

§§ 23.162–23.199

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date under this section, a covered swap entity may disregard:

(1) Amendments to the uncleared swap that were entered into solely to comply with the requirements of 12 CFR part 47; 12 CFR part 252, subpart I; or 12 CFR part 382, as applicable; or

(2) Amendments to the uncleared swap that were entered into in compliance with each of the following conditions:

(i) The law of the European Union ceases to apply to the United Kingdom pursuant to Article 50(3) of the Treaty on European Union, without conclusion of a withdrawal agreement between the United Kingdom and the European Union pursuant to Article 50(2) thereof; and

(ii) Solely in connection with a party to the swap's planning for or response to the event described in paragraph (d)(2)(i) of this section, one or both parties to the swap transfers the swap to its margin affiliate, or a branch or other authorized form of establishment of the transferor, and the parties make no other transfers of the swap; and

(A) A covered swap entity is a transferee from a party to the swap; or

(B) A covered swap entity is a remaining party to the swap, and the transferor represents to the covered swap entity that the transferee is a margin affiliate, or a branch or other authorized form of establishment of the transferor, and the transfer was made solely in connection with the transferor's planning for or response to the event described in paragraph (d)(2)(i) of this section; and

(iii) The amendments do not modify any of the following: the payment amount calculation methods, the maturity date, or the notional amount of the swap; and

(iv) The amendments take effect no earlier than the date of the event described in paragraph (d)(2)(i) of this section transpires; and

(v) The amendments take effect no later than:

(A) The date that is one year after the date of the event described in paragraph (d)(2)(i) of this section; or

(B) Such other date permitted by transitional provisions under Article 35

of Commission Delegated Regulation (EU) No. 2016/2251, as amended.

[81 FR 695, Jan. 6, 2016, as amended at 83 FR 60346, Nov. 26, 2018; 84 FR 12071, Apr. 1, 2019]

§§ 23.162–23.199 [Reserved]

Subpart F—Reporting, Record-keeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

SOURCE: 77 FR 20202, Apr. 3, 2012, unless otherwise noted.

§ 23.200 Definitions.

For purposes of subpart F, the following terms shall be defined as provided.

(a) *Business trading unit* means any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs, or exercises supervisory authority over the performance of, any pricing (excluding price verification for risk management purposes), trading, sales, purchasing, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a registrant.

(b) *Clearing unit* means any department, division, group, or personnel of a registrant or any of its affiliates, whether or not identified as such, that performs any proprietary or customer clearing activities on behalf of a registrant.

(c) *Complaint* means any formal or informal complaint, grievance, criticism, or concern communicated to the swap dealer or major swap participant in any format relating to, arising from, or in connection with, any trading conduct or behavior or with the swap dealer or major swap participant's performance (or failure to perform) any of its regulatory obligations, and includes any and all observations, comments, remarks, interpretations, clarifications, notes, and examinations as to such conduct or behavior communicated or documented by the complainant, swap dealer, or major swap participant.

(d) *Executed* means the completion of the execution process.

(e) *Execution* means, with respect to a swap, 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.

(f) *Governing body*. This term means:

- (1) A board of directors;
- (2) A body performing a function similar to a board of directors;
- (3) Any committee of a board or body; or
- (4) The chief executive officer of a registrant, or any such board, body, committee, or officer of a division of a registrant, provided that the registrant's swaps activities for which registration with the Commission is required are wholly contained in a separately identifiable division.

(g) *Prudential regulator* has the meaning given to such term in section 1a(39) of the Commodity Exchange Act and includes 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 Association, and the Federal Housing Finance Agency, as applicable to the swap dealer or major swap participant.

(h) *Registered entity* has the meaning given to such term in section 1a(40) of the Commodity Exchange Act, and includes boards of trade designated as contract markets, derivatives clearing organizations, swap execution facilities, and swap data repositories.

(i) *Related cash or forward transaction* means a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a swap where the swap and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another.

(j) *Swaps activities* means, with respect to a registrant, such registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives.

(k) *Swap confirmation* means the summation (electronically or other-

wise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all the terms of the swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).

§ 23.201 Required records.

(a) *Transaction and position records*. Each swap dealer and major swap participant shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all its swaps activities. Such records shall include:

(1) *Transaction records*. Records of each transaction, including all documents on which transaction information is originally recorded. Such records shall be kept in a form and manner identifiable and searchable by transaction and by counterparty, and shall include:

(i) All documents customarily generated in accordance with market practice that demonstrate the existence and nature of an order or transaction, including, but not limited to, records of all orders (filled, unfilled, or cancelled); correspondence; journals; memoranda; ledgers; confirmations; risk disclosure documents; statements of purchase and sale; contracts; invoices; warehouse receipts; documents of title; and

(ii) The daily trading records required to be kept in accordance with § 23.202.

(2) *Position records*. Records of each position held by each swap dealer and major swap participant, identified by product and counterparty, including records reflecting whether each position is "long" or "short" and whether the position is cleared. Position records shall be linked to transaction records in a manner that permits identification of the transactions that established the position.

(3) *Records of transactions executed on a swap execution facility or designated contract market or cleared by a derivatives clearing organization*. Records of each transaction executed on a swap execution facility or designated contract market or cleared by a derivatives clearing organization maintained