciliation of each other material term that is included in the UPI? Why or why not?

All comments must be submitted in English, or if not, accompanied by an English translation. Please refer to the ADDRESSES section above. Except as described below regarding confidential business information, all comments are considered part of the public record and will be posted as received to <http://>

[comments.cftc.gov](http://comments.cftc.gov) for public inspection. The information made available online includes personal identifying information (such as name and address) which is voluntarily submitted by the commenter. You should submit only information that you wish to make available publicly.

If you want to submit material that you consider to be confidential business information as part of your comment, but do not want it to be posted online, you must submit your comment by mail or hand delivery/courier and include a petition for confidential treatment as described in § 145.9 of the Commission’s regulations.<sup>10</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the rulemaking record and will be considered as required under the Administrative Procedure Act (“APA”) <sup>11</sup> and other applicable laws, and may be accessible under the Freedom of Information Act.<sup>12</sup>

## IV. Related Matters

### A. Administrative Procedure Act

The APA generally requires federal agencies to publish a notice of proposed rulemaking and provide an opportunity for public comment before issuing a new rule.<sup>13</sup> However, an agency may issue a new rule without a pre-publication public comment period when it for “good cause” finds that prior notice and comment is “impracticable, unnecessary, or contrary to the public interest.”<sup>14</sup> The Commission has determined that there is good cause to find that a pre-publication comment period is unnecessary because this Interim Final Rule involves technical, ministerial changes that simply move the placement of the current requirements from one part of the Commission’s regulations (part 45) to another (part 23) to retain the status quo for purposes of part 23’s mandated portfolio reconciliation exercises.<sup>15</sup> For this

<sup>10</sup> 17 CFR 145.9.

<sup>11</sup> 5 U.S.C. 553 *et seq.*

<sup>12</sup> 5 U.S.C. 552.

<sup>13</sup> *See* 5 U.S.C. 553(b).

<sup>14</sup> *See* 5 U.S.C. 553(b)(3)(B).

<sup>15</sup> Further, if the Commission were to provide an opportunity for notice and comment prior to the amendments’ effectiveness, the SDR Rule may take effect during the intervening period, causing

<sup>5</sup> 17 CFR 23.500(g).

<sup>6</sup> Portfolio Reconciliation Final Rule, 77 FR at 55927.

<sup>7</sup> *See* Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503 (Nov. 25, 2020). The SDR Rule did not expressly contemplate making changes to the Portfolio Reconciliation Final Rule for SDs and MSPs.

<sup>8</sup> *See* 17 CFR 23.500(g).

<sup>9</sup> Because appendix 1 to subpart I of part 23 only will be used as a reference in connection with the requirements for portfolio reconciliation exercises, the appendix will include only those terms that SDs and MSPs are required to reconcile under regulation 23.502.

Because § 45.5 is being amended by the SDR Rule and will no longer discuss unique swap identifiers (“USIs”), for clarity the Commission has changed only the explanatory comment in appendix 1 for each USI field from “As provided in § 45.5.” to “The USI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration.” The Commission believes this change will mitigate possible confusion and serve to

maintain current portfolio reconciliation processes for SDs and MSPs.

reason, the Commission finds that it is unnecessary to publish notice of these amendments under section 553(b)(3)(B) of the APA.

For the same reason, the Commission also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA.<sup>16</sup> Accordingly, the amendments will be effective immediately upon publication in the **Federal Register**.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act<sup>17</sup> requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. Because, as discussed above, the Commission is not required to publish a notice of proposed rulemaking for this rule, a regulatory flexibility analysis is not required.<sup>18</sup>

**C. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (“PRA”)<sup>19</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 Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Because it maintains the status quo under § 23.502, this final rulemaking will not impose any new recordkeeping or information collection requirements, or other collections of information.

**D. Consideration of Costs and Benefits**

Section 15(a) of the CEA<sup>20</sup> requires the Commission to “consider the costs and benefits” of its actions before

promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

This Interim Final Rule does not impose any substantive regulatory obligations on any person. Rather, the Commission is adopting technical amendments to part 23 of its regulations to maintain the status quo for portfolio reconciliation requirements under § 23.502 and ensure that SDs and MSPs can continue to engage in their required portfolio reconciliation exercises without disruption, as discussed above. Accordingly, relative to the status quo baseline there are no material, quantifiable costs or benefits associated with this rulemaking. This Interim Final Rule does not impact the efficiency, competitiveness, and financial integrity of the futures markets because this Interim Final Rule is nothing more than a technical, administrative action that moves specific requirements from part 45 of the Commission’s regulations to part 23.

**E. Antitrust Laws**

Section 15(b) of the CEA<sup>21</sup> requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA as well as the policies and purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or

approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.

The Commission believes that the public interest to be protected by the antitrust laws is the promotion of competition. The Commission has considered this Interim Final Rule to determine whether it is anticompetitive and has identified no anticompetitive effects. Having done so, it also has not identified any less anticompetitive means of achieving the purposes of the CEA.

**List of Subjects in 17 CFR Part 23**

Authority delegations (Government agencies), Commodity futures, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 23 as set forth below:

**PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS**

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

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

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

■ 2. In § 23.500, revise paragraph (g) to read as follows:

**§ 23.500 Definitions.**

\* \* \* \* \*

(g) Material terms means the minimum primary economic terms as defined in appendix 1 of subpart I of part 23 of this chapter.

\* \* \* \* \*

■ 3. Add Appendix 1 to subpart I of part 23 to read as follows:

**Part 23, Subpart I, Appendix 1**

**EXHIBIT A—MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS**

Data categories and fields for all swaps	Comment
Asset Class .....	Field values: Credit, equity, FX, interest rates, other commodities.
The Unique Swap Identifier for the swap .....	The USI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration.
The Legal Entity Identifier of the reporting counterparty .....	As provided in § 45.6, or substitute identifier for a natural person. Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap. ....	As provided in § 45.6, or substitute identifier for a natural person. As provided in § 45.7.

confusion regarding SD and MSP portfolio reconciliation requirements.

<sup>16</sup> 5 U.S.C. 553(d)(3).

<sup>17</sup> 5 U.S.C. 601 *et seq.*

<sup>18</sup> See 5 U.S.C. 603(a).

<sup>19</sup> 44 U.S.C. 3501 *et seq.*

<sup>20</sup> 7 U.S.C. 19(a).

<sup>21</sup> 7 U.S.C. 19(b).

EXHIBIT A—MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS—Continued

Data categories and fields for all swaps	Comment
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system. If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
An indication of the counterparty purchasing protection .....	Field values: LEI, or substitute identifier for a natural person.
An indication of the counterparty selling protection .....	Field values: LEI, or substitute identifier for a natural person.
Information identifying the reference entity .....	The entity that is the subject of the protection being purchased and sold in the swap. Field values: LEI, or substitute identifier for a natural person.
Contract type .....	<i>E.g.</i> , swap, swaption, forward, option, basis swap, index swap, basket swap.
Execution venue .....	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or “off-facility” if not so executed.
Start date .....	The date on which the swap starts or goes into effect.
Maturity, termination or end date .....	The date on which the swap expires.
The price .....	<i>E.g.</i> , strike price, initial price, spread.
The notional amount, and the currency in which the notional amount is expressed.	
The amount and currency (or currencies) of any up-front payment .....	
Payment frequency of the reporting counterparty .....	A description of the payment stream of the reporting counterparty, <i>e.g.</i> , coupon.
Payment frequency of the non-reporting counterparty .....	A description of the payment stream of the non-reporting counterparty, <i>e.g.</i> , coupon.
Clearing exception or exemption type .....	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization .....	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.	Use as many fields as required to report each such term.

EXHIBIT B—MINIMUM PRIMARY ECONOMIC TERMS DATA—FOREIGN EXCHANGE TRANSACTIONS

[Other than cross-currency swaps]

Data fields for all swaps	Comment
Asset Class .....	Field values: Credit, equity, FX, interest rates, other commodities.
The Unique Swap Identifier for the swap .....	The USI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration.
The Legal Entity Identifier of the reporting counterparty .....	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	Yes/No.
The Legal Entity Identifier of the non-reporting party .....	As provided in § 45.6, or substitute identifier for a natural person.
The Unique Product Identifier assigned to the swap .....	As provided in § 45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
Contract type .....	<i>E.g.</i> , forward, non-deliverable forward (NDF), non-deliverable option (NDO), vanilla option, simple exotic option, complex exotic option.
Execution venue .....	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or “off-facility” if not so executed.
Currency 1 .....	ISO code.
Currency 2 .....	ISO code.
Notional amount 1 .....	For currency 1.
Notional amount 2 .....	For currency 2.
Exchange rate .....	Contractual rate of exchange of the currencies.
Delivery type .....	Physical (deliverable) or cash (non-deliverable).
Settlement or expiration date .....	Settlement date, or for an option the contract expiration date.
Clearing exception or exemption type .....	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.

**EXHIBIT B—MINIMUM PRIMARY ECONOMIC TERMS DATA—FOREIGN EXCHANGE TRANSACTIONS—Continued**  
[Other than cross-currency swaps]

Data fields for all swaps	Comment
Indication of collateralization .....	Is the trade collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the trade matched or affirmed by the counterparties in verifying the trade.	<i>E.g.</i> , for options, premium, premium currency, premium payment date; for non-deliverable trades, settlement currency, valuation (fixing) date; indication of the economic obligations of the counterparties. Use as many fields as required to report each such term.

**EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS**  
[Including cross-currency swaps]

Data fields for all swaps	Comment
Asset Class .....	Field values: Credit, equity, FX, interest rates, other commodities.
The Unique Swap Identifier for the swap .....	The USI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration.
The Legal Entity Identifier of the reporting counterparty .....	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	Yes/No.
The Legal Entity Identifier of the non-reporting counterparty .....	As provided in § 45.6, or substitute identifier for a natural person.
The Unique Product Identifier assigned to the swap .....	As provided in § 45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
Contract type .....	<i>E.g.</i> , swap, swaption, option, basis swap, index swap.
Execution venue .....	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or “off-facility” if not so executed.
Start date .....	The date on which the swap starts or goes into effect.
Maturity, termination or end date .....	The date on which the swap expires or ends.
Day count convention .....	
Notional amount (leg 1) .....	The current active notional amount.
Notional currency (leg 1) .....	ISO code.
Notional amount (leg 2) .....	The current active notional amount.
Notional currency (leg 2) .....	ISO code.
Payer (fixed rate) .....	Is the reporting party a fixed rate payer? Yes/No/Not applicable.
Payer (floating rate leg 1) .....	If two floating legs, the payer for leg 1.
Payer (floating rate leg 2) .....	If two floating legs, the payer for leg 2.
Direction .....	For swaps: Whether the principal is paying or receiving the fixed rate. For float-to-float and fixed-to-fixed swaps: Indicate N/A. For non-swap instruments and swaptions: Indicate the instrument that was bought or sold.
Option type .....	<i>E.g.</i> , put, call, straddle.
Fixed rate .....	
Fixed rate day count fraction .....	<i>E.g.</i> , actual 360.
Floating rate payment frequency .....	
Floating rate reset frequency .....	
Floating rate index name/rate period .....	<i>E.g.</i> , USD-Libor-BBA.
Clearing exception or exemption type .....	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization .....	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.	<i>E.g.</i> , early termination option clause. Use as many fields as required to report each such term.

**EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS**

Data field for all swaps	Comment
Asset Class .....	Field values: Credit, equity, FX, interest rates, other commodities.

EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS—Continued

Data field for all swaps	Comment
The Unique Swap Identifier for the swap .....	The USI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration.
The Legal Entity Identifier of the reporting counterparty .....	As provided in § 45.6, or substitute identifier for a natural person. Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	
The Legal Entity Identifier of the non-reporting party .....	As provided in § 45.6, or substitute identifier for a natural person.
The Unique Product Identifier assigned to the swap .....	As provided in § 45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
Contract type .....	<i>E.g.</i> , swap, swaption, option, basis swap, index swap.
Execution venue .....	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or “off-facility” if not so executed.
Start date .....	The date on which the swap commences or goes into effect ( <i>e.g.</i> , in physical oil, the pricing start date).
Maturity, termination, or end date .....	The date on which the swap expires or ends ( <i>e.g.</i> , in physical oil, the pricing end date).
Buyer .....	The counterparty purchasing the product: ( <i>E.g.</i> , the payer of the fixed price (for a swap), or the payer of the floating price on the underlying swap (for a put swaption), or the payer of the fixed price on the underlying swap (for a call swaption). Field values: LEI, if available, or substitute identifier, for a natural person.
Seller .....	The counterparty offering the product: ( <i>E.g.</i> , the payer of the floating price (for a swap), the payer of the fixed price on the underlying swap (for a put swaption), or the payer of the floating price on the underlying swap (for a call swaption). Field values: LEI, or substitute identifier, for a natural person.
Quantity unit .....	The unit of measure applicable for the quantity on the swap. <i>E.g.</i> , barrels, bushels, gallons, pounds, tons.
Quantity .....	The amount of the commodity (the number of quantity units) quoted on the swap.
Quantity frequency .....	The rate at which the quantity is quoted on the swap. <i>E.g.</i> , hourly, daily, weekly, monthly.
Total quantity .....	The quantity of the commodity for the entire term of the swap.
Settlement method .....	Physical delivery or cash.
Price .....	The price of the swap. For options, the strike price.
Price unit .....	The unit of measure applicable for the price of the swap.
Price currency .....	ISO code.
Buyer pay index .....	The published price as paid by the buyer (if applicable). For swaptions, applies to the underlying swap.
Buyer pay averaging method .....	The averaging method used to calculate the index of the buyer pay index. For swaptions, applies to the underlying swap.
Seller pay index .....	The published price as paid by the seller (if applicable). For swaptions, applies to the underlying swap.
Seller pay averaging method .....	The averaging method used to calculate the index of the seller pay index. For swaptions, applies to the underlying swap.
Grade .....	If applicable, the grade of the commodity to be delivered, <i>e.g.</i> , the grade of oil or refined product.
Option type .....	Descriptor for the type of option transaction. <i>E.g.</i> , put, call, straddle.
Option style .....	<i>E.g.</i> , American, European, European Daily, European Monthly, Asian.
Option premium .....	The total amount paid by the option buyer.
Hours from through .....	For electric power, the hours of the day for which the swap is effective.
Hours from through time zone .....	For electric power, the time zone prevailing for the hours during which electricity is transmitted.
Days of week .....	For electric power, the profile applicable for the delivery of power.
Load type .....	For electric power, the load profile for the delivery of power.
Clearing exception or exemption type .....	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization .....	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.	Use as many fields as required to report each such term.

\* \* \* \* \*

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

**Robert Sidman,**

*Deputy Secretary of the Commission.*

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

**Appendices to Portfolio Reconciliation Requirements for Swap Dealers and Major Swap Participants—Revision of “Material Terms” Definition—Voting Summary and Chairman’s and Commissioners’ Statements**

**Appendix 1—Voting Summary**

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

**Appendix 2—Statement of Commissioner Dan M. Berkovitz**

I support today’s interim final rule that will maintain the continuity of swap portfolio reconciliation requirements for swap dealers. In September 2012, the Commission established in regulation 23.502 the requirement for swap dealers to regularly reconcile key material terms of swaps in portfolios with certain counterparties. These portfolios can include hundreds, thousands, and even tens of thousands of individual swap transactions. Regularly reconciling economic terms that determine the periodic payments made on swap portfolios reduces the likelihood of significant disputes and potential payment shortfalls or interruptions. Reducing these events reduces risk in the financial system, particularly during times of market stress.<sup>1</sup>

On September 17, 2020, the Commission adopted a final rule revising parts 45, 46, and 49 of its regulations on swap data recordkeeping and reporting requirements. In the amendments, significant changes were made to material terms that are cross-referenced in regulation 23.502. The unintended consequence would be to render the portfolio reconciliation requirement ineffective when the swap data regulations go into effect in approximately 60 days. The IFR corrects this unintended consequence by reestablishing the same material economic terms identified for regulation 23.502, thereby maintaining the status quo for the portfolio reconciliation requirement. This is a necessary action to maintain the risk reducing effects of that requirement.

[FR Doc. 2020–26536 Filed 1–4–21; 8:45 am]

**BILLING CODE 6351–01–P**

<sup>1</sup> See Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904, 55927 (Sept. 11, 2012).

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 23**

**RIN 3038–AF05**

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

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is adopting amendments (“Final Rule”) to its margin requirements for uncleared swaps for swap dealers (“SDs”) and major swap participants (“MSPs”) for which there is not a prudential regulator (“CFTC Margin Rule”). The Commission is amending the CFTC Margin Rule to revise the calculation method for determining whether certain entities come within the scope of its initial margin (“IM”) requirements for uncleared swaps beginning in the last phase of the phased compliance schedule, which starts on September 1, 2022, and the timing for compliance with the IM requirements after the end of the phased compliance schedule. These amendments align certain aspects of the CFTC Margin Rule with the Basel Committee on Banking Supervision and the International Organization of Securities Commissions’ (“BSBS/IOSCO”) Framework for margin requirements for non-centrally cleared derivatives (“BCBS/IOSCO Framework”). The Commission is also amending the CFTC Margin Rule to allow SDs and MSPs subject to the CFTC Margin Rule to use the risk-based model calculation of IM of a counterparty that is a CFTC-registered SD or MSP to determine the amount of IM to be collected from the counterparty and to determine whether the IM threshold amount for the exchange of IM has been exceeded such that documentation concerning the collection, posting, and custody of IM would be required.

**DATES:** This rule is effective February 4, 2021.

**FOR FURTHER INFORMATION CONTACT:** Joshua B. Sterling, Director, 202–418–6056, [jsterling@cftc.gov](mailto:jsterling@cftc.gov); Thomas J. Smith, Deputy Director, 202–418–5495, [tsmith@cftc.gov](mailto:tsmith@cftc.gov); Warren Gorlick, Associate Director, 202–418–5195, [wgorlick@cftc.gov](mailto:wgorlick@cftc.gov); or Carmen Moncada-Terry, Special Counsel, 202–418–5795, [cmoncada-terry@cftc.gov](mailto:cmoncada-terry@cftc.gov), Market Participants Division, Commodity

Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 4s(e) of the Commodity Exchange Act (“CEA” or “Act”)<sup>1</sup> requires the Commission to adopt rules establishing minimum initial and variation margin requirements for all swaps<sup>2</sup> that are (i) entered into by an SD or MSP for which there is no prudential regulator<sup>3</sup> (collectively, “covered swap entities” or “CSEs”)<sup>4</sup> and (ii) not cleared by a registered derivatives clearing organization (“uncleared swaps”).<sup>5</sup> To offset the greater risk to the SD<sup>6</sup> or MSP<sup>7</sup> and the financial system arising from the use of uncleared swaps, these requirements must (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps held by the SD or MSP.<sup>8</sup>

Pursuant to its rulemaking authority under section 4s(e), the Commission in 2016 promulgated Regulations 23.150 through 23.161, namely the CFTC Margin Rule, which requires CSEs to

<sup>1</sup> 7 U.S.C. 6s(e) (capital and margin requirements).

<sup>2</sup> CEA section 1a(47), 7 U.S.C. 1a(47) (swap definition); Regulation 1.3, 17 CFR 1.3 (further definition of a swap). A swap includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

<sup>3</sup> CEA section 1a(39), 7 U.S.C. 1a(39) (defining the term “prudential regulator” to include the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The definition of prudential regulator further specifies the entities for which these agencies act as prudential regulators. The prudential regulators published final margin requirements in November 2015. See generally Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (“Prudential Margin Rule”). The Prudential Margin Rule is substantially similar to the CFTC Margin Rule, including with respect to the CFTC’s phasing-in of margin requirements.

<sup>4</sup> CEA section 4s(e)(1)(B), 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a prudential regulator must meet the margin requirements for uncleared swaps established by the applicable prudential regulator. CEA section 4s(e)(1)(A), 7 U.S.C. 6s(e)(1)(A).

<sup>5</sup> CEA section 4s(e)(2)(B)(ii), 7 U.S.C. 6s(e)(2)(B)(ii). In Regulation 23.151, the Commission further defined this statutory language to mean all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that the Commission has exempted from registration as provided under the CEA. 17 CFR 23.151.

<sup>6</sup> CEA section 1a(49), 7 U.S.C. 1a(49) (swap dealer definition); Regulation 1.3 (further definition of swap dealer).

<sup>7</sup> CEA section 1a(32), 7 U.S.C. 1a(32) (major swap participant definition); Regulation 1.3 (further definition of major swap participant).

<sup>8</sup> CEA section 4s(e)(3)(A), 7 U.S.C. 6s(e)(3)(A).