

§ 43.1

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APPENDIX F TO PART 43—INITIAL APPROPRIATE MINIMUM BLOCK SIZES BY ASSET CLASS FOR BLOCK TRADES AND LARGE NOTIONAL OFF-FACILITY SWAPS

AUTHORITY: 7 U.S.C. 2(a), 12a(5) and 24a, as amended by Pub. L. 111-203, 124 Stat. 1376 (2010).

SOURCE: 76 FR 1243, Jan. 9, 2012, unless otherwise noted.

§ 43.1 Purpose, scope, and rules of construction.

(a) *Purpose.* This part implements rules relating to the reporting and public dissemination of certain swap transaction and pricing data to enhance transparency and price discovery pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, 124 Stat. 1376 (2010).

(b)(1) *Scope.* The provisions of this part shall apply to all swaps as defined in Section 1a(47) of the Act and any implementing regulations thereunder, including:

(i) Swaps subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act, including those swaps that are excepted from the requirement pursuant to Section 2(h)(7) of the Act;

(ii) Swaps that are not subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act, but are cleared at a registered derivatives clearing organization;

(iii) Swaps that are not cleared at a registered derivatives clearing organization and are reported to a registered swap data repository that accepts and

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publicly disseminates swap transaction and pricing data in real-time; and

(iv) Swaps that are required to be cleared under Section 2(h)(2) of the Act, but are not cleared.

(2) This part also shall apply to registered entities as defined in the Act, as well as to parties to a swap including swap dealers, major swap participants and U.S.-based market participants in a manner as the Commission may determine.

(c) *Rules of construction.* The examples in this part and in appendix A to 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.

(d) *Severability.* If any provision of this part, 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.

§ 43.2 Definitions.

As used in this part:

Act means the Commodity Exchange Act, as amended, 7 U.S.C. 1 *et seq.*

Affirmation means the process by which parties to a swap verify (orally, in writing, electronically or otherwise) that they agree on the primary economic terms of a swap (but not necessarily all terms of the swap). Affirmation may constitute “execution” of the swap or may provide evidence of execution of the swap, but does not constitute confirmation (or confirmation by affirmation) of the swap.

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 registered swap execution facility or designated contract market;

(2) Occurs away from the registered swap execution facility’s or designated contract market’s trading system or platform and is executed pursuant to the registered 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 registered swap execution facility or designated contract market and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5 of this part.

Business day means the twenty-four hour day, on all days except Saturdays, Sundays and legal holidays, in the location of the reporting party or registered entity reporting data for the swap.

Business hours means the consecutive hours of one or more consecutive business days.

Cap size means, for each swap category, the maximum notional or principal amount of a publicly reportable swap transaction that is publicly disseminated.

Confirmation means the consummation (electronic or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation shall be in writing (electronic or otherwise) and shall legally supersede any previous agreement (electronic or otherwise) relating to the swap.

Confirmation by affirmation means the process by which one party to a swap

acknowledges its assent to the complete swap terms submitted by the other party to the swap. If the parties to a swap are using a confirmation service vendor, complete swap terms may be submitted electronically by a party to such vendor’s platform and the other party may affirm such terms on such platform.

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 as those terms previously were established at confirmation (or were in effect on the start date).

Executed means the completion of the execution process.

Execution means 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. Execution occurs simultaneous with or immediately following the affirmation of the swap.

Futures-related swap means a swap (as defined in section 1a(47) of the Act and as further defined by the Commission in implementing regulations) that is economically related to a futures contract.

Large notional off-facility swap means an off-facility swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such publicly reportable swap transaction and is not a block trade as defined in § 43.2 of the Commission’s regulations.

Major currencies means the currencies, and the cross-rates between the currencies, of Australia, Canada, Denmark, New Zealand, Norway, South Africa, South Korea, Sweden, and Switzerland.

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 transfers all of its rights, liabilities, duties and obligations under the swap to a new legal party other than the counterparty to the swap. The transferee accepts all of the transferor's rights, liabilities, duties and obligations under the swap. A novation is valid as long as the transferor and the remaining party to the swap are given notice, and the transferor, transferee and remaining party to the swap consent to the transfer.

Off-facility swap means any publicly reportable swap transaction that is not executed on or pursuant to the rules of a registered swap execution facility or designated contract market.

Other commodity means any commodity that is not categorized in the 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.

Public dissemination and publicly disseminate means 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.

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; and

(ii) Portfolio compression exercises.

(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.

Real-time public reporting means the reporting of 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.

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.

Remaining party means a party to a swap that consents to a transferor's transfer by novation of all of the transferor's rights, liabilities, duties and obligations under such swap to a transferee.

Reporting party 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.

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.

Transferee means a party to a swap that accepts, by way of novation, all of a transferor's rights, liabilities, duties and obligations under such swap with respect to a remaining party.

Transferor means a party to a swap that transfers, by way of novation, all of its rights, liabilities, duties and obligations under such swap, with respect to a remaining party, to a transferee.

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 four standard deviations above the mean.

Unique product identifier means a unique identification of a particular level of the taxonomy of the product in an asset class or sub-asset class in question, as further described in

§ 43.4(f) and appendix A to this part. Such unique product identifier may combine the information from one or more of the data fields described in appendix A.

Widely published means to publish and make available through electronic means in a manner that is freely available and readily accessible to the public.

[76 FR 1243, Jan. 9, 2012, as amended at 78 FR 32937, May 31, 2013]

§ 43.3 Method and timing for real-time public reporting.

(a) *Responsibilities of parties to a swap to report swap transaction and pricing data in real-time*—(1) *In general.* A reporting party shall report any publicly reportable swap transaction to a registered swap data repository as soon as technologically practicable after such publicly reportable swap transaction is executed. For purposes of this part, a registered swap data repository includes any swap data repository provisionally registered with the Commission pursuant to part 49 of this chapter.

(2) *Swaps executed on or pursuant to the rules of a registered swap execution facility or designated contract market.* A party to a publicly reportable swap transaction shall satisfy its reporting requirement under this section by executing a publicly reportable swap transaction on or pursuant to the rules of a registered swap execution facility or designated contract market.

(3) *Off-facility swaps.* All off-facility swaps shall be reported by the reporting party as soon as technologically practicable following execution, to a registered swap data repository for the appropriate asset class in accordance with the rules set forth in this part. Unless otherwise agreed to by the parties prior to the execution of the publicly reportable swap transaction, the following persons shall be reporting parties for off-facility swaps:

(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 party;

(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 party;

(iii) If both parties are swap dealers, then the swap dealers shall designate which party shall be the reporting party;

(iv) If both parties are major swap participants, then the major swap participants shall designate which party shall be the reporting party;

(v) If neither party is a swap dealer or a major swap participant, then the parties shall designate which party (or its agent) shall be the reporting party.

(b) *Public dissemination of swap transaction and pricing data*—(1) *Publicly reportable swap transactions executed on or pursuant to the rules of a registered swap execution facility or designated contract market.* A registered swap execution facility or designated contract market shall satisfy the requirements of this subparagraph by transmitting swap transaction and pricing data to a registered swap data repository, as soon as technologically practicable after the publicly reportable swap transaction has been executed on or pursuant to the rules of such trading platform or facility.

(2) *Public dissemination of swap transaction and pricing data by registered swap data repositories.* A registered swap data repository shall ensure that swap transaction and pricing data is publicly disseminated, as soon as technologically practicable after such data is received from a registered swap execution facility, designated contract market or reporting party, unless such publicly reportable swap transaction is subject to a time delay described in § 43.5 of this part, in which case the publicly reportable swap transaction shall be publicly disseminated in the manner described in § 43.5.

(3) *Prohibitions on disclosure of data.*

(i) If there is a registered swap data repository for an asset class, a registered 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 registered swap data repository unless:

(A) Such disclosure is made no earlier than the transmittal of such data to a registered swap data repository for public dissemination;