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Commodity Futures Trading Commission

17 CFR Part 43
Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 43

RIN 3038–AD08

Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades

AGENCY: Commodity Futures Trading Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission is proposing regulations to implement certain statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Specifically, in accordance with section 727 of the Dodd-Frank Act, the Commission is proposing regulations that would define the criteria for grouping swaps into separate swap categories and would establish methodologies for setting appropriate minimum block sizes for each swap category. In addition, the Commission is proposing further measures under the Commission's regulations to prevent the public disclosure of the identities, business transactions and market positions of swap market participants.

DATES: Comments must be received on or before May 14, 2012.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD08, by any of the following methods:

- The agency's Web site, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

Commenters to this further notice of proposed rulemaking are requested to refrain from providing comments with respect to the provisions in part 43 of the Commission's regulations that are beyond the scope of this proposed rulemaking. The Commission only plans to address those comments that are responsive to the policies, merits and substance of the proposed provisions set forth in this further notice of proposed rulemaking.

Throughout this further notice of proposed rulemaking, the Commission requests comment in response to several specific questions. For convenience, the Commission has numbered each of these requests for comment. The Commission asks that, in submitting comments, commenters kindly identify the specific number of each request to which their comments are responsive.

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 *www.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 public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Carl E. Kennedy, Counsel, Office of the General Counsel, 202–418–6625, *c_kennedy@cftc.gov;* or George Pullen, Economist, Division of Market Oversight, 202–418–6709, *gpullen@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. The Dodd-Frank Act
B. The Initial Proposal
C. Public Comments in Response to the Initial Proposal
1. Public Comments Regarding the Proposed Determination of Appropriate Minimum Block Sizes
2. Public Comments Regarding the Proposed Anonymity Protections
3. Public Comments Regarding Implementation
D. Analysis of Swap Market Data; Issuance of the Adopting Release
II. Further Proposal—Block Trades
A. Policy Goals
B. Summary of the Proposed Approach
C. Proposing Criteria for Distinguishing Among Swap Categories in Each Asset Class
1. Interest Rate and Credit Asset Classes
a. Background
b. Interest Rate Swap Categories
i. Interest Rate Swap Data Summary
ii. Interest Rate Swap Data Analysis
c. Credit Swap Categories
i. Credit Swap Data Summary
ii. Credit Swap Data Analysis
2. Swap Category in the Equity Asset Class
3. Swap Categories in the FX Asset Class
4. Swap Categories in the Other Commodity Asset Class
D. Proposed Appropriate Minimum Block Size Methodologies for the Initial and Post-Initial Periods
1. Methodology for Determining the Appropriate Minimum Block Sizes in the Interest Rate and Credit Asset Classes
2. Treatment of Swaps Within the Equity Asset Class
3. Methodologies for Determining the Appropriate Minimum Block Sizes in the FX Asset Class
a. Initial Period Methodology for Determining Appropriate Minimum Block Sizes in the FX Asset Class
b. Post-Initial Period Methodology for Determining Appropriate Minimum Block Sizes in the FX Asset Class
4. Methodologies for Determining Appropriate Minimum Block Sizes in the Other Commodity Asset Class
a. Initial Period Methodology for Determining Appropriate Minimum Block Sizes in the Other Commodity Asset Class (Other Than Natural Gas and Electricity Swaps Proposed To Be Listed in Appendix B to Part 43)
b. Initial Period Methodology for Natural Gas and Electricity Swaps in the Other Commodity Asset Class Proposed To Be Listed in Appendix B to Part 43
c. Post-Initial Period Methodology for Determining Appropriate Minimum Block Sizes in the Other Commodity Asset Class
5. Special Provisions for the Determination of Appropriate Minimum Block Sizes for Certain Types of Swaps
a. Swaps With Optionality
b. Swaps With Composite Reference Prices
c. Physical Commodity Swaps
d. Currency Conversion
e. Successor Currencies
E. Procedural Provisions
1. Proposed § 43.6(a) Commission Determination
2. Proposed § 43.6(f)(3) and(4) Publication and Effective Date of Post-Initial Appropriate Minimum Block Sizes
3. Proposed § 43.6(g) Notification of Election
4. Proposed § 43.7 Delegation of Authority
III. Further Proposal—Anonymity Protections for the Public Dissemination of Swap Transaction and Pricing Data
A. Policy Goals
B. Establishing Notional Cap Sizes for Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time
1. Policy Goals for Establishing Notional Cap Sizes

[1] *See* 17 CFR 145.9.

2. Proposed Amendments Related to Cap Sizes—§ 43.2 Definitions and § 43.4 Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time
a. Initial Cap Sizes
b. Post-Initial Cap Sizes and the 75-Percent Notional Amount Calculation
c. Alternative Cap Size Calculations
C. Masking the Geographic Detail of Swaps in the Other Commodity Asset Class
1. Policy Goals for Masking the Geographic Detail for Swaps in the Other Commodity Asset Class
2. Proposed Amendments to § 43.4
3. Application of Proposed § 43.4(d)(4)(iii) and Proposed Appendix E to Part 43—Geographic Detail for Delivery or Pricing Points
a. U.S. Delivery of Pricing Points
i. Natural Gas and Related Products
ii. Petroleum and Products
iii. Electricity and Sources
iv. All Remaining Other Commodities
b. Non-U.S. Delivery or Pricing Points
c. Basis Swaps
4. Further Revisions to Part 43
a. Additional Contracts Added to Appendix B to Part 43
b. Technical Revisions to Part 43
IV. Regulatory Flexibility Act
A. Potential Economic Impact—Proposed § 43.6(g)—Notification of Election
B. Identification of Duplicative, Overlapping or Conflicting Federal Rules
C. Alternatives to Proposed Rules That Will Have an Impact
D. Certification
V. Paperwork Reduction Act
A. Background
B. Description of the Collection
1. Proposed § 43.6(g)—Notification of Election
2. Proposed Amendments to §§ 43.4(d)(4) and 43.4(h)
C. Request for Comments on Collection
VI. Cost-Benefit Considerations
A. Introduction
B. The Requirements of Section 15(a)
C. Structure of the Commission's Analysis; Cost Estimation Methodology
D. Background; Objectives of This Further Proposal
E. Costs and Benefits Relevant to the Block Trade Rules Section of the Further Proposal (§§ 43.6(a)–(f) and (h))
1. Costs and Benefits Relevant to the Proposed Criteria and Methodology
a. Proposed § 43.6(a) Commission Determination
b. Proposed § 43.6(b) Swap Category
c. Proposed §§ 43.6(c)–(f) and (h) Methods for Determining Appropriate Minimum Block Sizes
d. Proposed §§ 43.6(a)–(f) and (h) Costs Relevant to the Proposed Criteria and Methodology
e. Benefits Relevant to Proposed §§ 43.6(a)–(f) and (h)
f. Application of the Section 15(a) Factors to Proposed §§ 43.6(a)–(f) and (h)
i. Protection of Market Participants and the Public
ii. Efficiency, Competitiveness and Financial Integrity of Markets
iii. Price Discovery
iv. Sound Risk Management Practices
v. Other Public Interest Considerations
g. Specific Questions Regarding the Proposed Criteria and Methodology
2. Cost-Benefit Considerations Relevant to the Proposed Block Trade/Large Notional Off-Facility Swap Election Process (Proposed § 43.6(g))
a. Costs Relevant to the Proposed Election Process (Proposed § 43.6(g))
i. Incremental, Non-Recurring Expenditure to a Non-Financial End-user, SEF or DCM To Update Existing Technology
ii. Incremental, Non-Recurring Expenditure to a Non-Financial End-User, SEF or DCM To Provide Training to Existing personnel and Update Written Policies and Procedures
iii. Incremental, Recurring Expenses to a Non-Financial End-User, DCM or SEF Associated With Incremental Compliance, Maintenance and Operational Support in Connection With the Proposed Election Process
iv. Incremental, Non-Recurring Expenditure to an SDR To Update Existing Technology To Capture and Publicly Disseminate Swap Data for Block Trades and Large Notional Off-Facility Swaps
b. Benefits Relevant to the Proposed Election Process (Proposed § 43.6(g))
c. Application of the Section 15(a) Factors to Proposed § 43.6(g)
i. Protection of Market Participants and the Public
ii. Efficiency, Competitiveness and Financial Integrity
iii. Price Discovery
iv. Sound Risk Management Practices
v. Other Public Interest Considerations
d. Specific Questions Regarding the Proposed Election Process
F. Costs and Benefits Relevant to Proposed Anonymity Protections (Amendments to §§ 43.4(d)(4) and (h))
1. Proposed Amendments to § 43.4(d)(4)
2. Proposed Amendments to § 43.4(h)
3. Costs Relevant to the Proposed Amendments to §§ 43.4(d)(4) and (h)
4. Benefits Relevant to the Proposed Amendments to § 43.4
5. Application of the Section 15(a) Factors to the Proposed Amendments to § 43.4
a. Protection of Market Participants and the Public
b. Efficiency, Competitiveness and Financial Integrity
c. Price Discovery
d. Sound Risk Management Practices
e. Other Public Interest Considerations
6. Specific Questions Regarding the Proposed Amendments to § 43.4
VII. Example of a Post-Initial Appropriate Minimum Block Size Determination Using the 50-Percent Notional Amount Calculation
VIII. List of Commenters Who Responded to the Initial Proposal

I. Background

A. The Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act (''CEA'')[4] to establish a comprehensive, new regulatory framework for swaps and security-based swaps. This legislation was enacted to reduce risk, increase transparency and promote market integrity within the financial system by, *inter alia:* (1) Providing for the registration and comprehensive regulation of swap dealers (''SDs'') and major swap participants (''MSPs''); (2) imposing mandatory clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 727 of the Dodd-Frank Act created section 2(a)(13) of the CEA, which authorizes and requires the Commission to promulgate regulations for the real-time public reporting of swap transaction and pricing data.[5] Section 2(a)(13)(A) provides that the definition of ''real-time public reporting'' means 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.''[6] Section 2(a)(13)(B) states that the purpose of section 2(a)(13) 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.''

In general, section 2(a)(13) of the CEA directs the Commission to prescribe regulations ''providing for the public availability of transaction and pricing data'' for certain swaps. Section 2(a)(13) also places two other statutory requirements on the Commission that are relevant to this further notice of proposed rulemaking (''Further Proposal''). First, sections 2(a)(13)(E)(ii) and (iii) of the CEA respectively require the Commission to prescribe regulations specifying ''the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts'' and ''the appropriate time delay for reporting

[2] *See* Public Law 111–203, 124 Stat. 1376 (2010).

[3] The short title of Title VII of the Dodd-Frank Act is the ''Wall Street Transparency and Accountability Act of 2010.''

[4] *See* 7 U.S.C. 1 *et seq.*

[5] *See generally* CEA section 2(a)(13), 7 U.S.C. 2(a)(13).

[6] CEA section 2(a)(13)(A).

large notional swap transactions (block trades) to the public.'' [7] In promulgating regulations under section 2(a)(13), 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.'' [8]

The second statutory requirement relevant to this Further Proposal is found in sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) of the CEA. Section 2(a)(13)(E)(i) requires the Commission to protect the identities of counterparties to mandatorily-cleared swaps, swaps excepted from the mandatory clearing requirement and voluntarily-cleared swaps. Section 2(a)(13)(C)(iii) of the CEA requires the Commission to prescribe rules that maintain the anonymity of business transactions and market positions of the counterparties to an uncleared swap.[9] Indeed, Congress sought to ''ensure that the public reporting of swap transaction and pricing data [would] not disclose the names or identities of the parties to [swap] transactions.'' [10]

In carrying out these two statutory requirements under section 2(a)(13), the Commission issued a notice of proposed rulemaking. A discussion of that notice is described immediately below.

B. The Initial Proposal

On December 7, 2010, the Commission published in the **Federal Register** a notice of proposed rulemaking to implement section 2(a)(13) of the CEA (the ''Initial Proposal''), which included, among others, specific provisions pursuant to sections 2(a)(13)(E)(i)–(iv) and 2(a)(13)(C)(iii).[11] In the Initial Proposal, the Commission set out proposed provisions to satisfy the statutory requirements discussed above. With respect to the first statutory requirement, the Commission proposed: (1) Definitions for the terms ''large notional off-facility swap'' and ''block trade'' [12]; (2) a method for determining the appropriate minimum block sizes for large notional off-facility swaps and block trades; [13] and (3) a framework for timely reporting of such transactions and trades.[14] Proposed § 43.5(g) provided that registered swap data repositories (''SDRs'') shall be responsible for calculating the appropriate minimum block size for each ''swap instrument'' using the greater result of the distribution test [15] and the multiple test.[16] Proposed § 43.2(y) broadly defined ''swap instrument'' as ''a grouping of swaps in the same asset class with the same or similar characteristics.'' [17] Proposed § 43.5(h) provided that for any swap listed on a SEF or DCM, the SEF or DCM must set the appropriate minimum block trade size.[18]

With respect to the second statutory requirement relevant to this Further Proposal, the Initial Proposal set forth several provisions to address issues pertinent to protecting the identities of parties to a swap. Essentially, these proposed provisions sought to protect the identities of parties to a swap through the limited disclosure of information and data relevant to the swap. In particular, proposed § 43.4(e)(1) in the Initial Proposal provided that an SDR could not publicly report swap transaction and pricing data in a manner that discloses or otherwise facilitates the identification of a party to a swap. Proposed § 43.4(e)(2) would have placed a requirement on SEFs, DCMs and reporting parties to provide an SDR with a specific description of the underlying asset and tenor of a swap. This proposed section also included a qualification with respect to the reporting of the specific description. In particular, this section provided that ''[the] description must be general enough to provide anonymity but specific enough to provide for a meaningful understanding of the economic characteristics of the swap.'' [19] This qualification would have applied to all swaps.

In the Initial Proposal, the Commission acknowledged that swaps that are executed on or pursuant to the rules of a SEF or DCM do not raise the same level of concerns in protecting the identities, business transactions or market positions of swap counterparties since these swaps generally lack

[7] *See* CEA sections 2(a)(13)(E)(ii) and (iii). Section 2(a)(13)(E) explicitly refers to the swaps described only in sections 2(a)(13)(C)(i) and 2(a)(13)(C)(ii) of the CEA (*i.e.,* clearable swaps, including swaps that are exempt from clearing). As noted in the Commission's Initial Proposal (as defined below) and its Adopting Release (as defined below), the Commission interprets the provisions in section 2(a)(13)(E) to apply to all categories of swaps described in section 2(a)(13)(C) of the CEA.

[8] CEA section 2(a)(13)(E)(iv). Similarly, section 5h(f)(2)(C) of the CEA directs a registered swap execution facility (''SEF'') to set forth rules for block trades for swap execution purposes.

[9] This provision does not cover swaps that are ''determined to be required to be cleared but are not cleared.'' *See* CEA section 2(a)(13)(C)(iv).

[10] 156 Cong. Rec. S5921 (daily ed. July 15, 2010) (Statement of Sen. Blanche Lincoln).

[11] *See* Real-Time Public Reporting of Swap Transaction Data, 75 FR 76,139, Dec. 7, 2010, as corrected in Real-Time Public Reporting of Swap Transaction Data Correction, 75 FR 76,930, Dec. 10, 2010. Interested persons are directed to the Initial Proposal for a full discussion of each of the proposed part 43 rules.

[12] The Initial Proposal defined the term ''large notional swap.'' *See* proposed § 43.2(l), 75 FR 76,171. The Adopting Release finalized the term as ''large notional off-facility swap,'' to denote, in relevant part, that the swap is not executed pursuant to a SEF or designated contract market's (''DCM'') rules and procedures. *See* § 43.2, 77 FR 1,182, 1,244, Jan. 9, 2012 (''Adopting Release''). Specifically, the Adopting Release defined the term as 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.'' *Id.* Throughout this Further Proposal, the Commission uses the term ''large notional off-facility swap'' as adopted in the Adopting Release.

The Initial Proposal's definition of ''block trade'' was similar to the final definition in the Adopting Release. *See* proposed § 43.2(f), 75 FR 76,171. The Adopting Release defines the term ''block trade'' as a publicly reportable swap transaction that: ''(1) [i]nvolves a swap that is listed on a SEF or DCM; (2) [o]ccurs 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 applicable to such swap; and (4) [i]s 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.'' *See* § 43.2, 77 FR 1,243.

[13] *See* proposed § 43.5, 75 FR 76,174–76.

[14] Proposed § 43.5(k)(1) in the Initial Proposal provided that the time delay for the public dissemination of data for a block trade or large notional off-facility swap shall commence at the time of execution of such trade or swap. *See* 75 FR 76,176. Proposed § 43.5(k)(2) provided that the time delay for standardized block trades and large notional off-facility swaps (*i.e.,* swaps that fall under CEA Section 2(a)(13)(C)(i) and (iv)) would be 15 minutes from the time of execution. *Id.* The Initial Proposal did not provide specific time delays for large notional off-facility swaps (*i.e.,* swaps that fall under Section 2(a)(13)(C)(ii) and (iii)). Instead, proposed § 43.5(k)(3) provided that the time delay for such swaps shall be reported subject to a time delay that may be prescribed by the Commission. *Id.*

The Adopting Release established time delays for the public dissemination of block trades and large notional off-facility swaps in § 43.5. *See* 77 FR 1,247–49.

[15] The distribution test, described in proposed § 43.5(g)(1)(i) of the Initial Proposal, required that an SDR take the rounded transaction sizes of all trades executed over a period of time for a particular swap instrument and create a distribution of those trades. An SDR would then determine the minimum threshold amount as an amount that is greater than 95 percent of the notional or principal transaction sizes for the swap instrument for an applicable period of time. *See* 75 FR 76,175.

[16] The multiple test, described in proposed § 43.5(g)(1)(ii) in the Initial Proposal, required that an SDR multiply the block trade multiple by the ''social size'' of a particular swap instrument. Proposed § 43.2(x) defined ''social size'' as the greatest of the mean, median or mode for a particular swap instrument. The Commission proposed a block trade multiple of five. *Id.*

[17] *See* proposed § 43.2(y), 75 FR 76,172. For the reasons described in section II.B. infra, the Commission is proposing to use the term ''swap category'' instead of ''swap instrument.'' The Commission is of the view that the term swap category is a more descriptive term to convey the concept of a grouping of swap contracts that would be subject to the same appropriate minimum block size.

[18] *See* 75 FR 76,176.

[19] See 75 FR 76,174.

customization.[20] As a result, the Commission provided that SEFs and DCMs should tailor the description required by proposed section 43.2(e) depending on the asset class and place of execution of each swap.

In contrast, the Commission acknowledged that the public dissemination of a description of the specific underlying asset and tenor of swaps that are not executed on or pursuant to the rules of a SEF or DCM (*i.e.,* swaps that are executed bilaterally) may result in the unintended disclosure of the identities, business transactions or market positions of swap counterparties, particularly for swaps in the other commodity asset class.[21] To address this issue, the Commission proposed in § 43.4(e)(2) that an SDR publicly disseminate a more general description of the specific underlying asset and tenor.[22] In the Initial Proposal, the Commission provided a hypothetical example of how an SDR could mask or otherwise protect the underlying asset from public disclosure in a manner too specific so as to divulge the identity of a swap counterparty. The Commission, however, did not set forth a specific manner in which SDRs should carry out this requirement.[23]

To further protect the identities, business transactions or market positions of swap counterparties, proposed § 43.4(i) of the Initial Proposal included a rounding convention for all swaps, which included a ''notional cap'' provision. The proposed notional cap provision provided, for example, that if the notional size of a swap is greater than $250 million, then an SDR only would publicly disseminate a notation of ''$250+'' to reflect the notional size of the swap.[24]

The Commission issued the Initial Proposal for public comment for a period of 60 days, but later reopened the comment period for an additional 45 days.[25] The comments that were submitted in response to the Initial Proposal are discussed in the section that follows.

C. Public Comments in Response to the Initial Proposal

After issuing the Initial Proposal, the Commission received 105 comment letters and held 40 meetings with interested parties regarding the proposed provisions.[26] The commenters provided general and specific comments relating to the proposed provisions regarding the determination of appropriate minimum block sizes and anonymity protections for the identities, business transactions and market positions of swap counterparties.[27] Subsection 1 below sets out a discussion of the comments submitted in response to the Initial Proposal regarding the provisions that pertain to the determination of appropriate minimum block sizes. Subsection 2 below sets out a discussion of the comments submitted in response to the Initial Proposal regarding the proposed provisions that provide anonymity protections for the identities, business transactions or market positions of swap counterparties. Subsection 3 below sets out a discussion of the comments submitted in response to the Initial Proposal regarding the implementation of proposed part 43.

1. Public Comments Regarding the Proposed Determination of Appropriate Minimum Block Sizes

In terms of general comments, many commenters argued that the potential effects of the large notional off-facility swap and block trade provisions (including the provisions regarding the appropriate time delay) would adversely affect market liquidity.[28] Several commenters generally argued that the Commission's proposed methodology was not supported by actual swap market data.[29] In support of these comments, a few commenters also argued that the Commission should examine swap markets over a sufficient period of time to obtain a comprehensive view of market liquidity.[30] Other commenters also contended that the proposed methodology to determine appropriate minimum block sizes would increase transaction costs if the appropriate minimum block sizes are set too large or if time delays are not long enough.[31]

Some commenters made specific recommendations regarding the Commission's proposed method for determining appropriate minimum block sizes for large notional off-facility swaps and block trades.[32] For example, four commenters proffered alternative methods in which to group or categorize swaps for the purposes of the appropriate minimum block size determination.[33] Ten commenters recommended ways to modify the multiple test.[34] Specifically, four commenters suggested that the Commission remove the mean from the calculation of social size.[35] Several of

[20] *See* 75 FR 76,151 (''In contrast, for those swaps that are executed on a swap market, the Commission believes that since such contracts will be listed on a particular trading platform or facility, it will be unlikely that a party to a swap could be inferred based on the reporting of the underlying asset and therefore parties to swaps executed on swap markets must report the specific underlying assets and tenor of the swap.'').

[21] *See* 75 FR 76,150–51.

[22] *See* 75 FR 76,174.

[23] *See* 75 FR 76,150. The Initial Proposal further provided that the requirement in proposed § 43.4(e)(2) was separate from the requirement that a reporting party report swap data to an SDR pursuant to section 2(a)(13)(G) of the CEA. See 75 FR 76,174.

[24] *See* 75 FR 76,152.

[25] The initial comment period for the Initial Proposal closed on February 7, 2011. The comment periods for most proposed rulemakings implementing the Dodd-Frank Act—including the proposed part 43 rules—subsequently were reopened for the period of April 27 through June 2, 2011.

[26] The interested parties who either submitted comment letters or met with Commission staff included end-users, potential swap dealers, asset managers, industry groups/associations, potential SDRs, a potential SEF, multiple law firms on behalf of their clients and a DCM. Of the 105 comment letters submitted in response to the Initial Proposal, 42 letters focused on various issues relating to block trades and large notional off-facility swaps. Of the 40 meetings, five meetings focused on various issues relating to block trades and large notional off-facility swaps. All comment letters received in response to the Initial Proposal may be found on the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=919.*

[27] A list of the full names and abbreviations of commenters who responded to the Initial Proposal and who the Commission refers to in this Further Proposal is included in section VI below. As noted above, letters from these commenters and others submitted in response to the Initial Proposal are available through the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=919.*

[28] *See, e.g.,* Freddie Mac CL at 2; ICI CL at 2; ABC/CIEBA CL at 1–2; ISDA/SIFMA CL at 2–4; Cleary Gottlieb CL at 6; JP Morgan CL at 2; WMBAA CL at 3.

[29] *See, e.g.,* Cleary Gottlieb CL at 4–5; SIFMA/AFME/ASIFMA CL at 12; AII CL at 3–5. In their joint comment letter, for example, ISDA and SIFMA urged the Commission to conduct an empirical study on the impact of post-trade transparency on the over-the-counter (''OTC'') markets prior to finalizing the rulemaking. *See* ISDA/SIFMA CL at 4–5. In addition, ISDA and SIFMA argued that the Commission should conduct a three-month study, during which time the Commission should prescribe interim block trade rules. *Id.*

[30] Commenters did not agree on what constitutes a sufficient period of time to obtain a comprehensive view of liquidity. *See, e.g.,* ISDA/SIFMA CL at 4 (three months); *but see* AII CL at 4 (one year); ABC/CIEBA CL at 5–6 (at least one year); UBS (six month consultation period).

[31] *See, e.g.,* UBS CL at 1; AII CL at 4; SIFMA/AFME/ASIFMA CL at 11–13; BlackRock CL at 3–4; Hunton & Williams CL at 20; Cleary Gottlieb CL at 4–6; CCMR CL at 4; Coalition of Derivatives End-Users CL at 4–7; MFA CL at 3–4; MetLife CL at 2–3.

[32] *See, e.g.,* BlackRock CL at attachment 3; Coalition of Derivatives End-Users CL at 2–4.

[33] *See, e.g.,* UBS CL at 1; Coalition of Derivatives End-Users CL at 2–4; Cleary Gottlieb CL at 5–6; SIFMA AMG CL at 5; Goldman CL at 3–4; ICI CL at 3.

[34] *See e.g.,* JP Morgan CL at 9; BlackRock CL at 4; Goldman CL at 5.

[35] *See, e.g.,* Goldman CL at 5 (''[W]e encourage the [Commission] to modify the multiple test by eliminating the mean prong. Defining the social size of a swap category with reference to the mean of transaction sizes would make the calculation susceptible to skewing * * *.''). *See also* JPM CL

Continued

these commenters also suggested that the Commission use a multiple of less than five, with a multiple of two as the most often suggested alternative.[36]

Ten commenters also recommended that the Commission alter the distribution test in a way that they would support it as a test, which should be used individually or used in combination with the multiple test.[37] The majority of these commenters suggested that the Commission use a lower percentage than the proposed 95th percentile.[38] Specifically, these commenters suggested a percentile between the 50th and 80th percentile.[39]

A few commenters focused their recommendations on the methodologies that an SDR would use to calculate the appropriate minimum block sizes for specific asset classes. For example, three commenters made specific recommendations regarding the calculation and criteria of large notional off-facility swaps and block trades in the interest rate swap market.[40] A third commenter made specific recommendations regarding the calculation and criteria of large notional off-facility swaps and block trades in the credit default swap market.[41]

One commenter shared its view regarding whether the block trade rules that are applied in the futures markets are an appropriate analogy for determining appropriate minimum block sizes in related swaps markets. In its comment letter to the Initial Proposal, this commenter argued that the appropriate minimum block sizes in place for the futures market should be used as a comparison for determining appropriate minimum block sizes in the swaps market.[42] The commenter stated that where an economically-equivalent futures contract is listed on a DCM, then the rules establishing appropriate minimum block sizes for a swap should be comparable to such futures contracts.[43] The commenter also suggested that the Commission use comparable futures contracts in determining, inter alia, appropriate minimum block sizes and reporting and recordkeeping requirements.[44] The commenter warned otherwise that, if the Commission was to adopt a different approach, then such action would unintentionally ''[tilt] the playing field in favor of one class of instruments.'' [45] The commenter further argued that this consequence would not be consistent with Congress's intent when it enacted the Dodd-Frank Act.

In contrast, other commenters suggested that the appropriate minimum block sizes in place for futures contracts would be an inappropriate comparative measure for the swaps market.[46] Some of these commenters, for example, argued that the futures market is not an appropriate basis for setting appropriate minimum block sizes for block trades and large notional off-facility swaps because the swap market is significantly different than the futures market.[47]

Many commenters to the Initial Proposal contended that the Commission should determine appropriate minimum block sizes based on the liquidity of a ''swap instrument.'' [48] Two commenters suggested that markets with differing levels of liquidity should be subject to different block size methodologies.[49] Another commenter suggested that a volume of less than five transactions per day be used to classify certain swap categories as illiquid and therefore subject to lower relative block size thresholds.[50] Yet another commenter suggested utilizing a benchmark volume level to classify swaps within an asset class for the purpose of determining appropriate block sizes.[51] One commenter suggested considering the turnover in a market to determine appropriate block sizes and time delays.[52] Finally, another commenter recommended that the Commission review historical swap transaction data and consult with market participants in determining a liquidity spectrum for each swap category, with liquidity determined based on the average number of transactions per day (based on true risk transfer) over the preceding six months and the number of market makers regularly trading the instrument.[53]

2. Public Comments Regarding the Proposed Anonymity Protections

Several commenters expressed concerns that the Initial Proposal did not address possible disclosure of the identities, business transactions and market positions of swap counterparties.[54] Many commenters stated that the failure to adequately protect the identities and business transactions of the counterparties in connection with transacting block trades or large notional off-facility swaps would result in harm to the market.[55] These commenters argued that the proposal would increase the risk that sophisticated market participants or some counterparties would be able to detect either the asset being offset or the identity of the end-user doing the offsetting, notwithstanding the anonymity protections proposed in the Initial Proposal.[56] According to these commenters, this issue is of particular concern when a swap market participant enters into multiple swap transactions to place a large offsetting position and some or all of those transactions involve thinly-traded products or illiquid markets.[57] Under

at 8, UBS CL at 2, Federal National Mortgage Association CL at 2.

[36] *See, e.g.,* UBS CL at 2 (multiple of 2); JP Morgan CL at 9 (multiple of 2). *But see* MetLife CL at 5 (multiple of 1.5).

[37] *See e.g.,* PIMCO CL at 4; SIFMA AMG CL at 4; UBS CL at 2.

[38] *See, e.g.,* BlackRock CL at 4; SIFMA AMG CL at 5; Vanguard CL at 5 . *See also* UBS CL at 2.

[39] *See, e.g.,* BlackRock CL at 4 (use 75th percentile); SIFMA AMG CL at 5 (recommending ''somewhere in the range of the 66th to 80th percentiles''); Vanguard CL at 5 (80th percentile); JP Morgan CL at 9 (50th percentile). *See also* UBS CL at 2.

[40] *See* PIMCO CL at 3 (for interest rate swaps, ''$250 million for swaps of 0–2 years, $200 million for swaps of 2–5 years, $100 million for swaps of 6–10 years, $75 million for swaps of 11–20 years, and $50 million for swaps over 20 years.''); AII CL at 5 (''For interest rate swaps 0–5 year interest rate swaps, it may be appropriate to set the limit at approximately $100 million. For 5–10 year interest rate swaps, the threshold might be approximately $50 million and for 10–30 year interest rate swaps, the appropriate threshold could be approximately $25 million.''); BlackRock CL at attachment 3 (for interest rate swaps, ''$300K DV01 (approximately $350 million 10 year equivalent)'').

[41] *See* BlackRock CL at attachment 3. *See also* SIFMA/AFME/ASIFMA CL at 12 (recommending criteria for swaps and other instruments in the FX asset class).

[42] *See* CME CL at 12.

[43] *See id.*

[44] *See id.*

[45] *Id.* at 13.

[46] *See, e.g.,* Freddie Mac CL at 2; Barclays CL at 2; ICI CL at 2–3; ISDA/SIFMA CL at 3–4; Vanguard CL at 4; TriOptima CL at 5; CCMR CL at 3.

[47] *See* ISDA/SIFMA CL at 3–4; Vanguard CL at 4; TriOptima CL at 5; Freddie Mac CL at 2; Barclays CL at 2; ICI CL at 2–3; CCMR CL at 3.

[48] *See* note 17 supra for the Commission's proposal to use the term ''swap category'' instead of ''swap instrument.''

[49] *See* ISDA/SIFMA CL at 4; Coalition of Derivatives End-Users CL at 4.

[50] *See* Morgan Stanley CL at 11.

[51] *See* Vanguard CL at 5.

[52] *See* TriOptima CL at 5.

[53] *See* UBS CL at 2.

[54] *See e.g.,* Sutherland CL at 4–5; PIMCO CL at 3; Cleary Gottlieb CL at 5; Bracewell & Giuliani CL at 2–7; DTCC CL at 12; FINRA CL at 5; Dominion CL at 6–9; Commission staff meeting with Argus Media, Inc. on Feb. 3, 2011. *See also* ISDA and SIFMA, Block trade reporting over-the-counter derivatives markets, 6 (Jan. 2011), available at *http://www.isda.org/speeches/pdf/Block-Trade-Reporting.pdf.*

[55] *See, e.g.,* Dominion CL at 5–6; PIMCO CL at 3; ABC/CEIBA CL at 16; WMBAA CL at 10; MFA CL at 2–3; Coalition for Derivatives End-Users CL at 10; Sutherland CL at 5; Argus CL at 3–4; ATA CL at 5; Sadis Goldberg CL at 2–4.

[56] *See, e.g.,* Sutherland CL at 5; Coalition for Derivatives End-Users CL at 10; ATA CL at 5.

[57] *See, e.g.,* Argus CL at 3–4 (''In situations where only a few entities trade a certain type of underlying asset, real-time reporting may inadvertently reveal the identity of the swap participants, particularly where the underlying

those circumstances, the commenters asserted that the parties to a swap would face an increased risk that their identities or transactions would be revealed to the public in violation of sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iv) of the CEA.[58] The commenters concluded that, as a result, swap counterparties could experience difficulty in offsetting their positions at a competitive price.[59]

To address concerns regarding limited disclosure, several commenters recommended that the Commission establish a ''masking rule.'' [60] For example, one commenter suggested that the Commission set masking thresholds at or near the level that represents the dividing line between retail and institutional trades.[61] Another commenter suggested that the Commission develop a masking rule for the swaps market that is similar to the one established by the Financial Industry Regulatory Authority (''FINRA'') for the bond market.[62] These commenters suggested, however, that the Commission establish alternative methodologies to ensure limited public disclosure of swap transaction and pricing data.[63]

Some commenters expressed general concerns regarding anonymity as well as specific concerns with respect to swaps in the other commodity asset class. One commenter provided specific examples of how the identities of the counterparties could be revealed by publicly disseminating information relating to energy products.[64] Another commenter suggested the use of broad geographic regions when publicly disseminating data for commodity swaps with very specific underlying assets or delivery points (*e.g.,* natural gas) in order to protect the anonymity of the parties to these swaps.[65] In commenting on the hypothetical example provided in the Initial Proposal,[66] the commenter suggested that instead of reporting Lake Charles, Louisiana as the delivery point, an SDR could publicly disseminate ''Louisiana'' or ''Gulf Coast.'' [67]

Six commenters argued that the proposed anonymity provisions are not sufficient for certain swaps or certain markets (*e.g.,* large, bespoke trades offsetting energy assets; illiquid contracts entered into by non-financial end-users; etc.). These commenters further argued that the public dissemination requirement in the Initial Proposal may result in undue harm to the swap market by increasing the risk of public disclosure of the identities, business transactions and market positions of swap counterparties.[68]

3. Public Comments Regarding Implementation

In the Initial Proposal, the Commission solicited comments in response to specific questions regarding the implementation of real-time public reporting, including, inter alia, the timetable in which the Commission would require the public dissemination of swap transaction and pricing data for block trades and large notional off-facility swaps. In response to the Initial Proposal, several commenters suggested that the Commission phase-in the block trade thresholds and time delays, starting with lower thresholds and longer time delays.[69] These commenters further suggested that the Commission phase-in stricter methodologies and time delays over time.[70] For example, one commenter stated in its comment letter that the Commission should specify appropriate minimum block sizes in advance and readjust those sizes over time in order to provide certainty to the market.[71] In contrast, another commenter argued that the Commission should use data that is currently available to set appropriate minimum block sizes without any delay.[72]

Following the close of the comment period, the Commission took several actions in consideration of the comments received regarding the proposed methodology to determine appropriate minimum block sizes, the proposed anonymity protections and the proposed implementation approach.[73] A discussion of the Commission's actions and their impact on this Further Proposal is set out immediately below.

D. Analysis of Swap Market Data; Issuance of the Adopting Release

In consideration of the public comments submitted in response to the Initial Proposal, the Commission obtained and analyzed swap data in order to better understand the trading activity of swaps in certain asset classes.[74] The Commission also reviewed additional information, including a recent study pertaining to the mandatory execution requirements and post-trade transparency concerns that arose out of two of the Commission's proposed rulemakings,[75] as well as a report issued by two industry trade associations on block trade reporting in the swaps market.[76] In addition, the Commission and the Securities and Exchange Commission, held a two-day public roundtable on Dodd-Frank Act implementation on May 2 and 3, 2011 (''Public Roundtable'').[77] During the Public Roundtable and in comment letters submitted in support thereof, interested parties recommended that the Commission adopt a phased-in approach with respect to the establishment of block trade rules.

Recently, the Commission issued the Adopting Release that finalized several provisions that were proposed in the Initial Proposal.[78] Those provisions,

asset is a commodity.''); *see also* Dominion CL at 5–6; Sutherland CL at 5; Coalition for Derivatives End-Users CL at 10.

[58] *See, e.g.,* Argus CL at 3–4; ATA CL at 5; Dominion CL at 5–6; Sadis Goldberg CL at 2–4.

[59] *Id. See* note 58 *supra.*

[60] JP Morgan CL at 12–14 (''The masking rule is similar in concept to the so-called '5+ rule' in TRACE. Under TRACE, transactions involving bonds in excess of $5 [m]illion are reported as '5+' * * *.''); *see also* WMBAA CL at 10; ABC/CIEBA CL at 8–9.

[61] *See* JP Morgan CL at 12–13.

[62] *See* WMBAA CL at 10.

[63] *See, e.g.,* ABC/CIEBA CL at 9 (''We ask the Commission adopt a rule * * * which will require that the volume of those swaps which are not block trades be disseminated in the form of ranges.'').

[64] *See* MS CL at 3.

[65] *See* Argus CL at 1–3.

[66] *See* 75 FR 76,150–76,151.

[67] *See* Argus CL at 1–3.

[68] *See* Argus CL at 1–3; Coalition for Derivatives End-Users CL at 8–9; Dominion CL at 6–9; Cleary Gottlieb CL at 5; MS CL at 3; Bracewell & Giuliani CL at 2–7. *See also* Commission staff meeting with NFPEEU, June 11, 2011.

[69] *See, e.g.,* Barclays Capital CL at 5; World Federation of Exchanges CL at 2; ISDA/SIFMA CL at 11–12; and Cleary Gottlieb CL at 18–19.

[70] *See, e.g.,* Freddie Mac CL at 2–3; Barclays Capital CL at 5.

[71] *See* CCMR CL at 2–4. *Accord* Freddie Mac CL at 2–3 (''As the Commission collects data about the liquidity of the swaps market and the effects of the Commission's reporting rules, it may be appropriate to revisit the initial parameters for block trade reporting in order to further increase transparency.'').

[72] *See* SDMA CL at 3.

[73] Commission staff also consulted with the staffs of several other federal financial regulators in connection with the issuance of this Further Proposal.

[74] A detailed discussion of the Commission staff's review and analysis process is set out below in section II.B.1.a. of this Further Proposal.

[75] *See* ISDA, Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products, 24 (ISDA Discussion Paper No. 2, Nov. 2011), available at *http://www2.isda.org/attachment/Mzc0NA==/ISDA%20Mandatory%20Electronic%20Execution%20Discussion%20Paper.pdf.* This paper cited the Commission's notice of proposed rulemaking with respect to SEFs (Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1,214, 1,220, Jan. 7, 2011) and the Initial Proposal.

[76] *See* Block trade reporting for over-the-counter derivatives markets, note 54 supra.

[77] *See* Joint Public Roundtable on Issues Related to the Schedule for Implementing Final Rules for Swaps and Security-Based Swaps Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 23,211, Apr. 26, 2011. A copy of the transcript is accessible at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050211.pdf.*

[78] *See* 77 FR 1,182.

once effective, will implement, among other things: (1) Several definitions proposed in the Initial Proposal relevant to this Further Proposal [79]; (2) the scope of part 43; (3) the reporting responsibilities of the parties to each swap; (4) the requirement that SDRs publicly disseminate swap transaction and pricing data; (5) the data fields that SDRs will publicly disseminate; (6) the time-stamping and recordkeeping requirements of SDRs, SEFs, DCMs and the ''reporting party'' to each swap [80]; (7) the interim time delays for public dissemination and the time delays for public dissemination of large notional off-facility swaps and block trades; and (8) interim notional cap sizes for all swaps that are publicly disseminated.[81]

Based on the public comments received in response to the Initial Proposal, and in order to successfully implement the real-time public reporting regulatory framework established in the Adopting Release, the Commission has decided to further propose provisions that: (1) Specify the criteria for determining swap categories and methodologies for determining the appropriate minimum block sizes for large notional off-facility swaps and block trades; and (2) provide increased protections to the identities of swap counterparties to large swap transactions and certain other commodity swaps, which were not fully addressed in the Adopting Release.[82]

In section II of this Further Proposal, the Commission sets out its proposal with respect to the criteria for determining swap categories and the methodologies for determining appropriate minimum block sizes for block trades and large notional off-facility swaps. In section III of this Further Proposal, the Commission sets out its proposal with respect to methodologies that provide anonymity to the swap counterparties to large swap transactions and certain other commodity swaps.

II. Further Proposal—Block Trades

A. Policy Goals

In section 2(a)(13) of the CEA, Congress intended that the Commission consider both the benefits of enhanced market transparency and the effects such transparency would have on market liquidity.[83] The Commission anticipates that the public dissemination of swap transaction and pricing data will generally reduce costs associated with price discovery and prevent information asymmetries between market makers and end users.[84] The Commission is of the view that the benefits of enhanced market transparency are not boundless, particularly in swap markets with limited liquidity. As noted above, section 2(a)(13)(E)(iv) of the CEA places constraints on the requirements for the real-time public reporting of swap transaction and pricing data. Specifically, this section provides that the Commission shall ''take into account whether the public disclosure [of swap transaction and pricing data] will materially reduce market liquidity.'' [85]

The Commission believes that the publication of detailed information regarding ''outsize swap transactions'' [86] could expose swap counterparties to higher trading costs.[87] In this regard, the publication of detailed information about an outsize swap transaction may 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.[88] Other market participants might be alerted to the liquidity provider's need to offset risk and therefore would have a strong incentive to exact a premium from the liquidity provider. As a result, liquidity providers possibly could be deterred from becoming counterparties to outsize swap transactions if swap transaction and pricing data is publicly disseminated before liquidity providers can offset their positions. The Commission anticipates that, in turn, this result could negatively affect market liquidity in the swaps market. In consideration of these potential outcomes, this Further Proposal seeks to provide maximum transparency while taking into account reductions in market liquidity through more detailed criteria to establish: (1) Swap categories (relative to the definition of swap instrument in the Initial Proposal); and (2) a phased-in approach to determining appropriate minimum block sizes for block trades and large notional off-facility swaps. A summary of the Commission's proposed approach is described below.

B. Summary of the Proposed Approach

The Commission is proposing a two-period, phased-in approach to implement of regulations for determining appropriate minimum block sizes.[89] That is, the Commission is

[79] The Adopting Release includes final definitions for the following terms: (1) Block trade; (2) large notional off-facility swap; (3) appropriate minimum block size; and (4) asset class. As noted above, the Adopting Release did not define the term swap instrument. This Further Proposal puts forth a new term swap category, which groups swaps for the purpose of determining whether a swap transaction qualifies as a large notional off-facility swap or block trade. *See* note 17 *supra.*

[80] *See* § 43.2 of the Commission's regulations. 77 FR 1,244. The Adopting Release finalized the definition of ''reporting party'' as a ''party to a swap with the duty to report a publicly reportable swap transaction in accordance with this part [43] and section 2(a)(13)(F) of the [CEA].'' 77 FR 1,244.

[81] *See* 77 FR 1,244.

[82] In several places in the Adopting Release, the Commission stated that it plans to address these requirements in a separate, forthcoming release. *See, e.g.,* 77 FR 1,185, 1,191, 1,193 and 1,217. This Further Proposal is that release.

Commenters to this Further Proposal are requested to refrain from providing comments with respect to the provisions adopted in the Adopting Release. Those provisions are not the subject of this Further Proposal. The Commission will not address the policy merits or substance of those provisions in its final rulemaking to this Further Proposal.

[83] In considering the benefits and effects of enhanced market transparency, the Commission notes that 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.'' Congressional Record—Senate, S5902, S5922 (July 15, 2010).

[84] *See e.g.,* CEA section 2(a)(13)(B) (''The 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.'').

[85] CEA section 2(a)(13)(E)(iv). *See also* CEA section 5h(f)(2)(C) (concerning the treatment of block trades for execution purposes).

[86] As used in this Further Proposal, 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.

[87] The Commission's proposed SEF rulemaking, would require pre-trade transparency for swap transactions that: (1) Are subject to the mandatory clearing requirement; (2) involves a swap that a SEF makes available to trade; and (3) are not block trades. *See* proposed § 37.9(a)(2)(v), 76 FR 1,220. This Further Proposal also would require SEFs to utilize the Commission's rules for block trades (*i.e.,* the subject matter of this Further Proposal) in determining the trading procedures that apply to swap transactions. Therefore, swap transactions exceeding an appropriate minimum block size would therefore be exempt from the mandatory trading requirements.

[88] The price of such a transaction would reflect market conditions for the underlying commodity or reference index and the liquidity premium for executing the swap transaction. The time delays in part 43 of the Commission's regulations will protect end-users and liquidity providers from the expected price impact of the disclosure of publicly reportable swap transactions. Trading that exploits the need of traders to reduce or offset their positions has been defined in financial economics literature as ''predatory trading.'' *See e.g.,* Markus Brunnermeier and Lasse Heje Pedersen, Predatory Trading, Journal of Finance LX 4, Aug. 2005, available at *http://pages.stern.nyu.edu/~lpederse/papers/predatory_trading.pdf.*

[89] The Commission is proposing the same phased-in approach for determining cap sizes. For a more detailed discussion of the Commission's proposed approach with respect to cap sizes, *see* section III of this Further Proposal infra.

The two-period, phased-in approach would become effective after the implementation of the part 43 provisions in the Adopting Release. Until the date on which the proposed provisions in this Further Proposal become effective, all swaps would be subject to a time delay pursuant to the provisions in part 43.

proposing to phase-in its regulations during an initial period and thereafter on an ongoing basis (*i.e.,* the post-initial period) so that market participants can better adjust their swap trading strategies to manage risk, secure new technologies and make necessary arrangements in order to comply with part 43. The Commission is proposing two provisions relating to the Commission's determination of appropriate minimum block sizes: (1) Initial appropriate minimum block sizes under proposed § 43.6(e); and (2) post-initial appropriate minimum block sizes under proposed § 43.6(f).

In proposed § 43.6(e), the Commission is establishing initial appropriate minimum block sizes for each category of swaps within the interest rate, credit, foreign exchange (''FX'') and other commodity asset classes.[90] The Commission has listed the prescribed initial appropriate minimum block sizes in proposed appendix F to part 43 based on these swap categories.[91] For interest rate and credit swaps, the Commission reviewed actual market data and has prescribed initial appropriate minimum block sizes for swap categories in these asset classes based on that data. For the other asset classes, the Commission did not have access to relevant market data. As such, during the initial period, the Commission is proposing to use a methodology based on whether a swap or swap category is ''economically related'' to a futures contract.[92] Swaps and swap categories that are not economically related to a futures contract would remain subject to a time delay (*i.e.,* treated as block trades or large notional off-facility swaps, as applicable, regardless of notional amount). All initial appropriate minimum block sizes in proposed appendix F to part 43 would become effective 60 days following the publication in the **Federal Register** of a final rule adopting the provisions set forth in this Further Proposal.

In proposed § 43.6(f)(1), the Commission provides that the duration of this initial period would be no less than one year after an SDR has collected reliable data for a particular asset class as determined by the Commission. During the initial period, the Commission would review reliable data for each asset class. For the purposes of this proposed provision, reliable data would include all data collected by an SDR for each asset class in accordance with the compliance chart in the adopting release to part 45 of the Commission's regulations.[93] The proposed initial period would expire following the publication of a Commission determination of post-initial appropriate minimum block sizes in accordance with the publication process set forth in proposed §§ 43.6(f)(3) and (4). Thereafter, the Commission would set post-initial appropriate minimum block sizes for swap categories no less than once each calendar year using the calculation methodology set forth in proposed § 43.6(c)(1).[94]

The Commission is also proposing special rules for determining appropriate minimum block sizes in certain instances. In particular, in proposed § 43.6(d), the Commission prescribes special rules for swaps in the equity asset class. In proposed § 43.6(h), the Commission is establishing special rules for determining appropriate minimum block sizes in certain circumstances including, for example, rules for converting currencies and rules for determining whether a swap with optionality qualifies for block trade or large notional off-facility swap treatment.

Section C below describes the Commission's proposed approach to establish swap categories across the five asset classes. A discussion of the Commission's proposed methodologies to determine appropriate minimum block sizes follows in section D.

C. Proposing Criteria for Distinguishing Among Swap Categories in Each Asset Class

The Commission is proposing to use the term ''swap category'' to convey the concept of a grouping of swap contracts that would be subject to a common appropriate minimum block size.[95] Specifically, the Commission is proposing specific criteria for defining swap categories in each asset class. These proposed criteria are intended to 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 the swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[96] In the Commission's view, balancing these policy objectives and considering the characteristics of different types of swaps within an asset class are necessary in establishing appropriate criteria for determining swap categories within each asset class. The five asset classes established by the Commission in the Adopting Release are discussed briefly in the paragraph below, followed by a discussion of the proposed swap category criteria for each asset class.

Section 43.2 of the Commission's regulations currently defines ''asset class'' as ''a broad category of commodities, including without limitation, any 'excluded commodity' as defined in section 1a(19) of the [CEA], with common characteristics underlying a swap.'' [97] Section 43.2 also identifies the following five swap asset classes: interest rates; [98] equity; credit; FX; [99] and other commodities.[100]

In this Further Proposal, the Commission is proposing to breakdown each asset class further into separate swap categories for the purpose of determining appropriate minimum block sizes for such categories. During the initial and post-initial periods, the Commission would group swaps in the five asset classes into the prescribed swap categories as set forth in proposed § 43.6(b). In the subsections that follow, the Commission discusses in detail the proposed criteria for further delineating groups of swaps in the interest rate, credit, equity, FX, and other commodity

[90] The Commission is proposing that swaps in the equity asset class do not qualify as block trades and large notional off-facility swaps. *See* proposed § 43.6(d). Otherwise, the Commission is prescribing swap categories for each asset class as set forth in proposed § 43.6(b). These swap categories would remain the same during the initial and post-initial periods.

[91] The Commission notes SEFs and DCMs would not be prohibited under this Further Proposal from setting block sizes for swaps at levels that are higher than the appropriate minimum block sizes as determined by the Commission.

[92] A discussion of the term ''economically related'' is set forth below in section II.C.4 of this Further Proposal.

[93] *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2,136, 2,196, Jan. 13, 2012. The Commission is currently of the view, however, that data is per se reliable if it is collected by an SDR for an asset class after the respective compliance date for such asset class as set forth in part 45 of the Commission's regulations.

[94] In particular, the Commission is proposing a 67-percent notional amount calculation, which is discussed in more detail infra in section II.D.1 of this Further Proposal.

[95] Proposed § 43.6(b) does not set out a definition for the term ''swap category.'' Instead, proposed § 43.6(b) sets out the provisions that group swaps within each asset class with common risk and liquidity profiles, as determined by the Commission.

[96] These objectives are specific to the determination of appropriate swap category criteria and are intended to promote the general policy goals described above in section II.A.of this Further Proposal.

[97] *See* § 43.2, 77 FR 1,243.

[98] In the Adopting Release, the Commission determined that cross-currency swaps are a part of the interest rate asset class. *See* 77 FR 1,193. The Commission noted that this determination is consistent with industry practice. *See id.*

asset classes into separate swap categories.

Request for Comment

Q1. Should the Commission provide for special swap categories and appropriate minimum block size methodologies for bilateral versus cleared swap transactions? If so, why?

1. Interest Rate and Credit Asset Classes

a. Background

The Commission was able to obtain and review non-public swap data to make inferences about patterns of trading activity, price impact and liquidity in the market for swaps in the interest rate and credit asset classes. Based on that review, the Commission is proposing criteria for determining swap categories in these two asset classes. Specifically, the Commission is proposing to define swap categories for: (1) Interest rate swaps based on unique combinations of tenor [101] and currency; and (2) credit default swaps (''CDS'') based on unique combinations of tenor and conventional spreads.[102]

The Commission obtained transaction-level data for these asset classes from two third-party service providers with the assistance of the Over-the-Counter Derivatives Supervisors Group (''ODSG'').[103] The ODSG was established in 2005 and is chaired by the Federal Reserve Bank of New York. The ODSG is comprised of domestic and international supervisors of representatives from major OTC derivatives market participants.[104] In particular, the ODSG coordinated with the ''G–14 banks'' in order to gain written permission to access the non-public swap data.[105]

MarkitSERV, a post-trade processing company jointly owned by Markit and The Depository Trust & Clearing Corporation (''DTCC''), provided the interest rate swap data set. The interest rate swap data set covered transactions confirmed on the MarkitWire platform between June 1, 2010 and August 31, 2010 where at least one party was a G–14 Bank.[106]

The Warehouse Trust Company LLC (''The Warehouse Trust'') provided the CDS data set.[107] The CDS data set covered CDS transactions for a three-month period beginning on May 1, 2010 and ending on July 31, 2010.[108]

b. The Commission filtered both data sets in order to analyze only transaction-level data corresponding to ''publicly reportable swap transactions,'' as defined in § 43.2 of the Adopting Release.[109] As such, the Commission excluded from its analysis duplicate and non-price forming transactions.[110] The

[99] To the extent that FX swaps or forwards, or both, are excluded from the definition of ''swap'' pursuant to a determination by United States Department of the Treasury (''Treasury''), the requirements of section 2(a)(13) of the CEA would not apply to those transactions, and such transactions would not be subject to part 43 of the Commission's regulations. Treasury issued a proposed determination on April 29, 2011, in which it stated that FX swaps and forwards would be excluded from the definition of ''swap,'' and thereby exempt from certain requirements established in the Dodd-Frank Act, including registration and clearing. *See* Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 76 FR 25,774, May 5, 2011. Treasury's proposed determination may also be found at *http://www.treasury.gov/initiatives/wsr/Documents/FX%20Swaps%20and%20Forwards%20NPD.pdf.*

The CEA provides, however, that, even if Treasury determines that FX swaps and forwards may be excluded from the definition of ''swap'', these transactions still are not excluded from regulatory reporting requirements to an SDR. Nonetheless, as stated, such transactions would not be subject to part 43 of the Commission's regulations. *See* 77 FR 1,188. Treasury has proposed to act pursuant to the authority in section 721 of the Dodd-Frank Act that permits a determination that certain FX swaps and forwards should not be regulated as swaps and are not structured to evade the Dodd-Frank Act. The Commission has noted that, as proposed, Treasury's determination would exclude FX swaps and forwards, as defined in CEA section 1a, but would not apply to FX options or non-deliverable forwards. FX instruments that are not covered by Treasury's final determination would still be subject to part 43 of the Commission's regulations.

[100] The Adopting Release defines the term ''other commodity'' to mean any commodity that is not categorized in the other asset classes as may be determined by the Commission. *See* 77 FR 1,244. The definition of asset class in § 43.2 also provides that the Commission may later determine that there are other asset classes not identified currently in that section. *See* 77 FR 1,243.

[101] As used in the Further Proposal, the tenor of a swap refers to the amount of time from the effective or start date of a swap to the end date of such swap. In circumstances where the effective or start date of the swap was different from the trade date of the swap, the Commission used the later occurring of the two dates to determine tenor.

[102] As generally used in the industry, the term ''conventional spread'' represents the equivalent of a swap dealer's quoted spread (*i.e.,* an upfront fee based on a fixed coupon and using standard assumptions such as auctions and recovery rates. More information regarding the use of this term can be found at Markit, The CDS Big Bang: Understanding the Changes to the Global CDS Contract and North American Conventions, at *http://www.markit.com/cds/announcements/resource/cds_big_bang.pdf,* (Mar. 2009), at 19.

[103] Section 8(a) of the CEA protects non-public, transaction-level data from public disclosure. Section 8(a)(1) provides, in relevant part, that ''the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers * * *.'' To assist commenters, this Further Release includes various tables and summary statistics depicting the ODSG data in aggregate forms. In the discussion that follows, the Commission additionally has described the methodology it employed in reviewing, analyzing and drawing conclusions based on the ODSG data.

[104] *See* OTC Derivatives Supervisors Group—Federal Reserve Bank of New York, *http://www.ny.frb.org/markets/otc_derivatives_supervisors_group.html (last visited Jan. 15, 2012).* The ODSG was formed ''in order to address the emerging risks of inadequate infrastructure for the rapidly growing market in the credit derivatives * * *.'' The ODSG works directly with market participants to plan, monitor and coordinate industry progress toward collective commitments made by firms.

[105] The G–14 banks are: Bank of America-Merrill Lynch; Barclays Capital; BNP Paribas; Citigroup; Credit Suisse; Deutsche Bank AG; Goldman Sachs & Co.; HSBC Group; J.P. Morgan; Morgan Stanley; The Royal Bank of Scotland Group; Societe Generale; UBS AG; and Wells Fargo Bank, N.A.

[106] The interest rate swap data was limited to transactions and events submitted to the MarkitWire platform. MarkitWire is a trade confirmation service offered by MarkitSERV.

[107] The Warehouse Trust, a subsidiary of DTCC DerivSERV LLC, is regulated as a member of the U.S. Federal Reserve System and as a limited purpose trust company by the New York State Banking Department. The Warehouse Trust provides the market with a trade database and centralized electronic infrastructure for post-trade processing of OTC credit derivatives contracts over their entire lifecycle. See DTCC, The Warehouse Trust Company, About the Warehouse Trust Company, *http://www.dtcc.com/about/subs/derivserv/warehousetrustco.php.* (last visited Jan. 31, 2012).

[108] The Warehouse Trust data contained ''allocation-level data,'' which refers to refers to transactional data that does not distinguish between isolated transactions and transactions that, although documented separately, comprise part of a larger transaction.

The Commission notes the work of other regulators in aggregating observations believed to be part of a single transaction. *See* Kathryn Chen, et al., Federal Reserve Bank of New York Staff Report, An Analysis of CDS Transactions: Implications for Public Reporting, (Sept. 2011), at 25, *http://www.newyorkfed.org/research/staff_reports/sr517.html.* The Commission notes that this allocation-level information could produce a downward bias in the notional amounts of the swap transactions in the data sets provided by the ODSG. In turn, this downward bias would produce smaller appropriate minimum block trade sizes relative to a data set that, if available with appropriate execution time stamps, would reflect the aggregate notional amount of swaps completed in a single transaction.

[109] ''Publicly reportable swap transaction'' means, unless otherwise provided in this part: (1) 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 (2) any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap. Examples of an executed swap that does not fall within the definition of publicly reportable swap transaction may include: (1) Certain internal swaps between 100-percent-owned subsidiaries of the same parent entity; and (2) portfolio compression exercises. These examples represent swaps that are not at arm's length, but that do result in a corresponding change in the market risk position between two parties. *See* 77 FR 1,244.

[110] The excluded records represented activities such as option exercises or assignments for physical, risk optimization or compression transactions, and amendments or cancellations that were assumed to be mis-confirmed. A transaction was assumed to be mis-confirmed when it was canceled without a fee, which the Commission has inferred was the result of a confirmation correction. The Commission also excluded interest rate transactions that were indicated as assignments,

Commission also converted the notional amount of each swap transaction into a common currency denominator the U.S. dollar.[111] Interest Rate Swap Categories.

i. Interest Rate Swap Data Summary

The filtered transaction records in the interest rate swap data set contained 166,874 transactions with a combined notional value of approximately $45.4 trillion dollars.[112] These transactions included trades with a wide range of notional amounts, 28 different currencies, eight product types, 57 different floating rate indexes and tenors ranging from under one week to 55 years. Summary statistics of the filtered interest rate swap data set are presented in Table 1.[113]

TABLE 1—SUMMARY STATISTICS FOR THE INTEREST RATE SWAP DATA SET BY PRODUCT TYPE, CURRENCY, FLOATING INDEX AND TENOR[114]

	Number of transactions	Percentage of total transactions	Notional amount (billions of USD)	Percentage of total notional amount (%)
Product Type:				
Single Currency Interest Rate Swap	128,658	77	16,276	36
Over Night Index Swap (OIS)	12,816	8	16,878	37
Forward Rate Agreement (FRA)	5,936	4	7,071	16
Swaption	11,042	7	2,256	5
Other	8,395	5	2,909	6
Currency:				
European Union Euro Area euro (EUR)	46,412	28	18,648	41
United States dollar (USD)	50,917	31	11,377	25
United Kingdom pound sterling (GBP)	16,715	10	7,560	17
Japan yen (JPY)	19,502	12	4,253	9
Other	33,301	20	3,553	8
Floating Index:				
USD–LIBOR–BBA	48,651	29	9,411	21
EUR–EURIBOR–Reuters	39,446	24	9,495	21
EUR–EONIA–OIS–COMPOUND	6,517	4	9,122	20
JPY–LIBOR–BBA	19,194	12	4,010	9
GBP–LIBOR–BBA	12,835	8	2,419	5
GBP–WMBA–SONIA–COMPOUND	2,014	1	5,123	11
Other	38,190	23	5,809	13
Tenor:				
1 Month	3,171	2	11,859	26
3 Month	10,229	6	11,660	26
6 Month	2,822	2	1,701	4
1 Year	9,522	6	3,484	8
2 Year	16,450	10	3,347	7
3 Year	9,628	6	1,488	3
5 Year	26,139	16	2,712	6
7 Year	6,599	4	661	1
10 Year	34,000	20	2,746	6
30 Year	9,616	6	448	1
Other	38,671	23	5,284	12
Sample Totals	166,847	100	45,390	100

Table 2 below sets out the notional amounts of the interest rate swap data set organized by product type, currency, floating index and tenor. The table also includes the notional amounts in each percentile of a distribution of the data set.

terminations, and structurally excluded records since the Commission was unable to determine if these records were price-forming. The Commission also excluded CDS transactions that were notated as single name transactions. The data sets also included transaction records created for workflow purposes (and therefore redundant), duplicates and transaction records resulting from name changes or mergers.

[111] The Commission calculated the average daily exchange rates between relevant currencies and the U.S. dollar for the relevant three-month period covered by the data. This average daily exchange rate was then applied to the notional amounts for non-U.S. dollar denominated swap transactions.

[112] The Commission only reviewed relevant transaction records in the interest rate swap data set. As noted above, the Commission excluded duplicate and non-price forming transactions from its review. *See* note 110 supra for a list of excluded transaction records.

[113] *See* the *International Organization for Standardization* (ISO) standard *ISO 4217* for information on the currency codes used by the Commission. For information on floating rate indexes, *see also* ISDA, 2006 Definitions (2006), and supplements.

[114] In producing Table 1, the Commission counted tenors for swaps with an end date within four calendar days of a complete month relative to the swap's start date as ending on the nearest complete month.

TABLE 2—NOTIONAL AMOUNTS OF INTEREST RATE SWAP DATA SET ORGANIZED BY PRODUCT TYPE, CURRENCY, FLOATING INDEX AND TENOR

[In millions of USD]

	Mean notional amount	Percentiles						
		5th	10th	25th	50th	75th	90th	95th
Product Type:								
Single Currency Interest Rate Swap	127	4	9	23	52	117	252	438
OIS	1,293	6	13	63	341	1,261	3,784	5,282
FRA	1,168	90	133	266	631	1,039	2,000	3,018
Swaption	204	3	20	50	100	226	500	642
Other	346	*	1	23	89	250	631	1,132
Currency:								
EUR	400	6	15	38	91	249	631	1,617
USD	221	5	12	31	89	200	500	1,000
GBP	435	1	1	15	57	167	755	1,698
JPY	221	11	13	28	57	124	339	790
Other	108	4	6	13	30	78	175	308
Floating Index:								
USD–LIBOR–BBA	192	5	12	30	76	180	500	803
EUR–EURIBOR–Reuters	241	8	17	38	79	189	416	757
EUR–EONIA–OIS–COMPOUND	1,385	4	10	61	315	1,261	3,784	6,306
JPY–LIBOR–BBA	211	11	12	28	57	113	339	658
GBP–LIBOR–BBA	181	1	4	23	54	151	377	755
GBP–WMBA–SONIA–COMPOUND	2,450	75	113	283	1,509	3,018	6,037	9,055
Other	152	2	4	12	31	88	264	500
Tenor:								
1 Month	3,523	37	252	1,251	2,522	3,784	7,546	12,074
3 Month	1,081	11	38	208	604	1,250	2,000	3,018
6 Month	581	19	49	150	377	747	1,261	1,892
1 Year	348	20	31	70	151	341	755	1,261
2 Year	205	10	16	39	111	243	453	631
3 Year	154	10	16	44	95	169	315	500
5 Year	107	5	9	25	63	113	226	316
7 Year	105	7	13	29	57	113	221	315
10 Year	83	5	10	23	50	95	175	252
30 Year	47	4	7	18	26	50	95	132
Other	249	2	4	15	50	126	340	883

The Commission also analyzed the interest rate swap data set to classify the counterparties into broad groups.[115] The Commission's analysis of the interest rate swap data set revealed that approximately 50 percent of transactions were between buyers and sellers who were both identified as G–14 banks and that these transactions represented a combined notional amount of approximately $22.85 trillion or 50 percent of the relevant IRS data set's total combined notional amount.

ii. Interest Rate Swap Data Analysis

As noted above, the Commission is proposing swap categories in the interest rate asset class based on tenor and underlying currency. The Commission is of the view that these criteria would meet the objectives of grouping swaps with economic similarity and reducing unnecessary complexity for market participants in determining whether their swaps are classified within a particular swap category. Tenors were associated with concentrations of liquidity at commonly recognized points along the yield curve. In general, the Commission observed that transactions in the data set (and related market liquidity) tended to cluster at certain tenors.[116]

The Commission is proposing interest rate swap tenor groupings based on two observations regarding the data in the interest rate swap data set.[117] First, the Commission observed that price-notation conventions and points of concentrated transaction activity correspond with specific tenors (*e.g.,* three months, six months, one year, two years, etc.). Second, the Commission observed a similarity in the transaction amounts within a given tenor grouping (*e.g.,* longer-dated tenors in the data set generally had lower average notional sizes). Based on these observations, table 3 below details the proposed tenor groups for the interest rate asset class.

[115] MarkitSERV anonymized the identities of the counterparties and indicated whether a G–14 bank was a party to the swap transaction. Summary statistics relating to these anonymous numbers included: (1) Total count of unique counterparties was equal to approximately 300; (2) the average notional size of transactions involving two G–14 banks was equal to approximately $280 million; (3) the average notional size of transactions involving both a G–14 bank and a non G–14 bank (which traded at least 100 swap transactions) was equal to approximately $260 million.

[116] The Commission alternatively considered using tenor solely to determine interest rate swap categories. While this alternative approach would result in fewer swap categories (and would be based on the strongest single variable indicator of notional size in statistical regressions performed by the Commission on the interest rate swap data set), it may result in overbroad swap categories treating, for example, interest rate swaps denominated in U.S. dollars the same as those denominated in Polish zlotys, despite relative liquidity differences. As a result, this alternative approach may result in the super-major currency-denominated interest rate swaps setting the block size for all other currencies because of the super-major currency's relatively higher trading frequency. *See* note 123 infra for the Commission's definition of ''super-majority currency.''

[117] Through the performance of statistical regressions on the interest rate swap data set, the Commission found that tenor was the single strongest indicator of variations in notional amounts.

[118] The Commission chose to extend the tenor groups about one-half month beyond the commonly observed tenors to group similar tenors together and capture variations in day counts. The Commission added an additional 15 days beyond a multiple of one year to the number of days in each group to avoid ending each group on specific years.

TABLE 3—PROPOSED TENOR GROUPS FOR INTEREST RATES ASSET CLASS [118]

Tenor group	Tenor greater than	And tenor less than or equal to
1		Three months (107 days).
2	Three months (107 days)	Six months (198 days).
3	Six months (198 days)	One year (381 days).
4	One year (381 days)	Two years (746 days).
5	Two years (746 days)	Five years (1,842 days).
6	Five years (1,842 days)	Ten years (3,668 days).
7	Ten years (3,668 days)	30 years (10,973 days).
8	30 years (10,973 days).	

Similarly, through its analysis of the interest rate swap data set, the Commission found that the currency referenced in a swap explains a significant amount of variation in notional size and, hence, can be used to categorize interest rate swaps given this relationship.[119] The Commission is proposing currency groupings after considering: (1) Price-notation conventions; (2) the relative development of currency groups in the interest rate and FX futures markets; (3) the relative swap transaction total notional amounts and transaction volumes of each currency group; and (4) the relative average transaction notional amounts and lack of evidence of large transacted notional amounts or substantial volume of each currency group.[120] After considering these factors, the Commission is proposing three currency categories for the interest rate asset class: (1) Super-major currencies, which are currencies with large volume and total notional amounts; [121] (2) major currencies, which generally exhibit moderate volume and total notional amounts; [122] and (3) non-major currencies, which generally exhibit moderate to very low volume and notional amounts.

Table 4 below summarizes the Commission's three proposed currency swap categories.

TABLE 4—PROPOSED CURRENCY CATEGORIES FOR INTEREST RATES ASSET CLASS

Currency category	Component currencies
Super-Major Currencies	United States dollar (USD), European Union Euro Area euro (EUR), United Kingdom pound sterling (GBP), and Japan yen (JPY).
Major Currencies [123]	Australia dollar (AUD), Switzerland franc (CHF), Canada dollar (CAD), Republic of South Africa rand (ZAR), Republic of Korea won (KRW), Kingdom of Sweden krona (SEK), New Zealand dollar (NZD), Kingdom of Norway krone (NOK) and Denmark krone (DKK).
Non-Major Currencies	All other currencies.

Table 5 below presents details on the sample characteristics of the interest rate swap data set organized by currency and tenor swap categories.

TABLE 5—SAMPLE CHARACTERISTICS OF PROPOSED INTEREST RATE SWAP CATEGORIES [124]

Currency category	Tenor group	Number of transactions	Percent of transactions (%)	Notional (billions of USD)	Percent of total notional (%)
Super-major	1	11,394	7	22,347	50
Super-major	2	2,563	2	1,813	4
Super-major	3	6,277	4	3,302	7
Super-major	4	12,395	7	3,420	8
Super-major	5	32,148	19	4,818	11
Super-major	6	42,675	26	4,220	9
Super-major	7	24,237	15	1,433	3
Super-major	8	1,857	1	56	0

[119] The Commission considered alternative approaches of using the individual floating rate indexes or currencies to determine swap categories in the interest rate asset class. These alternative approaches would have the benefit of being more correlated to an underlying curve than the recommended currency and tenor groupings. The data contained 57 floating rate indexes and 28 currencies, which would result in 456 and 224 categories respectively, after sorting by the eight identified tenor groups. The Commission anticipates, however, that grouping swaps using individual rates or currencies would not substantially increase the explanation of variations in notional amounts, while it could result in cells with relatively few observations in some currency-tenor categories. Hence, the Commission does not believe there would be a significant benefit to offset the additional compliance burden that a more granular approach would impose on market participants.

[120] Non-major currencies represent less than two percent of the total notional and about 10 percent of the transactions. These currencies typically do not have corresponding futures markets.

[121] Super-major currencies represent over 92 percent of the total notional amounts and 80 percent of the total transactions in the data set. It is noteworthy that these currencies have well-developed futures markets for general interest rates and exchange rates.

[122] Major currencies represent about six percent of the total notional amount and about 10 percent of the transactions. Some of these currencies host liquid futures markets for interest rates, and all exhibit liquid foreign exchange markets.

[123] The Commission selected these currencies for inclusion in the definition of major currencies based on the relative liquidity of these currencies in the interest rate and FX futures markets. The Commission is of the view that this list of currencies is consistent, in part, with the Commission's existing regulations in § 15.03(a), which defines ''major foreign currency as ''the currency, and the cross-rates between the currencies, of Japan, the United Kingdom, Canada, Australia, Switzerland, Sweden and the European Monetary Union.'' 17 CFR 15.03(a).

[124] Table 5 does not include swap categories with less than 200 transactions in order to preserve the anonymity of the parties to these transactions.

TABLE 5—SAMPLE CHARACTERISTICS OF PROPOSED INTEREST RATE SWAP CATEGORIES [124]—Continued

Currency category	Tenor group	Number of transactions	Percent of transactions (%)	Notional (billions of USD)	Percent of total notional (%)
Major	1	2,305	1	1,818	4
Major	2	445	0	124	0
Major	3	2,113	1	302	1
Major	4	2,639	2	226	1
Major	5	5,380	3	293	1
Major	6	3,707	2	129	0
Major	7	704	0	19	0
Major	8	<200			
Non-Major	1	403	0	64	0
Non-Major	2	247	0	26	0
Non-Major	3	2,073	1	165	0
Non-Major	4	3,354	2	256	1
Non-Major	5	5,873	4	116	0
Non-Major	6	3,935	2	41	0
Non-Major	7	<200	.....	.....	.....
Non-Major	8	<200	.....	.....	.....

Table 6 below sets out the notional amounts of the interest rate swap data set organized by currency and tenor categories. The table includes the mean notional amount of each currency and tenor category, as well as the notional amounts in each percentile of a distribution of the data set.

TABLE 6—NOTIONAL AMOUNTS OF INTEREST RATE SWAP DATA SET ORGANIZED BY THE PROPOSED INTEREST RATE SWAP CATEGORIES

[In millions of USD]

Currency group	Tenor group	Mean	Transactions percentiles						
			5th	10th	25th	50th	75th	90th	95th
Super-major	1	1,961	10	36	500	1,000	2,260	4,000	6,306
Super-major	2	708	13	41	200	500	883	1,500	2,260
Super-major	3	526	47	75	150	272	565	1,179	1,809
Super-major	4	276	19	43	100	176	304	565	848
Super-major	5	150	9	21	50	100	158	301	482
Super-major	6	99	6	12	30	54	100	204	305
Super-major	7	59	1	5	14	31	63	126	200
Super-major	8	30	0	0	1	13	37	65	118
Major	1	789	80	133	175	312	573	921	1,313
Major	2	279	50	70	120	210	350	480	921
Major	3	143	13	26	52	97	175	264	438
Major	4	86	9	16	33	66	104	184	240
Major	5	54	4	8	19	44	72	109	145
Major	6	35	4	7	13	23	46	72	96
Major	7	27	5	7	11	20	31	49	75
Major	8	<200							
Non-major	1	160	19	37	64	129	225	315	450
Non-major	2	106	16	23	39	72	145	233	311
Non-major	3	79	8	22	31	56	102	157	224
Non-major	4	76	6	9	16	27	50	78	108
Non-major	5	20	2	4	8	14	23	39	54
Non-major	6	10	2	2	4	8	13	21	29
Non-major	7	<200	.....	.....	.....	.....	.....	.....	.....
Non-major	8	<200	.....	.....	.....	.....	.....	.....	.....

Request for Comment

Q2. Please provide comments regarding the Commission's proposed two criteria (tenor and underlying currency type) for determining swap categories in the interest rate asset class.

Q3. As a variation of the proposed approach, should specific currencies as proposed to be assigned be moved to other proposed currency categories?

Q4. As a second variation to the proposed approach, the Commission is considering, for super-major currency interest rate swaps, bifurcating the less than three month tenor category into two separate swap categories: (1) A swap category composed of super-major currency interest rate swaps with a less than 21 day tenor; and (2) a swap category composed of super-major currency interest rate swaps with a greater than 21 day tenor, but less than three month tenor (107 days). The Commission requests comment on the appropriateness of this variation.[125]

[125] This approach would yield an appropriate minimum block size for super-major currency interest rate swaps with a less than 21 day tenor of $13 billion based on the 67-percent notional amount calculation proposed in § 43.6(c)(1). The appropriate minimum block size for interest rate

Q5. As a third variation to the proposed approach, the Commission considered floating rate index, product type, duration equivalents, tenor, individual currencies,[126] and currency categories in determining the economic similarities among the swaps in the interest rate asset class before settling on tenor and currency groupings as the sole criteria. Should the Commission use one or more of these other characteristics in addition to, or instead of, the proposed swap categories in the interest rate asset class?

Q6. The proposed interest rate swap categories generally resulted in the grouping of swaps characterized by similar market activity—*i.e.,* high, medium, and low volumes and notional sizes. The Commission requests comment as to whether other measures of market activity or swap characteristics should be used to group or validate the grouping of swaps.

Q7. What considerations should the Commission take into account related to the approach for calculating the tenor of back-dated swaps (*i.e.,* those swaps in which the start date is prior to the execution date)? How should back-dated swaps be categorized for the purposes of determining the tenor?

Q8. Should the Commission consider expanding or contracting the number of currency categories, and, if so, which currencies should be placed in each category? The Commission asks commenters to describe any specific recommendations and include market data in support of such recommendations.

c. Credit Swap Categories

i. Credit Swap Data Summary

The CDS data set contained 98,931 CDS index records that would fall within the definition of publicly reportable swap transaction,[127] with a combined notional value of approximately $4.6 trillion dollars.[128] The CDS data set contained transactions based on 26 broad credit indexes.[129] Of those indexes, each of the iTraxx Europe Series and the Dow Jones North America investment grade CDS indexes (''CDX.NA.IG'') served as the basis for over 20 percent of the total number of transactions and over 33 percent of the total notional value in the relevant CDS data set. Table 7 sets out summary statistics of the CDS data set and includes those CDS indexes with greater than five transactions per day on average.

TABLE 7—SUMMARY STATISTICS BY CDS INDEX NAME

Names	Number of transactions	Percentage of total transactions (%)	Notional amount (in millions of USD)	Percentage of total notional amount (%)
ITRAXX EUROPE SERIES 13 V1	18,287	18.48	1,138,362	24.83
CDX.NA.IG.14	12,611	12.75	1,083,974	23.64
ITRAXX EUROPE XO SERIES 13 V1	8,713	8.81	153,365	3.34
CDX.NA.HY.14	7,984	8.07	172,599	3.76
ITRAXX EUROPE SENIOR FINANCIALS SERIES 13 V1	4,774	4.83	187,978	4.10
CDX.NA.IG.9	4,134	4.18	388,650	8.48
ITRAXX EUROPE XO SERIES 13 V2	3,959	4.00	66,894	1.46
CDX.NA.IG.9 TRANCHE	3,357	3.39	112,411	2.45
ITRAXX SOVX CEEMEA SERIES 3 V1	3,252	3.29	32,291	0.70
CDX.EM.13	3,052	3.08	34,952	0.76
ITRAXX SOVX WESTERN EUROPE SERIES 3 V1	2,377	2.40	74,068	1.62
ITRAXX AUSTRALIA SERIES NUMBER 13 V1	2,138	2.16	31,540	0.69
ITRAXX EUROPE SERIES 9 V1	1,893	1.91	188,364	4.11
ITRAXX EUROPE SUB FINANCIALS SERIES 13 V1	1,779	1.80	50,241	1.10
ITRAXX EUROPE SERIES 9 V1 TRANCHE	1,577	1.59	50,269	1.10
ITRAXX JAPAN SERIES NUMBER 13 V1	1,406	1.42	19,100	0.42
ITRAXX ASIA EX-JAPAN IG SERIES NUMBER 13 V1	1,319	1.33	15,856	0.35
ITRAXX SOVX ASIA PACIFIC SERIES 3 V1	1,001	1.01	11,666	0.25
ITRAXX EUROPE HIVOL SERIES 13 V1	788	0.80	30,585	0.67
CMBX.NA.AAA.1	463	0.47	13,384	0.29
ITRAXX EUROPE SERIES 12 V1	452	0.46	71,161	1.55
CMBX.NA.AJ.3	392	0.40	6,332	0.14
CMBX.NA.AAA.2	381	0.39	8,433	0.18
LCDX.NA.14	380	0.38	7,063	0.15
MCDX.NA.14	350	0.35	2,798	0.06
CMBX.NA.AAA.4	337	0.34	6,024	0.13
CMBX.NA.A.1	332	0.34	3,834	0.08
IOS.FN30.500.09	317	0.32	7,836	0.17
Total	87,805	88.75	3,970,029	86.59

swaps with a tenor of 21 days to three months would remain at $6.4 billion in the super-major currency swap category. *See* proposed appendix F to part 43 of the Commission's regulations *infra.*

[126] The Commission found that the precision of an approach utilizing the above-mentioned tenor groupings along with individual currencies was only marginally improved.

[127] *See* note 109 *supra.*

[128] The CDS index transactions in the data set made up approximately 33 percent of the total filtered records and 75 percent of the CDS markets' notional amount for the three months of data provided. The data set contained over 250 different reference indexes; 400 reference index and tenor combinations; and 450 reference index, tenor, and tranche combinations. The data set also contained three different currencies: USD (53%), EUR (46%), and JPY (1%). The Commission notes that in all but a handful of records, each reference index transaction was denoted in a single currency.

[129] Those indexes were: (1) ABX.HE; (2) CDX.EM; (3) CDX.NA.HY; (4) CDX.NA.IG; (5) CDX.NA.IG.HVOL; (6) CDX.NA.XO; (7) CMBX.NA; (8) IOS.FN30; (9) iTRAXX Asia ex-Japan HY; (10) iTRAXX Asia ex-Japan IG; (11) iTRAXX Australia; (12) iTRAXX Europe Series; (13) iTRAXX Europe Subs; (14) iTRAXX Japan 80; (15) iTRAXX Japan HiVol; (16) iTRAXX Japan Series; (17) iTRAXX LEVX Senior; (18) iTRAXX SOVX Asia; (19) iTRAXX SOVX CEEMA; (20) iTRAXX Western Europe; (21) LCDX.NA; (22) MCDX.NA; (23) PO.FN30; (24) PRIMEX.ARM; (25) PRIMEX.FRM; and (26) TRX.NA.

The Commission identified the following seven terms as the most relevant for the purposes of the Commission's analysis:[130] (1) Notional amount; (2) notional currency; (3) tranche indicator; (4) fixed rate; (5) tenor; (6) spread; and (7) RED code.[131] Summary statistics for the relevant CDS data set included: Average notional amount of approximately $46 million; median notional amount of approximately $24 million; mode notional amount of approximately $32 million; and skewness of 13 and kurtosis over 450, indicating that the sample's notional amounts were not normally distributed.[132] After rounding,[133] the smallest 25 percent of transactions had notional values of $9 million or less and the largest five percent of trades had notional values greater than $150 million. The swaps with the top ten most frequently traded notional sizes accounted for nearly 65 percent of all transactions and 40 percent of the total notional value.[134]

The Commission also analyzed the CDS data set to classify the counterparties into broad groups.[135] The Commission's analysis of the CDS data set revealed that approximately 55 percent of transactions were between buyers and sellers who were both identified as G–14 banks and that these transactions represented a combined notional amount of approximately $3.1 trillion, or 66 percent of the relevant CDS data set's total combined notional amount.[136]

ii. Credit Swap Data Analysis

As noted above, the Commission is proposing to use tenor and conventional spread criteria to define swap categories for CDS indexes. The Commission anticipates that these proposed criteria would provide an appropriate way to group swaps with economic similarities and to reduce unnecessary complexity for market participants in determining whether their swaps are classified within a particular swap category. The Commission is proposing the following six broad tenor groups in the credit asset class: (1) Zero to two years (0–746 days); (2) over two to four years (747–1,476 days); (3) over four to six years (1,477–2,207 days) (which include the five-year tenor); (4) over six to eight-and-a-half years (2,208–3,120 days); (5) over eight-and-a-half to 12.5 years (3,121–4,581 days) and (6) greater than 12.5 years (4,581 days).[137] The Commission added an additional 15 days to each tenor group beyond a multiple of one year in order to avoid ending each group on specific years.

The Commission is proposing these swap categories based on the way transactions in the CDS data set clustered towards the center of each tenor band. While the majority of transactions in the CDS data set consisted of corporate credit default index swaps with a five-year tenor, the Commission found that trading of corporate credit default index swaps also occurred in other tenor ranges.[138] The Commission believes that its proposed approach is appropriate since CDS on indexes other than corporate indexes (*e.g.,* asset backed indexes, municipal indexes, sovereign indexes) may also trade at tenors other than five years.[139]

With respect to the conventional spread criterion, the Commission is proposing ranges of spread values based on the Commission's review of the distribution of spreads in the entire CDS data set.[140] In particular, the Commission observed that the relevant CDS data set partitioned at the 175 basis points (''bps'') and 350 bps levels.[141] The Commission found that significant differences existed in the CDS data set between CDS indexes with spread values under 175 bps and those in the other two swap categories. Table 8 shows the summary statistics of the proposed criteria to determine swap categories for swaps in the credit asset class.[142]

[130] Each transaction record contained up to 75 fields identifying information such as the anonymized counterparty identifier, trade date, submit date, transaction type, RED code (*i.e.,* the particular index series, version, or vintage), notional amount, notional currency, fixed rate, confirm date, spread, points upfront and several other variables.

[131] The RED code is the industry standard identifier for CDS contracts. RED codes are nine character codes (similar to CUSIP codes for securities) where the first six characters refer to the reference entity (or index) when the last three characters refer to the reference obligation, that is, the version or series of an index, and where the first five characters refer to the reference entity (or index) when the last four refer to the vintage of an index. RED codes are used by DTCC to confirm CDS trades on the DTCC Deriv/SERV platform. *See also* Markit Credit Indices, A Primer, Nov. 2008, 30, available at *https://www.markit.com/news/Credit%20Indices%20Primer.pdf.*

[132] Two times the ''social size'' *see* note 16 supra, for the relevant CDS data set was $93 million, covered 87 percent of the number of transactions, and 49 percent of the cumulative notional amount. Five times the social size, or $230 million, covered 97 percent of transactions and 75 percent of the cumulative notional amount.

[133] The Commission used the rounding convention set forth in § 43.4(g) of the Commission's regulations.

[134] In descending order and in millions of dollars, the ten most frequently traded rounded notional amounts included: 32 (the mode); 10; 25; 13; 50; 63; 5; 100; 6; and 20.

[135] The Commission notes that the CDS data set was anonymized by The Warehouse Trust, but counterparties were identified by a number value and an account number in one of the following eleven groups: Asset managers, bank, custodian, dealer, financial services, G14 dealer, hedge fund, insurance, non-financial, other, and pension plan. Summary statistics relating to these identifiers included: (1) Total count of buyer account identifiers equal to approximately 1,900; (2) total count of seller account identifiers equal to approximately 1,700; (3) total count of unique buyer and seller account identifiers equal to approximately 2,600; (4) total count of buyers equal to approximately 600; (5) total count of sellers equal to approximately 500; and (6) total count of unique buyers and sellers equal to approximately 700. The CDS data set identified counterparties as belonging to one of the eleven groups, and the average notional size of transactions in the eight tenor groups which contained more than 100 transactions ranging from approximately $19 million to $92 million.

[136] The Commission notes that the CDS data set only included transaction records where a G–14 bank was one of the counterparties, and did not include transaction records with two buy-side counterparties. A natural bias was present in the percentage of market share that G–14 banks have in the CDS market.

[137] The Commission assessed the possibility of applying the tenor categories proposed for swaps in the interest rate asset class to the distribution of notional sizes in the CDS indexes and anticipates the level of granularity proposed to categorize swaps in the interest rate asset class by tenor would be inappropriate for the CDS index market. The Commission anticipates that this level of granularity would be inappropriate because the vast majority of CDS index transactions in the data set were for five years (or approximately 1,825 days). Based on the concentration of CDS index transactions in five-year tenors, the Commission is proposing a six tenor bands for CDS indexes.

[138] For example, based on the observed CDS data set, off-the-run swaps (*i.e.,* previous five-year tenor swaps for corporate credit default index swaps) have less than five years to maturity and displayed different trading patterns than the five-year, on-the-run swaps.

[139] For example, based on the observed CDS data set, the majority of municipal credit default index swaps traded with tenors of around 10 years.

[140] *See* note 102 *supra* for a definition of conventional spread.

[141] The Commission is proposing partition levels by a qualitative examination of multiple histogram distributions of the traded and fixed spreads from the CDS data set. This qualitative examination was confirmed through a partition test (using JMP software), including both before and after controlling for the effects of tenor on the distribution. The Commission observed that 175 bps explained the greatest difference in means of the two data sets resulting from a single partition of the data. The Commission also observed that 350 bps was an appropriate partition for CDS index transactions with spreads over 175 bps.

[142] Table 8 uses tenor and spread criteria discussed above, in a standardized, least squared regression utilizing observed log notional amounts.

TABLE 8—CDS INDEX SAMPLE STATISTICS BY PROPOSED SWAP CATEGORY CRITERIA

Spread	Sum of notional amounts (in billions of USD)	Number of trades
<175	3,761	59,887
175-to-350	233	11,045
350>	577	27,998
Tenor (in calendar days):		
0–746	146	1,421
747–1,476	569	6,774
1,477–2,207	3,490	79,357
2,208–3,120	159	2,724
3,121–4,581	18	497
4,582+	190	8,157

Request for Comment

Q9. The Commission seeks comment on all aspects of its proposed approach to define swap categories for the credit asset class for the purpose of setting appropriate minimum block sizes. More specifically, the Commission seeks comment as to whether the proposed grouping, alternatives or some other combination of alternatives offer the best means to identify swap categories.

Q10. As an alternative to the proposed criteria, should the Commission use other criteria? [143] The Commission considered the following alternative criteria: (1) The underlying reference CDS index or the more specific RED code (of which there were hundreds); [144] (2) the tranche level; [145] (3) on-the-run versus off-the-run version or series; [146] and (4) the difference in the average notional amounts of transactions by groupings of counterparties.[147]

Q11. As another alternative, the Commission seeks comment on the possibility of establishing two swap categories in the credit asset class based on ''activity groupings'' of notional amounts of transactions: A ''more active group''; and a ''less active group.'' The more active group would be calculated by ordering, from most to least, the sum of non-rounded notional amounts of all swaps reported to SDRs by a CDS index (*e.g.,* CDX.NA.IG) and then selecting the CDS indexes represented in the first 50 percent of aggregate notional amount. If only one index accounted for the first 50 percent of aggregate notional amount, then the next largest index also would be included in the more active group. The less active group would be comprised of the remainder of all credit index transactions that are not within the more active group. Should the Commission use this activity grouping approach to categorize CDS indexes? If so, how should the Commission determine appropriate minimum block sizes and cap sizes?

Q12. As a third alternative, the Commission seeks comment on the possibility of establishing swap categories in the credit asset class based on sector groupings of the underlying reference entities. Under this alternative approach, the Commission would group the CDS index market into the following four sectors: Corporate; sovereign; municipal; and mortgage-backed security. An index with a mix of sectors represented in the reference entities

[143] The Commission notes that the investment grade of an underlying asset is a material economic term of each CDS contract. When reviewing the CDS data set, the Commission considered using investment grade as an alternative criterion through which to group CDS into separate swap categories. The Commission, however, is of the view that using this alternative criterion would be inappropriate in light of the statutory prohibition against references to credit ratings in federal regulations. This prohibition is set forth in section 939 of the Dodd-Frank Act.

Section 939A(a) of the Dodd-Frank Act provides, in relevant part, that ''each Federal agency shall, to the extent applicable, review—(1) any regulation issued by such agency that requires the use of an assessment of the creditworthiness of a security or money market instrument; and (2) any references to or requirement in such regulations regarding credit ratings.'' In addition, section 939A(b) further provides that ''[e]ach such agency shall modify any such regulations identified by the review * * * to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations.'' 15 U.S.C. 78o–7 note.

Pursuant to the directive set forth in section 939A of the Dodd-Frank Act, the Commission has issued final rules removing all references to credit ratings in the Commission's regulations. *See* 76 FR 78,776, Dec. 19, 2011; 76 FR 44,262, July 25, 2011.

[144] While the underlying indexes and the RED codes helped explain average notional size in the CDS data set, the Commission is of the view—based on the large number of currently offered indexes, the frequency with which new indexes may be created, and the large number of RED codes—that such an approach may not be practicable and may impose unnecessary complexity on market participants trying to determine what appropriate minimum block sizes apply to what transactions.

[145] In the CDS market, a ''tranche'' means a particular segment of the loss distribution of the underlying CDS index. For example, tranches may be specified by the loss distribution for equity, mezzanine (junior) debt, and senior debt on the referenced entities. The Commission found that the tranche-level data was even more granular than index-level data. Similarly, the Commission anticipates that grouping the relevant CDS data set in tranche criterion may not be practicable because it may produce too many swap categories and as a result would impose unnecessary complexity on market participants.

[146] An on-the-run CDS index represents the most recently issued version of an index. For example, every six months, Dow Jones selects 125 investment grade entities domiciled in North America to make up the Dow Jones North American investment grade index (''CDX.NA.IG''). Each new CDX.NA.IG index is given a new series number while market participants continue to trade the old or ''off-the-run'' CDX.NA.IG series. The Commission observed that an on-the-run index series was more actively traded than off-the-run index series. Each version or series of an index had a distinct group of tenors and, in most cases, the five year tenor was most active. The index provider determines the composition of each index though a defined list of reference entities. The index provider has discretion to change the composition of the list of reference entities for each new version or series of an index. In its analysis of the CDS data set, the Commission generally observed either no change or a small change (ranging from one percent to ten percent) of existing composition in the reference entities underlying a new version or series of an index. Because of these two dynamics (tenor and index composition), the CDS data set contained transactions within a given index with different versions and series that were in some instances identical and in others not identical across varying tenors. While the off-the-run transactions were generally larger on average than the on-the-run transactions, trading activity in the on-the-run indexes was more active than in the off-the-run indexes.

The Commission decided not to use this level of detail for grouping CDS indexes into categories because: (i) The underlying components of swaps with differing versions or series based on the same named index are broadly similar, if not the same, indicative of economic substitutability across versions or series; (ii) differences in the average notional amount across differing versions or series were explained by differences in tenor; and (iii) and using versions or series as the criterion for defining CDS swap categories may result in an unnecessary level of complexity.

[147] Although the Commission was not able to examine non-anonymized data, the Commission did observe differences of approximately 50 percent from the average notional amount for transactions involving different groups based on the counterparty identifiers provided by The Warehouse Trust. The Commission, however, believes that it would be neither practical nor equitable to base a swap category and related appropriate minimum block size based on the predominant business activity of a counterparty.

would be categorized by the sector representing the majority of entities. The Commission is of the view that in addition to these four distinct sectors, a fifth catch-all group (other) would be necessary to categorize any new swap index that either does not fall into any of these four enumerated sectors or is in mixed sectors not predominated by a single sector.

Q13. As a fourth alternative, should the Commission consider basing swap categories for the credit asset class on individual CDS indexes? For example, CDX.NA.IG would constitute its own swap category.

Q14. Should the Commission combine aspects of the above alternatives? For example, should the Commission distinguish between on-the-run and off-the-run series under an index grouping approach? The Commission seeks comment on whether distinguishing between on-the-run and off-the-run series and tenor would be appropriate under this approach, given the underlying economic similarity of swaps utilizing the same underlying CDS index.

2. Swap Category in the Equity Asset Class

The Commission is proposing a single swap category for swaps in the equity asset class. The Commission is proposing this approach based on: (1) The existence of a highly liquid underlying cash market; (2) the absence of time delays for reporting block trades in the underlying equity cash market; (3) the small relative size of the equity index swaps market relative to the futures, options, and cash equity index markets; and (4) the Commission's goal to protect the price discovery function of the underlying equity cash market and futures market by ensuring that the Commission does not create an incentive to engage in regulatory arbitrage among the cash, swaps, and futures markets.[148]

Request for Comment

Q15. Please provide specific comments regarding the Commission's proposed approach with respect to having one swap category in the equity asset class.

Q16. As an alternative to the proposed approach, should the Commission establish one or more swap categories for swaps in the equity asset class based on any of the following criteria or a combination of such criteria: (1) Tenor; (2) publicly-listed equity indexes and custom equity indexes;[149] (3) market capitalization of the underlying index components;[150] and/or (4) whether a swap is based on an ''open market'' versus a ''closed market''?[151]

Q16.a. If the Commission follows the alternative approach to use tenor as a criterion to distinguish between swap categories, how should the Commission address the practice of long-tenured swaps that are terminated prior to maturity?

3. Swap Categories in the FX Asset Class

The Commission proposes to establish swap categories for the FX asset class based on unique currency combinations. The Commission bases this approach on the observation that FX swaps and instruments with identical currency combinations draw upon the same liquidity pools. The Commission proposes in §§ 43.6(b)(4)(i) and (b)(4)(ii) to distinguish between FX swaps and instruments based on the existence of a related futures contract. Accordingly, the Commission would establish swap categories under proposed § 43.6(b)(4)(i) based on the unique currency combinations of super-major currencies, major currencies and the currencies of Brazil, China, Czech Republic, Hungary, Israel, Mexico, New Zealand, Poland, Russia, and Turkey (*e.g.,* euro (EUR) and Canadian dollar (CAD) combination would be a separate swap category; Swedish kronor (SEK) and U.S. dollar (USD) combination would be a separate swap category; etc.). These currency combinations currently have sufficient liquidity in the underlying futures market, which may suggest that there may be sufficient liquidity in the swaps market for these currency combinations. In proposed § 43.6(b)(4)(ii), the Commission would establish swap categories based on unique currency combinations not included in proposed § 43.6(b)(4)(i).

Request for Comment

Q17. The Commission requests specific comments, data and analysis in respect of its proposed approach to determining swap categories for the FX asset class.

Q18. As an alternative to the proposal, should the Commission establish swap categories based on currency class pairings? In other words, swap categories that correspond to: (i) Super-major-to-super-major; (ii) super-major-to-major; (iii) super-major-to-non-major; (iv) major-to-major; (v) major-to-non-major; and (vi) non-major-to-non-major currency class pairings?[152]

Q18.a. Should the Commission develop currency and tenor swap categories similar to what it is proposing for swaps in the interest rate asset class? The currency and tenor categories could be adjusted to reflect current trading activity in the FX swap and instrument markets.

Q19. In the post-initial period, should the Commission include tenor as a criterion for distinguishing FX swap categories? For example, should the Commission separate FX swaps with short-dated tenors (*e.g.,* less than one or three months) from those with long-dated tenors (*e.g.,* greater than one or three months)?[153]

Q20. The Commission is considering as a variation of its proposed approach to characterize certain swap categories within the FX asset class as ''infrequently transacted.'' Infrequently-transacted swaps would exhibit all or some of the following features: (1) The constituent swap or swaps to which they are economically related are not

[148] As used in this Further Proposal, the term ''regulatory arbitrage'' means engaging in financial structuring or a series of transactions without economic substance in order to avoid unwelcome regulation or to exploit inconsistencies in regulations.

[149] Under this alternative approach, ''publicly-listed'' equity indexes would be defined as equity swaps with reference prices economically related to equity indexes with publicly available index weightings. ''Custom equity index swaps,'' in contrast, would be defined as equity swaps that utilize reference prices that are not economically related to equity indexes with publicly known index weightings. This alternative approach would be based on the premise that a custom equity index swap would have a higher probability of being subject to liquidity risk.

[150] For example, if an equity index is composed of the weighted average of ten equity components, A Corp., B Corp., C Corp., D Corp., E Corp., F Corp., G Corp., H Corp., I Corp., and J Corp. corresponding to a market capitalization on the day prior to the related swap transaction of $100 million, $200 million, $300 million, $400 million, $500 million, $200 million, $100 million, $200 million, $300 million, and $500 million, respectively, then it would result in an average market capitalization of $280 million. This alternative approach is premised on market capitalization serving as indicia of cash market liquidity for derivatives on the index.

[151] Under ISDA's Master Confirmation Templates, ''open market'' references ISDA annexes with underlying shares or indices in Australia, Hong Kong, New Zealand or Singapore. ''Closed market'' references ISDA annexes with underlying shares or indices in India, Indonesia, Korea, Malaysia, Taiwan and Thailand. For more information, *see* ISDA, ISDA Equity Derivatives, ISDA Master Confirmation Templates (by region), *http://www.isda.org/c_and_a/equity_der.html#defs.*

Under this alternative, other countries outside of Asia could be added to the list in a similar fashion.

[152] This approach would result in fewer swap categories, thereby easing administrative burdens related to determining the appropriate swap category corresponding to a swap. At the same time, however, this approach would require the use of a common denominator currency (*e.g.,* the U.S. dollar) for determining the applicable notional amount. This would imply a currency conversion, thereby increasing administrative burdens associated with currency conversions.

[153] This approach would be predicated on expected differing liquidity and notional size distributions between FX swaps with differing tenors.

executed on, or pursuant to the rules of, a SEF or DCM; (2) few market participants have transacted in these swaps or in economically-related swaps; or (3) few swap transactions are executed during a historic period in these swaps or in economically-related swaps.[154]

4. Swap Categories in the Other Commodity Asset Class

The Commission proposes to determine swap categories in the other commodity asset class based on groupings of economically related swaps under proposed §§ 43.6(b)(5)(i) and (ii) and based on groupings of swaps sharing a common product type under proposed § 43.6(b)(5)(iii). Swap contracts and futures contracts that are economically related to one another—as defined by the Commission in a proposed amendment to § 43.2—are economic substitutes that should be subject to the same appropriate minimum block sizes or block trade rules for futures contracts, as applicable.[155] Accordingly, the Commission is proposing to define ''economically related'' in § 43.2 as a direct or indirect reference to the same commodity at the same delivery location or locations,[156] or with the same or substantially similar cash market price series.[157] The Commission anticipates that this proposed definition would: (1) Ensure that swap contracts with shared reference price characteristics indicating economic substitutability (*i.e.,* an ability to offset some or all of the risks across swaps in a specific category) are grouped together within a common swap category; and (2) provide further clarity as to which swaps are described in § 43.4(d)(4)(ii)(B).[158] This definition would apply to the use of the term ''economically related'' throughout all of part 43 of the Commission's regulations.

Under proposed § 43.6(b)(5)(i), the Commission would establish separate swap categories for swaps that are economically related to one of the contracts listed on appendix B to part 43. Appendix B to part 43 currently lists 28 enumerated physical commodity contracts and other contracts (*i.e.,* Brent Crude Oil (ICE)) for which an SDR must ensure the public dissemination of the actual underlying asset for the applicable publicly reported swap transactions under § 43.4(d)(4)(ii) of the Commission's regulations.[159] The Commission previously has identified these other commodity contracts as: (1) Having high levels of open interest and significant cash flow; and (2) serving as a reference price for a significant number of cash market transactions. The Commission is proposing to establish an initial appropriate minimum block size for the swap categories corresponding to each of these contracts to the extent that a DCM has set a block trade size for such a contract.

Under proposed § 43.6(b)(5)(ii), the Commission would establish swap categories based on swaps in the other commodity asset class that are: (1) Not economically related to one of the futures or swap contracts listed in appendix B to part 43; (2) futures related; and (3) economically related to the relevant futures contract that is subject to the block trade rules of a DCM. Proposed § 43.6(b)(5)(ii) lists the futures contracts to which these swap categories are economically related;[160] these swap categories would include any swap that is economically related to such contracts. The swap categories established by proposed § 43.6(b)(5)(i) (discussed in the paragraphs above) differ from the swap categories established by proposed § 43.6(b)(5)(ii) in that the former may be economically related to futures contracts that are not subject to the block trade rules of a DCM, whereas the latter are economically related to futures contracts that are subject to the block trade rules of a DCM.[161]

Under proposed § 43.6(b)(5)(iii), the Commission would establish swap categories for all other commodity swaps that are not categorized under proposed §§ 43.6(b)(5)(i) or (ii). These swaps are not economically related to one of the contracts listed in appendix B to part 43 or in proposed § 43.6(b)(5)(ii). In particular, the Commission would determine the appropriate swap category based on the product types described in appendix D to part 43 to which the underlying asset(s) of the swap would apply or otherwise relate. Proposed appendix D to part 43 establishes ''Other Commodity Groups'' and certain ''Individual Other Commodities'' within those groups. To the extent that there is an ''Individual Other Commodity'' listed, the Commission would deem the ''Individual Other Commodity'' as a separate swap category. For example, regardless of whether the underlying asset to an off-facility swap is ''Sugar No. 16'' or ''Sugar No. 5,'' the underlying asset would be grouped as ''Sugar.'' The Commission thereafter would set the appropriate minimum block size for each of the swap categories listed in appendix D to part 43.

In circumstances where a swap does not apply or otherwise relate to a specific ''Individual Other Commodity'' listed under the ''Other Commodity Group'' in appendix D to part 43, the Commission would categorize such swap as falling under the respective

[154] The Commission considered applying a methodology resulting in less relative transparency to such infrequently transacted swap categories (*e.g.,* a 50-percent notional amount calculation).

[155] In the Adopting Release, the Commission explained: ''For the purposes of part 43, swaps are economically related, as described in § 43.4(d)(4)(ii)(B), if such contract utilizes as its sole floating reference price the prices generated directly or indirectly from the price of a single contract described in appendix B to part 43.'' 77 FR 1,211. Further, the Commission explained that ''an 'indirect' price link to an Enumerated Physical Commodity Contract or an Other Contract described in appendix B to part 43 includes situations where the swap reference price is linked to prices of a cash-settled contract described in appendix B to part 43 that itself is cash-settled based on a physical-delivery settlement price to such contract.'' *Id.* at n.289.

[156] For example, a swap utilizing the Platts Gas Daily/Platts IFERC reference price is economically related to the Henry Hub Natural Gas (NYMEX) (futures) contract because it is based on the same commodity at the same delivery location as that underlying the Henry Hub Natural Gas (NYMEX) (futures) contract.

[157] For example, a swap utilizing the Standard and Poor's (''S&P'') 500 reference price is economically related to the S&P 500 Stock Index futures contract because it is based on the same cash market price series.

[158] The Commission is proposing to amend § 43.2 to define ''reference price'' as a floating price series (including derivatives contract 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. The Commission is proposing to use this term in connection with the establishment of a method through which parties to a swap transaction may elect to apply the lowest appropriate minimum block size applicable to one component swap category of such swap transaction.

[159] The Commission is proposing to add 13 contracts to appendix B to part 43, as described in detail in section III.C.4 infra. Each of these additional swap contracts would be categorized in its own other commodity swap grouping.

[160] Specifically, these additional other commodity swap categories would be based on the following futures contracts: CME Cheese; CBOT Distillers' Dried Grain; CBOT Dow Jones-UBS Commodity Index Excess Return; CBOT Ethanol; CME Frost Index; CME Goldman Sachs Commodity Index (GSCI) (GSCI Excess Return Index); NYMEX Gulf Coast Gasoline; NYMEX Gulf Coast Sour Crude Oil; NYMEX Gulf Coast Ultra Low Sulfur Diesel; CME Hurricane Index; CME International Skimmed Milk Powder; NYMEX New York Harbor Ultra Low Sulfur Diesel; CBOT Nonfarm Payroll; CME Rainfall Index; CME Snowfall Index; CME Temperature Index; CME U.S. Dollar Cash Settled Crude Palm Oil; and CME Wood Pulp.

[161] This distinction is noteworthy because proposed § 43.6(e)(3) provides that ''[p]ublicly reportable swap transactions described in § 43.6(b)(5)(i) that are economically related to a futures contract in appendix B to this part [43] shall not qualify to be treated as block trades or large notional off-facility swaps (as applicable) [during the initial period], if such futures contract is not subject to a designated contract market's block trading rules.'' *See* the discussion of this proposed provision in section II.D.4(a) infra.

''Other'' swap categories. For example, an emissions swap would be categorized as ''Emissions,'' while a swap in which the underlying asset is aluminum would be categorized as ''Base Metals—Other.'' Additionally, in circumstances where the underlying asset of swap does not apply or otherwise relate to an ''Individual Other Commodity'' or an ''Other'' swap category, the Commission would categorize such swap as either ''Other Agricultural'' or ''Other Non-Agricultural.''

Request for Comment

Q21. The Commission requests specific comments, data and analysis with respect to its proposed approach for determining swap categories for the other commodity asset class.

Q22. Does the proposed definition of economically related appropriately capture swaps that are economic substitutes within a single swap category? Should the Commission define economically related to mean swaps that have historically correlated changes in daily prices within a swap category (*e.g.,* a correlation coefficient of 0.95 or greater)? This alternative approach would be based on the notion that historical correlation is indicative of economic substitutability.

Q23. In the post-initial period, should the Commission include tenor as a criterion for determining swap categories for the other commodity asset class? For example, should the Commission separate other commodity swaps with short-dated tenors (*e.g.,* less than one or three months) from those with long-dated tenors (*e.g.,* greater than one or three months)? [162]

Q24. As a variation of the proposal, should the Commission create additional product types in order to provide specific swap categories for commodities not specifically listed in proposed appendix D to part 43? [163]

Q25. As a variation of the proposal, should the Commission further refine the swap categories in § 43.6(b)(5)(iii) (*i.e.,* those based on product types listed in proposed appendix D to part 43) on the basis of geography? If so, on what basis and for which product types?

Q26. As a variation on the proposed approach, should the Commission include inflation index futures contracts in proposed § 43.6(b)(5)(ii)?

Q27. As an alternative approach, the Commission is considering characterizing certain swap categories within the other commodity asset class as ''infrequently transacted.'' This alternative approach is consistent with the approach discussed in Q20 above.

Q27.a. Should this alternative approach apply to asset classes in addition to the FX and other commodity asset classes?

Q28. As another alternative, should the Commission consider dividing the swaps in the other commodity asset class into swap categories based on relative market concentration? For example, a variation of the Herfindahl-Hirschman Index (''HHI'') based on the average daily or average month-end HHI score to determine swap categories for the other commodity asset class? [164] Would a daily or month-end average long-short swap position HHI [165] for a three-year rolling window (beginning with a minimum of one year and adding one year of data for each calculation until a total of three years of data is accumulated) of lower than 2,500, 2,000, or 1,500 be indicative of a market that is not concentrated? [166]

Q28.a. Should the Commission use this approach for other asset classes?

D. Proposed Appropriate Minimum Block Size Methodologies for the Initial and Post-Initial Periods

The Commission is proposing a tailored approach for determining appropriate minimum block sizes during the initial and post-initial periods for each asset class. In the subsections below, the Commission sets out a more detailed discussion of the appropriate minimum block methodologies for swaps within: (1) The interest rate and credit asset classes; (2) the single swap category in the equity asset class; (3) swap categories in the FX asset class; and (4) swap categories in the other commodity asset class. Thereafter, the Commission discusses special rules for determining the appropriate minimum block sizes across asset classes. For convenience, the chart immediately below summarizes swap categories and calculation methodologies that the Commission is proposing for each asset class.

PROPOSED APPROACH

Asset class	Swap category criteria	Initial implementation period	Post-initial implementation period [167]
Interest Rates	By unique currency and tenor grouping [168].	67-percent notional amount calculation by swap category [169].	67-percent notional amount calculation by swap category.[170]
Credit	By tenor and conventional spread grouping [171].		
FX	By numerated FX currency combinations (*i.e.,* futures related) [172].	Based on DCM futures block size by swap category [173].	
	By non-enumerated FX currency combinations (*i.e.,* non-futures related) [174].	All trades may be treated as block trades [175].	

[162] This approach would be predicated on expected differing liquidity and notional size distributions between other commodity swaps with differing tenors.

[163] These additional product types would allow the Commission to set an appropriate minimum block size for a swap category based on a distribution of transactions with more similar underlying physical commodity market characteristics. For example, swaps utilizing a reference price based on an aluminum or iron underlier would be included in the same ''other base metal'' swap category. Under this variation to the proposed approach, there could be additional specific product types corresponding to specific commodities not included in proposed appendix D to part 43 (*e.g.,* aluminum or iron).

[164] An ''HHI score'' would be defined as the sum of the squared percentages, in whole numbers, of relative positions or transactions on the long or short side of a grouping of swap positions or transactions during a specified period. This alternative approach would be based on the distribution of percentages of positions or transactions held or executed by non-affiliated market participants on the long and short side of a swap market. In addition, this alternative approach would be predicated on the notion that reduced market concentration is indicative of a degree market liquidity depth that warrants greater transparency because of reduced liquidity concerns, as well as reduced concerns with the anonymity of transactions in such swap categories.

[165] This figure would be the simple average of the HHI score on the short and long sides of a swap market based on the concentration of open interest on either side of such a market.

[166] The Commission may consider applying a methodology resulting in less relative transparency to concentrated swap categories (*e.g.,* a 50-percent notional amount calculation).

PROPOSED APPROACH—Continued

Asset class	Swap category criteria	Initial implementation period	Post-initial implementation period [167]
Other Commodity	By economically-related Appendix B to part 43 contract if the swap is (1) futures related and (2) the relevant futures contract is subject to DCM block trade rules [176].	Based on DCM futures block size by swap category [177].	
	By economically-related Appendix B to part 43 contract if the swap is: (1) futures related and (2) the relevant futures contract is *not* subject to DCM block trade rules [178].	No trades may be treated as blocks [179].	
	By economically-related Appendix B to part 43 contract if the swap is (1) a listed natural gas or electricity swap contract and (2) the relevant Appendix B contract is not futures related [180].	Appropriate minimum block size equal to $25 million [181].	
	By swaps that are economically related to the list of 18 contracts listed in § 43.6(b)(5)(ii) [182].	Based on DCM futures block size by swap category [183].	
	By Appendix D to part 43 commodity group, for swaps not economically related to a contract listed in Appendix B to part 43 or to the list of 18 contracts listed in § 43.6(b)(5)(ii) [184].	All trades may be treated as block trades [185].	
Equity	All equity swaps [186]	No trades may be treated as blocks.[187]	

Request for Comment

Q29. The Commission requests general comment regarding its proposed methodologies to determine appropriate minimum block sizes in both implementation periods.

Q29.a. In the post-initial period, should the Commission consider using the previous period's appropriate minimum block size or one of the alternative calculation methodologies (as discussed in Q35 below) if the calculated appropriate minimum block size during the current period is extraordinarily high or low, or where the number of transactions in a swap category is small (*e.g.,* less than 60 transactions each six month period)?

Q30. Should the updates of post-initial appropriate minimum block sizes and related calculations occur at regular periods of time? If so, is the proposed time frame for updating the appropriate minimum block sizes sufficient? [188]

Q31. During the initial period, should the Commission update the appropriate minimum block sizes based on the methodologies or alternatives described in this proposed rulemaking?

1. Methodology for Determining the Appropriate Minimum Block Sizes in the Interest Rate and Credit Asset Classes

The Commission is proposing to use a 67-percent notional amount calculation to determine initial and post-initial appropriate minimum block sizes for swaps in the interest rate and credit asset classes pursuant to proposed §§ 43.6(c)(1) and 43.6(e)(1).[189] The 67-percent notional amount calculation is a methodology under which the Commission would: (step 1) Select all of the publicly reportable swap transactions within a specific swap category using a rolling three-year window of data beginning with a minimum of one year's worth of data and adding one year of data for each calculation until a total of three years of data is accumulated ;[190] (step 2) convert to the same currency or units and use a ''trimmed data set;'' [191] (step 3) determine the sum of the notional amounts of swaps in the trimmed data set; (step 4) multiply the sum of the notional amount by 67 percent; (step 5) rank order the observations by notional amount from least to greatest; (step 6) calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 67-percent notional amount calculated in step 4; (step 7) select the notional amount

[167] This post-initial implementation period would commence at a minimum of one year after the initial period. Thereafter, the Commission would determine appropriate minimum block sizes a minimum of once annually. *See* proposed § 43.6(f)(1).

[168] *See* proposed § 43.6(b)(1).

[169] *See* proposed § 43.6(c)(1).

[170] *See* proposed § 43.6(f)(2).

[171] *See* proposed § 43.6(b)(2).

[172] *See* proposed § 43.6(b)(4)(i).

[173] *See* proposed § 43.6(e)(1).

[174] *See* proposed § 43.6(b)(4)(ii).

[175] *See* proposed § 43.6(e)(2).

[176] *See* proposed § 43.6(b)(5)(i).

[177] *See* proposed § 43.6(e)(1).

[178] *See* proposed § 43.6(b)(5)(i).

[179] *See* proposed § 43.6(e)(3).

[180] *See* proposed § 43.6(b)(5)(i).

[181] *See* proposed § 43.6(e)(3).

[182] *See* proposed § 43.6(b)(5)(ii).

[183] *See* proposed § 43.6(e)(1).

[184] *See* proposed § 43.6(b)(5)(iii) and the product types groupings listed in proposed appendix D to part 43.

[185] *See* proposed § 43.6(e)(2).

[186] *See* proposed § 43.6(b)(3).

[187] *See* proposed § 43.6(d).

[188] *See* proposed § 43.6(f)(1).

[189] Proposed § 43.6(c)(1) describes the 67-percent notional amount calculation. Proposed § 43.6(e)(1) provides the provisions relating to the methodology for determining appropriate minimum block sizes during the initial period for swaps in the interest rate and credit asset classes, inter alia.

[190] *See* note 109 supra for the definition of publicly reportable swap transaction. Since the Commission is proposing to determine all appropriate minimum block sizes based on reliable data for all publicly reportable swap transactions within a specific swap category, the Commission does not view the fact that more than one SDR may collect such data as raising any material concerns.

[191] *See* proposed amendment to § 43.2 and the discussion infra in this section.

associated with that observation; (step 8) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits [192]; and (step 9) set the appropriate minimum block size at the amount calculated in step 8. An example of how the Commission would apply this proposed methodology is set forth in section VII of this Further Proposal.

There were three swap categories in the interest rate and credit asset classes, which contained less than 30 transaction records that would meet the definition of publicly reportable swap transaction. For these swap categories, the Commission is proposing to use the lowest appropriate minimum block size for their respective asset classes based on the respective data set. The three swap categories are: (1) Interest rate swap category major currency/30 years +; (2) interest rate swap category non-major currency/30 years +; and (3) CDS index swap category 350 bps/six-to-eight years and six months. If the Commission were to use the proposed 67-percent notional calculation method, then two of the three swap categories would have resulted in appropriate minimum block sizes higher than those proposed. The remaining swap category contained no data.

The proposed 67-percent notional amount calculation is intended to ensure that within a swap category, approximately two-thirds of the sum total of all notional amounts are reported on a real-time basis. Thus, this approach would ensure that market participants have a timely view of a substantial portion of swap transaction and pricing data to assist them in determining, inter alia, the competitive price for swaps within a relevant swap category. The Commission anticipates that enhanced price transparency would encourage market participants to provide liquidity (*e.g.,* through the posting of bids and offers), particularly when transaction prices moves away from the competitive price. The Commission also anticipates that enhanced price transparency thereby would improve market integrity and price discovery, while also reducing information asymmetries enjoyed by market makers in predominately opaque swap markets.[193]

In the Commission's view, using the proposed 67-percent notional amount calculation also would minimize the potential impact of real-time public reporting on liquidity risk. The Commission views this calculation methodology as an incremental approach to achieve real-time price transparency in swap markets. The Commission believes that its methodology represents a more tailored and incremental step (relative to the approach set out in the Initial Proposal) towards achieving the goal of ''a vast majority'' of swap transactions becoming subject to real-time public reporting.[194]

As noted above, CEA section 2(a)(13)(E)(iv) directs the Commission to take into account whether the public disclosure of swap transaction and pricing data ''will materially reduce market liquidity.'' [195] If market participants reach the conclusion that the Commission has set appropriate minimum block sizes for a specific swap category in a way that will materially reduce market liquidity, then those participants are encouraged to submit data in support their conclusion. In response to such a submission, the Commission has the legal authority to take action by rule or order to mitigate the potential effects on market liquidity with respect to swaps in that swap category. In addition, if through its own surveillance of swaps market activity, the Commission becomes aware that an appropriate minimum block size would reduce market liquidity for a specific swap category, then under those circumstances the Commission may exercise its legal authority to take action by rule or order to mitigate the potential effects on marketing liquidity with respect to swaps in that swap category.

As referenced above, the Commission is proposing to amend § 43.2 of the Commission's regulations to define the term ''trimmed data set'' as a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of ten (Log_{10}), computing the mean, and excluding transactions that are beyond four standard deviations above the mean. Proposed § 43.6(c) uses this term in connection with the calculations that the Commission would undertake in determining appropriate minimum block sizes and cap sizes.

The Commission is proposing to use a trimmed data set since it believes that removing the largest transactions, but not the smallest transactions, may provide a better data set for establishing the appropriate minimum block size, given that the smallest transactions may reflect liquidity available to offset large transactions. Moreover, in the context of setting a block trade level (or large notional off-facility swap level), a method to determine relatively large swap transactions should be distinguished from a method to determine extraordinarily large transactions; the latter may skew measures of the central tendency of transaction size (*i.e.,* transactions of usual size) away from a more representative value of the center.[196] Therefore, trimming the data set increases the power of these statistical measures.

Request for Comment

Q32. Please provide specific comment regarding the Commission's proposed approach to determine appropriate minimum block sizes for swaps in the interest rates and credit asset classes.

Q32.a. Is the Commission's proposed approach reasonable with respect to those swap categories for which there were less than 30 transaction records? Is there another appropriate minimum block size (either higher or lower) that the Commission should use for these swap categories? If so, then why? Should the Commission continue to use this approach in the post-initial period by determining whether there are less than 30 transaction records within a six-month period?

Q33. As a variation of the proposed approach, should the Commission use a 50-percent notional amount calculation methodology for determining the appropriate block sizes for these asset classes? If so, please explain why. If so, what affects would a 50-percent notional amount calculation have on the costs imposed on, and the benefits that would inure to, market participants and registered entities? [197] Are there some

[192] For example, 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 are publicly disseminated in real time.

[193] The proposed calculation stands in contrast to the proposed 95th percentile-based distribution test set out in the Initial Proposal. *See* the discussion *supra* in section I.B. of this Further Proposal.

[194] *See* note 83 *supra.* This phased-in approach seeks to improve transparency while not having a negative impact on market liquidity.

[195] 7 U.S.C. 2(a)(13)(E)(iv).

[196] A measure of central tendency, also known as a measure of location, in a distribution is a single value that represents the typical transaction size. Two such measures are the mean and the median. For a general discussion of statistical methods, *see e.g.,* Wilcox, R. R., Fundamentals of Modern Statistical Methods (Springer 2d ed. 2010), (2010).

[197] The Commission is actively considering the use of a 50-percent notional amount calculation methodology in the initial and/or post-initial periods. The rule text for the 50-percent notional amount calculation would be nearly identical to proposed § 43.6(c)(1) and (2), except for the insertion of ''50-percent'' where appropriate.

parts of the swaps market for which 50-percent notional amount calculation would be a more appropriate methodology (*e.g.,* actively-traded swap categories in the interest rates and credit asset classes)? The following two charts compare the proposed initial appropriate minimum block sizes (using the 67-percent notional amount calculation) for swaps in the interest rate and credit asset classes with appropriate minimum block sizes that would result if the Commission were to use the 50-percent notional amount calculation.[198]

COMPARISON OF INITIAL APPROPRIATE MINIMUM BLOCK SIZES

[Interest rate swaps]

Currency group	Tenor greater than	Tenor less than or equal to	50% Notional (in millions)	67% Notional (in millions)
Super-Major		Three months (107 days)	3,800	6,400
Super-Major	Three months (107 days)	Six months (198 days)	1,200	1,900
Super-Major	Six months (198 days)	One year (381 days)	1,100	1,600
Super-Major	One year (381 days)	Two years (746 days)	460	750
Super-Major	Two years (746 days)	Five years (1,842 days)	240	380
Super-Major	Five years (1,842 days)	Ten years (3,668 days)	170	290
Super-Major	Ten years (3,668 days)	30 years (10,973 days)	120	210
Super-Major	30 years (10,973 days)		67	130
Major		Three months (107 days)	700	970
Major	Three months (107 days)	Six months (198 days)	440	470
Major	Six months (198 days)	One year (381 days)	220	320
Major	One year (381 days)	Two years (746 days)	130	190
Major	Two years (746 days)	Five years (1,842 days)	88	110
Major	Five years (1,842 days)	Ten years (3,668 days)	49	73
Major	Ten years (3,668 days)	30 years (10,973 days)	37	50
Major	30 years (10,973 days)		15	22
Non-Major		Three months (107 days)	230	320
Non-Major	Three months (107 days)	Six months (198 days)	150	240
Non-Major	Six months (198 days)	One year (381 days)	110	160
Non-Major	One year (381 days)	Two years (746 days)	54	79
Non-Major	Two years (746 days)	Five years (1,842 days)	27	40
Non-Major	Five years (1,842 days)	Ten years (3,668 days)	15	22
Non-Major	Ten years (3,668 days)	30 years (10,973 days)	16	24
Non-Major	30 years (10,973 days)		15	22

COMPARISON OF INITIAL APPROPRIATE MINIMUM BLOCK SIZES

[Credit default swaps]

Spread group (basis points)	Traded tenor greater than	Traded tenor less than or equal to	50% Notional	67% Notional
Less than or equal to 175		Two years (746 days)	320	510
Less than or equal to 175	Two years (746 days)	Four years (1,477 days)	200	300
Less than or equal to 175	Four years (1,477 days)	Six years (2,207 days)	110	190
Less than or equal to 175	Six years (2,207 days)	Eight years and six months (3,120 days).	110	250
Less than or equal to 175	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	130	130
Less than or equal to 175	Twelve years and six months (4,581 days).		46	110
Greater than 175 and less than or equal to 350.		Two years (746 days)	140	210
Greater than 175 and less than or equal to 350.	Two years (746 days)	Four years (1,477 days)	82	130
Greater than 175 and less than or equal to 350.	Four years (1,477 days)	Six years (2,207 days)	32	36
Greater than 175 and less than or equal to 350.	Six years (2,207 days)	Eight years and six months (3,120 days).	20	26
Greater than 175 and less than or equal to 350.	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	26	64
Greater than 175 and less than or equal to 350.	Twelve years and six months (4,581 days).		63	120
Greater than 350		Two years (746 days)	66	110
Greater than 350	Two years (746 days)	Four years (1,477 days)	41	73
Greater than 350	Four years (1,477 days)	Six years (2,207 days)	26	51
Greater than 350	Six years (2,207 days)	Eight years and six months (3,120 days).	13	21

[198] Using the ODSG data for interest rate swaps, the Commission notes that the proposed 67-percent notional amount calculation would result in 94 percent of trades being reported in real-time, compared with 86 percent of trades that would be reported in real-time under the alternative 50-percent notional amount calculation.

Using the ODSG data for CDS, the Commission notes that the proposed 67-percent notional amount calculation would result in 94 percent of trades being reported in real-time, compared with 85 percent of trades that would be reported in real-time under the alternative 50-percent notional amount calculation.

COMPARISON OF INITIAL APPROPRIATE MINIMUM BLOCK SIZES—Continued

[Credit default swaps]

Spread group (basis points)	Traded tenor greater than	Traded tenor less than or equal to	50% Notional	67% Notional
Greater than 350	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	13	21
Greater than 350	Twelve years and six months (4,581 days).		41	51

Q34. As another variation of the proposed methodology, should the Commission change specific aspects of its methodology?

Q34.a. For example, should the Commission define the term ''trimmed data set'' to exclude greater or fewer extremely large transactions from the data set used to determine appropriate minimum block sizes? Or, should the term be defined to exclude transactions that are three or five standard deviations beyond the mean? If so, should this be done for all asset classes?

Q34.b. Should the Commission use another method for excluding outliers?

Q35. As an alternative to the proposed 67-percent notional amount calculation methodology, should the Commission use any of the following in the initial and/or post-initial periods:

Q35.a. As an alternative approach, should the Commission determine appropriate minimum block sizes based on a measure of market depth and breadth? Market depth and breadth is one of several approaches in which the Commission could preserve market liquidity.[199] Under this alternative, market depth and breadth would be determined using the following methodology: (step 1) Identify swap contracts with pre-trade price transparency within a swap category [200]; (step 2) calculate the total executed notional volumes for each swap contract in the set from step 1 and calculate the sum total for the swap category over the look back period; (step 3) collect a market depth snapshot [201] of all of the bids and offers once each minute for the pre-trade price transparency set of contracts identified in step 1 [202]; (step 4) identify the four 30-minute periods that contain the highest amount of executed notional volume each day for each contract of the pre-trade price transparency set identified in step 1 and retain 120 observations related to each 30-minute period for each day of the look-back period [203]; (step 5) determine the average bid-ask spread over the look-back period of one year by averaging the spreads observed between the largest bid and executed offer for all the observations identified in step 3; (step 6) for each of the observations 120 observations determined in step 4, calculate the sum of the notional amount of all orders collected from step 3 that fall within a range,[204] calculate the average of all of these observations for the look-back period and divide by two; (step 7) to determine the trimmed market depth, calculate the sum of the market depth determined in step 6 for all swap contracts within a swap category; (step 8) to determine the average trimmed market depth, use the executed notional volumes determined in step 2 and calculate a notional volume weighted average of the notional amounts determined in step 6; (step 9) using the calculations in steps 7 and 8, calculate the market breadth based on the following formula—market breadth = averaged trimmed market depth + (trimmed market depth − average trimmed market depth) × .75; (step 10) set the appropriate minimum block size equal to the lesser of the values from steps 8 and 9. Would the Commission have to establish special swap categories for this approach? Would the collection of snapshots from a central limit order book be too burdensome (*i.e.,* costly and time consuming) for DCMs and SEFs? What are the costs and benefits of adopting this approach?

Q35.b. Should the Commission use a confidence interval test for calculating the appropriate minimum block sizes for these asset classes?

The confidence interval test calculates the minimum notional value as the point where the publicly disseminated average notional size is within the 95-percent confidence interval using the following process: (step 1) Select the swap transaction data for a specific swap category; (step 2) convert to the same currency or units and determine the transaction distribution of notional amounts using the natural logarithm and trimmed data set for the swap category [205]; (step 3) calculate the average notional size and the 95-percent confidence interval around this average [206]; (step 4) drop the largest

[199] Although this alternative approach presents several limitations (*e.g.,* the impact of collecting market depth data on a regular basis), the Commission considers this alternative to be a viable option to its proposed approach discussed above.

[200] Swap contracts would be determined to have pre-trade price transparency if they have electronically displayed and executable bids and offers along with displayed available volumes for execution.

[201] CEA sections 4g(b), 4g(d), 5(d)(1), 5(d)(10) and 5(d)(18) authorize the Commission to request this data from a DCM. CEA sections 5h(f)(5) and 5h(f)(10) authorize the Commission to request this data from a SEF. The Commission would request such data as part of a special call process.

[202] Note that this is a snapshot observation for a single moment in time. The Commission is not specifying which second within the minute would be analyzed when taking a snapshot of market depth.

[203] These periods may vary from day to day and from contract to contract and would be defined on the 48 30-minute periods set to the top and bottom of each hour of each day (*e.g.,* 1–1:29 p.m. 1:30–1:59 p.m., etc.). In instances when tie occurs in identifying the four 30-minute periods based on executed notional volumes, preference would first be given to the period with the largest total notional volume for the largest bid and offer. If a tie still results, then preference would be given to the period with the smallest difference in bids minus asks. Lastly, if a tie is still remains, then the period of time after and nearest to 12 p.m. New York time would be selected.

[204] The range would be determined by the average of the largest bid and offer for that observation plus or minus three time the average bid-ask spread (as determined in step 5) for all 120 observations.

[205] In practice, the natural logarithm of the notional value is preferred over the nominal value to reduce the effect of skewness on sample statistics. In addition to classical statistical methods, the calculation of the confidence interval may be improved by using ''bootstrapping'' methods to estimate the distribution of the average notional trade size. *See generally,* Bradley Efron, Bootstrap Methods: Another Look at the Jackknife, Ann. Statist. Vol. 7, No. 1 (1979), 1–26, *http://projecteuclid.org/DPubS?service=UI&version=1.0&verb=Display&handle=euclid.aos/1176344552* (last visited Jan. 31, 2012).

[206] The confidence interval test assumes sufficient data is available in a swap category such that a normal distribution is a good approximation to compute an interval estimate. To the extent that the actual distribution diverges significantly from a normal distribution, the interval estimate may not reflect the probability at the desired (95 percent) confidence interval. In which case, other methods such as ''bootstrapping'' may be necessary to compute the confidence intervals around the full sample average notional size. The Commission notes the ODSG data sets were not normally distributed, but were nearly symmetric after trimming. Further, according to a TABB Group survey, many market participants expected the average notional transaction size to decline, which would have implied change in the distribution. *See* the presentation of Kevin McPartland, Principal, Tabb Group, CFTC Technology Advisory

remaining transaction from the distribution [207]; (step 5) conditional on the full-sample 95-percent confidence interval, calculate the sample average notional size using the data resulting from step 4; (step 6) if the sample average notional size is not outside of the 95-percent confidence interval, repeat steps 4 and 5 until it is just outside of the 95-percent confidence interval; (step 7) once the sample average notional size is outside the 95-percent confidence interval, set the minimum notional value equal to the notional value; (step 8) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and (step 9) set the appropriate minimum block size equal to the largest transaction of the distribution for which the sample average notional size was still within the 95-percent confidence interval. What are the costs and benefits associated with using this alternative approach?

Q35.c. Should the Commission use a stability test that makes use of ''CUSUM'' and/or ''CUSUM of Square'' methods? [208] The Commission would define the stability test calculation as a process whereby the Commission would: (step 1) In the post-initial period, select swap transaction data for a specific swap category over a specified period (*e.g.,* a rolling window of three years of such data at one year intervals) [209]; (step 2) trim the extraordinarily large notional transactions from the swap transaction data by converting the data series into natural logarithm value equivalents, determining the mean, and excluding transactions that are beyond four standard deviations above the mean; (step 3) reposition the largest transactions back into a time-ordered trade sequence based on the reporting delay using one-percent sample increments of the largest transactions; (step 4) measure stability of this repositioning by calculating the fraction of observations violating the 95-percent confidence interval in the ''CUSUM'' and ''CUSUM of Squares'' methods [210]; and (step 5) identify the increment that causes the least change in stability of the average notional trade size compared to a non-repositioned sequence. The notional size cutoff for this increment would become the appropriate minimum block size in that swap category. If the test above does not produce a disruption in the stability of the average notional trade size, then the Commission would use the 67-percent notional amount calculation methodology. What are the costs and benefits associated with using this alternative approach?

Q35.d. Should the Commission utilize a percentile-based methodology to determine appropriate minimum block sizes that would focus on the number of trades? [211]

Q35.e. Should the Commission use a measure of average volume in a given time period [212] as a proxy for liquidity in order to calculate the appropriate minimum block size? The Commission is considering two alternatives for calculating appropriate minimum block size using this methodology: (1) Setting the initial appropriate minimum block size using daily volume when time-stamped transactions are not available; or (2) setting the post-initial block sizes once time-stamped transactions become available.[213] The methodology for setting initial appropriate minimum block size in the swap categories in the interest rate and credit asset classes would use the ODSG data sets to calculate the minimum notional value for a block using the following procedure for a given swap category: (step 1) Sum the notional volume of all trades within the swap category for each day for the ODSG data set; (step 2) calculate an estimate of the average volume in a 15-minute time period for each day by dividing the sum from step 1 by 32 (there are 32, 15-minute increments in an 8-hour time period, which is the presumed active trading period) [214]; (step 3) calculate the daily average for the ODSG data set by summing each day's estimated 15-minute average volume calculated in step 2 and dividing it by the total number of business days in the ODSG data set; and (step 4) multiply the daily average of the 15-minute average volume in time (''AVIT'') by a factor of two to determine the minimum block size.

Q35.f. As a variation of the AVIT methodology, should the Commission instead examine the volume of a portion of trades? For example, should the Commission examine volumes during the most active periods of a day, month or quarter? Or should the Commission only examine volume associated with a net change in position by counterparties during the delay period or the end of the day?

Q35.g. Should the Commission consider using a combination of the proposed and alternative tests as part of a composite test? [215] A composite test

Committee Meeting, Dec. 13, 2011, available at *http://www.cftc.gov/PressRoom/Events/opaevent_tac121311.*

[207] The Commission is also considering dropping transactions in one-percent increments until the sample average moves outside the 95-percent confidence interval. The Commission would then drop transactions within the last one-percent increment until the actual transaction is found that moves the sample mean outside of the confidence interval.

[208] Brown, R.L., J. Durbin, and J.M. Evans, ''Techniques for Testing the Constancy of Regression Relationships over Time,'' Journal of the Royal Statistical Society, B, 37, 149–163 (1975).

[209] If the Commission were applying this methodology to the initial period, then a rolling three-year window of data, beginning with a minimum of one year's worth of data, may not be available. In that case, the Commission would use the ODSG data where applicable.

[210] As with the confidence interval test, this test assumes a normal distribution, and as such, will follow similar procedures to those outlined in note 206 supra.

[211] For example, the Commission would order all publicly reportable swap transactions in a swap category by notional amount. After ordering these swap transactions, the Commission would set the appropriate minimum block size at the notional amount that corresponds to the 80th percentile. *See* note 15 *supra* for a discussion of the distribution test, which was proposed in the Initial Proposal.

[212] The Commission is considering using a measure of the average volume in time (''AVIT'') to determine the minimum block size since liquidity may not be directly observable in the market and historical trading volume is one indicator of (or proxy for) liquidity. Incorporating a measure of liquidity into the calculation of block sizes is important given that section 2(a)(13)(E)(iv) of the CEA requires the Commission to take into account whether public disclosure will materially reduce market liquidity. Moreover, calculating the AVIT for a 15-minute time period may serve as a proxy for the expected volume that could normally be transacted in the time between a block trade being executed and being publicly reported. *See* 7 U.S.C. 2(a)(13)(E)(iv).

[213] The transactions in the data sets for the interest rate and credit asset classes which the Commission is using in the initial period are not time stamped. However, SDRs will receive time-stamped swap transactions under real time reporting rules, which will then be remitted to the Commission.

[214] In the post-initial period when time-stamped transaction data will be available, the Commission could use a calculation based on actual transaction times. For example, the average volume could be calculated for each clock hour (*e.g.,* 8:00–:859 a.m.) in each business day by summing the notional sizes of all transactions for a 12-month time period in each clock hour and dividing by the total number of business days. Thereafter, the Commission would calculate the 15-minute volume.

[215] The Commission believes a composite test may increase the flexibility (*i.e.,* robustness) of setting minimum block sizes by using methods which are more appropriate in certain circumstances. For example, the Commission recognizes that certain methods may have limitations, including statistical breakdown points given certain distributions of transactions. Hence, it may be that no single test optimally sets block sizes under all distributions of transactions. A composite test may be more appropriate than any single test in setting block sizes across the wide variety of products that comprise the various swap categories and asset classes. In the event sample sizes are small, methods such as the social size, 50-percent distribution test, and AVIT may not produce results

Continued

would combine a number of methods to determine potential block size and would include switching rules to select the appropriate block size from among the methods. An example of a simple switching rule is to select the largest result from among a number of alternative methods. For example, a general composite test to calculate the block size would consist of setting the appropriate minimum block size to the greater of the results using (a) 50-percent distribution test,[216] (b) AVIT method and (c) social size. In this example, three methods are used and a simple switching rule would use the largest value resulting from the three methods. The example composite test ensures that a minimum block size would be equal to the larger of the three component tests, and thus ensures a minimal acceptable level of transparency.[217] The Commission recognizes that alternative switching rules may be more appropriate, such as taking the lower of two or more individual tests or taking the average of two or more tests to produce the appropriate minimum block size, and seeks comments on the use of alternative switching methods. The Commission invites comments on the use of a composite test as an alternative to a single method and on whether a composite test should be used to determine the appropriate minimum block size. If so, which methods should be included and what switching rule(s) should be used? Why would such an alternative be appropriate?

Q35.h. Should the Commission use a methodology that takes into consideration the impact of trade sizes on prices in the swap markets while determining post-interim minimum block sizes?

Q35.i. Should the Commission use a variation of the multiple test, which was proposed in the Initial Proposal? [218] For example, should the Commission remove one or more of the components of the test (*i.e.,* should the Commission remove the mean, median or mode)? Should the components be weighted? Should the multiplier be increased or decreased?

2. Treatment of Swaps Within the Equity Asset Class

The Commission is proposing under § 43.6(d) that all swaps in the equity asset class would not qualify for treatment as a block trade or large notional off-facility swap (*i.e.,* these swaps would not be subject to a time delay under part 43). As noted above, the Commission is proposing this approach based on: (1) The existence of a highly liquid underlying cash market; (2) the absence of time delays for reporting block trades in the underlying equity cash market; (3) the small relative size of the equity index swaps market relative to the futures, options and cash equity index markets; and (4) the Commission's goal to protect the price discovery function of the underlying equity cash market and futures market by ensuring that the Commission does not create an incentive to engage in regulatory arbitrage among the cash, swaps, and futures markets.

Request for Comment

Q36. Please provide specific comments regarding the Commission's proposed approach to disallow swaps in the equity asset class from being eligible for treatment as a block trade or large notional off-facility swap.

Q37. In the alternative, should the Commission employ a phased-in approach with respect to swaps in the equity asset class, whereby during the initial period all swaps in this asset class would be eligible for treatment as block trades or large notional off-facility swaps?

Q37.a. If so, then on what basis would the Commission follow this alternative approach?

Q38. As a second alternative, should the Commission establish post-initial appropriate minimum block sizes for swaps in the equity asset class using the 50-percent notional amount calculation?

Q38.a. If not a 67-percent notional amount calculation, then what other calculation methodology could the Commission adopt? For example, the Commission could establish appropriate minimum block sizes for swaps in the equity asset class at 0.002 percent of average market capitalization for publicly-listed equity indexes, and at some lower threshold (*e.g.,* 0.00175 percent) for custom equity indexes in recognition of possible marginal increased liquidity risk associated with these indexes.

Q38.b. Should the Commission establish post-initial appropriate minimum block sizes for swaps in the equity asset class using one of the alternative methodologies discussed in Q35 above?

Q39. As a third alternative, should the Commission adopt and then increase the 67-percent notional amount calculation over time? If so, why? For example, for each year after the implementation of post-initial appropriate minimum block sizes, should the notional amount calculation threshold increase by five or ten percentage points until a maximum of 95-percent notional amount is reached? Is this alternative appropriate for swaps in other asset classes?

Q40. As a fourth alternative, should the Commission apply an approach that uses a different calculation methodology based on the underlying liquidity in a swap category to determine the calculation methodology used to determine the appropriate minimum block size? If so, what measures of liquidity should the Commission use to determine appropriate categorization of swap categories into low, medium, or high liquidity swaps within the equity asset class? Is this alternative appropriate for swaps in other asset classes?

Q40.a. Would a 33, 50 and 67-percent notional amount calculation be appropriate for low, medium, or high liquidity swap categories respectively?

3. Methodologies for Determining the Appropriate Minimum Block Sizes in the FX Asset Class

The Commission is proposing to use different methodologies for the initial and post-initial periods to determine appropriate minimum block sizes for swaps categories in the FX asset class. The Commission's proposed approach is premised on the absence of actual market data on which to determine appropriate minimum block sizes in the initial period. Subsection a. below includes a discussion of the initial period methodology. Subsection b. below includes a discussion of the post-initial period methodology.

that adequately differentiate large swap transactions in need of block consideration. In addition, the 95% confidence interval test could be included in a composite test to ensure that the level of transparency provided by the real-time publicly reported tape is representative of the actual data.

[216] *See* note 15 *supra.*

[217] For example, shredding by market participants may cause a marked decrease in the average notional size of transactions as a participant executes numerous smaller transactions as opposed to a single large transaction. It is possible that even as total notional volume in a market increases, and by assumption liquidity increases, measures of average trade size fall, causing calculations based on the notional distribution of transactions to suggest lower block sizes. If shredding becomes standard practice in a market, then using only the social size or the 67-percent notional amount calculation method would result in low minimum block sizes which would not reflect the true size of a transaction and would not adequately determine what constitutes ''large notional swap transactions'' (i.e., block trades) in particular markets. Section 2(a)(13)(E)(ii) of the CEA requires that the Commission ''specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts.'' 7 U.S.C. 2(a)(13)(E)(ii).

[218] *See* note 16 supra for a description of the multiple test.

a. Initial Period Methodology for Determining Appropriate Minimum Block Sizes in the FX Asset Class

During the initial period, the Commission is proposing under § 43.6(e)(1) to set the appropriate minimum block sizes for swaps in the FX asset class based on whether such swap is economically related to a futures contract. For futures-related swaps in the FX asset class, proposed § 43.6(e)(1) provides that the Commission would establish the appropriate minimum block sizes for futures-related swaps [219] based on the block trade size thresholds set by DCMs for economically-related futures contracts.[220] The Commission has set forth the initial appropriate minimum block sizes in proposed appendix F to part 43 of the Commission's regulations.[221] The Commission anticipates that this approach would encompass the most liquid FX swaps and instruments, including most super-major currencies combinations, as well as most super-major and major currencies combinations. This approach also would further encompass many important super-major-and-major combinations and super-major-and-non-major currency combinations.[222] The Commission believes that this proposed approach is appropriate during the initial period in the absence of actual swap data for two reasons. First, the Commission aims to deter regulatory arbitrage opportunities with respect to swaps that are economically related to futures contracts. In the Commission's experience, futures and swap contracts that are economically related form one part of a larger derivatives market and, as such, should be subject to consistent block trade regulations (*i.e.,* time delays, methodologies for calculating block trade sizes, etc.) in order to minimize the potential for regulatory arbitrage.

Second, this proposed approach during the initial period would draw upon the experience of DCMs in considering the potential impacts on liquidity risk that enhanced transparency may cause in connection with futures contract execution.[223] The Commission understands that DCMs have set block sizes primarily in consideration of the objectives of enhancing pre-trade transparency and reducing liquidity risk.[224] The Commission notes that DCMs are required to set block sizes for futures in compliance with relevant core principles (including Core Principle 9) [225] and part 40 of the Commission's regulations.[226]

Swap contracts and futures contracts that are economically related—as defined by the Commission in the proposed amendment to § 43.2—are economic substitutes for the purpose of determining an appropriate minimum block size.[227] Where swap positions are economically related to futures positions, parties would likely have an incentive to conduct regulatory arbitrage by trading swaps. This incentive is created because swap positions provide counterparties with the ability to keep the nature of their trade confidential. Accordingly, the Commission is proposing to adopt the same block sizes established by DCMs in futures markets for futures-related swaps in order to ensure consistent levels of market transparency across futures and swaps markets that are economically related.

For non-futures related swaps in the FX asset class in the initial period of implementation, the Commission is proposing under § 43.6(e)(2) that all non-futures-related swaps in the FX asset class would qualify to be treated as block trades or large notional off-facility swaps (*i.e.,* these swaps would be subject to a time delay under part 43 of the Commission's regulations). The Commission expects that this provision only would apply to the most illiquid swaps.

Request for Comment

Q41. Please provide specific comments regarding the Commission's proposed approach to prescribe initial appropriate minimum block sizes for swaps in the FX asset class.

Q41.a. As a variation of the proposed approach, should the Commission use a ''triangulated'' approach for setting specific appropriate minimum block sizes in the initial period for FX swaps and instruments involving pairings of currencies that are not included in a single FX futures contract but whose currency legs can be indirectly paired through a common FX futures contract pairing with a third currency? [228] That is, the Commission would infer an appropriate minimum block size for pairings not subject to a common block size by comparing the DCM block sizes that apply to each pair with respect to the U.S. dollar and choosing the lower of the two block sizes.[229] This approach would enable the Commission to prescribe an appropriate minimum block size for all pairings involving all combinations of super-major and major currencies (except those involving the Danish krone).

Q42. As an alternative to the proposed approach, should the Commission treat all FX swaps and instruments in the same manner as it is proposing to treat all equity swaps under § 43.6(d) (*i.e.,* all FX swaps and instruments would not be subject to a time delay and as a result

[219] The Commission is proposing to amend § 43.2 to define ''futures related swap'' to mean 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.

[220] For example, if swap A is economically related to futures F, and futures F is subject to the block trade rules of a DCM that applies at a notional amount of $1 million, then swap A would qualify for treatment as a block trade or large notional off-facility swap if the notional amount of swap A exceeds $1 million.

[221] In situations when two or more DCMs offer for trading futures contracts that are economically related, the Commission has selected the lowest applicable non-zero futures block size as the initial appropriate minimum block size. The Commission believes that this approach would reduce the chance that the appropriate minimum block size established by the Commission in the initial period would have an unintended adverse effect on market liquidity for the relevant swap category.

[222] *See* Q18 supra, which sets forth an alternative approach to proposed swap categories based on unique currency combinations.

[223] The Commission notes further that DCMs historically have had the appropriate incentive to balance these considerations because they benefit from liquidity generally (*i.e.,* commissions from transaction volume in block and non-block trades provides DCMs with their primary source of revenue).

[224] The Commission is of the view that the pre-trade and post-trade contexts are sufficiently similar in that policies directed at balancing transparency and liquidity concerns in a pre-trade context are relevant in considering what an appropriate balance is in the post-trade context. In the pre-trade context, block sizes are set near or at the point where a trader would be able to offset the risk of an equally large transaction without bearing liquidity risk.

[225] Core Principle 9 of section 5(d) of the CEA provides that a DCM ''shall provide a competitive, open, and efficient market and mechanism for executing transactions * * *.'' 7 U.S.C. 7(d)(9). Current appendix B to part 38 of the Commission's regulations provides that in order to maintain compliance with core principle 9, DCMs allowing block trading ''should ensure that the block trading does not operate in a manner that compromises the integrity of prices or price discovery on the relevant market.'' *See* 17 CFR 38 app. B.

[226] Section 40.6 of the Commission's regulations include a process by which registered entities may certify rules or rule amendments that establish or change block trade sizes for futures contracts. *See* 17 CFR 40.6.

[227] Correlations among all members of a group of economically related swaps or futures contracts may vary, for the purpose of determining appropriate minimum block sizes. As a general matter, however, such swaps correlate closely in price. *See* § 36.3 of the Commissions regulations.

[228] For example, futures based on Canadian dollar (CAD) and Australian dollar (AUD) currency pairings are not offered on a DCM while Canadian dollar/U.S. dollar DCM futures contracts and Australian dollar/U.S. dollar futures contracts are offered on a DCM. Therefore, the Canadian dollar and Australian dollar can be indirectly paired through their common relationship with U.S. dollar-linked FX futures.

[229] For example, the Canadian dollar/U.S. dollar DCM futures contract is subject to a block size of 10,000,000 CAD and the Australian dollar/U.S. dollar is subject to a block size of 10,000,000 AUD. The Commission would base the appropriate minimum block size for AUD/CAD swaps on the lower of 10,000,000 CAD and 10,000,000 AUD.

would have to be publicly disseminated as soon as technological practicable)? The Commission would premise this alternative on: (1) The existence of very liquid FX spot, futures and forwards markets; and (2) the absence of a centralized FX market structure.

Q43. For longer-dated tenor transactions, should the Commission establish appropriate minimum block sizes at a fraction of the block trade sizes set by DCMs? This variation to the proposed approach would be based on the premise that longer-dated swaps may be less liquid.

Q43.a. If so, then for which specific futures-related swap contracts? What is an appropriate fraction? For which tenors should the fraction apply (*e.g.,* tenors beyond three months, one year, two years, etc.)?

b. Post-Initial Methodology for Determining Appropriate Minimum Block Sizes in the FX Asset Class

In the post-initial period, the Commission is proposing under § 43.6(f)(2) to utilize the 67-percent notional amount calculation to determine appropriate minimum block sizes for swap categories in the FX asset class. That is, the Commission would group all publicly reportable swap transactions in the FX asset class into their respective swap categories and then apply the 67-percent notional amount calculation to determine the appropriate minimum block sizes.

Request for Comment

Q44. Should the Commission continue to utilize the initial appropriate minimum block sizes for futures-related FX swaps as a minimum or floor appropriate minimum block size in the post-initial period? Should this floor level only apply to short-dated tenors? [230]

Q45. Should the Commission establish post-initial appropriate minimum block sizes for swaps in the FX asset class using one of the alternative methodologies discussed in Q35 above?

4. Methodologies for Determining Appropriate Minimum Block Sizes in the Other Commodity Asset Class

The Commission is proposing to use different methodologies for the initial and post-initial periods to determine appropriate minimum block sizes for swaps categories in the other commodity asset class. The proposed methodology for determining the appropriate minimum block sizes in the initial period differs based on the three types of other commodity swap categories: (1) Those swaps based on contracts listed in appendix B to part 43 of the Commission's regulations [231]; (2) swaps that are economically related to certain futures contracts [232]; and (3) other swaps.[233] The Commission has set initial appropriate minimum block sizes for publicly reportable swap transactions in which the underlying asset directly references or is economically related to the natural gas or electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations.[234] The proposed methodology for determining the appropriate minimum block sizes for other commodity swaps in the post-initial period follows the same methodology used for determining the post-initial appropriate minimum block sizes in the interest rate, credit and FX asset classes. A more detailed description of the methodologies during the initial and post-initial periods, as well as the rules for the special treatment of listed natural gas and electricity swaps are presented in the subsections below.

a. Initial Period Methodology for Determining Appropriate Minimum Block Sizes in the Other Commodity Asset Class (Other Than Natural Gas and Electricity Swaps Proposed To Be Listed in Appendix B to Part 43)

With respect to swaps that reference or are economically related to one of the futures contracts listed in appendix B to part 43 [235] or proposed § 43.6(b)(5)(ii), the Commission would set the appropriate minimum block size based on the block sizes for related futures contracts set by DCMs.[236] For swaps that reference or are economically related to a futures contract listed in appendix B to part 43 that is not subject to a DCM block trade rule, the Commission proposes in § 43.6(e)(3) to disallow treatment as a block trade or large notional off-facility swap. The Commission bases this approach on an inference that DCMs have not set block trade rules for certain futures contracts because of the degree of liquidity in those futures markets.

In the initial period, the Commission provides in proposed § 43.6(e)(2) to treat all non-futures-related swaps [237] in the other commodity asset class as block trades or large notional off-facility swaps (*i.e.,* these swaps would be subject to a time delay under part 43, irrespective of notional amount). The Commission currently believes that non-futures-related swaps in the other commodity asset class generally have lower liquidity in contrast to the more liquid interest rate, credit and equity asset classes, as well as other commodity swaps that are economically related to liquid futures contracts (*i.e.,* those futures contracts listed in proposed appendix B to part 43).

Request for Comment

Q46. Should the Commission allow swaps that are economically related to futures contracts listed on appendix B to part 43 (but are not subject to a DCM's block trade rules) to qualify as block trades or large notional off-facility swaps—*i.e.,* should the Commission not finalize § 43.6(e)(3) as proposed? If so, how should the Commission determine the initial appropriate minimum block size for such contracts? [238]

Q47. Please provide comment regarding the Commission's current belief that non-futures-related swaps in the other commodity asset class generally have lower liquidity in contrast to the more liquid interest rate, credit and equity asset classes, as well

[230] For example, swaps with a tenor of less than one or three months.

[231] *See* proposed § 43.6(b)(5)(i).

[232] These futures contracts are: CME Cheese; CBOT Distillers' Dried Grain; CBOT Dow Jones-UBS Commodity Index Excess Return; CBOT Ethanol; CME Frost Index; CME Goldman Sachs Commodity Index (GSCI) (GSCI Excess Return Index); NYMEX Gulf Coast Gasoline; Gulf Coast Sour Crude Oil; NYMEX Gulf Coast Ultra Low Sulfur Diesel; CME Hurricane Index; CME International Skimmed Milk Powder; NYMEX New York Harbor Ultra Low Sulfur Diesel; CBOT Nonfarm Payroll; CME Rainfall Index; CME Snowfall Index; CME Temperature Index; CME U.S. Dollar Cash Settled Crude Palm Oil; and CME Wood Pulp. *See* proposed § 43.6(b)(5)(ii).

[233] *See* proposed § 43.6(b)(5)(iii).

[234] The Commission notes that pursuant to proposed § 43.6(b)(5)(i), each of the listed natural gas and electricity swap contracts proposed to be listed in appendix B to part 43 would be considered its own swap category.

[235] The futures contracts that are currently listed on appendix B to part 43 are the 28 Enumerated Reference Contracts plus Brent Crude Oil (ICE). The 13 swap contracts that the Commission is proposing to add to appendix B to part 43 of the Commission's regulations in this Further Proposal are not futures contracts.

[236] In situations when two or more DCMs offer for trading futures contracts that are economically related, the Commission has selected the lowest applicable non-zero futures block size among the DCMs as the initial appropriate minimum block size. The Commission believes that this approach would reduce the chance that the appropriate minimum block size established by the Commission in the initial period would have an unintended adverse effect on market liquidity for the relevant swap category.

[237] These non-futures related swaps are not economically related to one of the futures contracts listed in proposed appendix B to part 43 or in proposed § 43.6(b)(5)(ii). *See* proposed § 43.6(b)(5)(iii).

[238] For example, the Commission could set an appropriate minimum block size at $25 million or treat all of these swaps as block trades or large notional off-facility swaps.

as in contrast to other commodity swaps that are economically related to liquid futures contracts.

b. Initial Period Methodology for Natural Gas and Electricity Swaps in the Other Commodity Asset Class Proposed To Be Listed in Appendix B to Part 43

For swaps in which the underlying asset references or is economically related to one of the natural gas or electricity swaps listed in appendix B to part 43, the Commission is proposing to treat such natural gas and electricity swaps differently than other publicly reportable swap transactions in the other commodity asset class when setting the initial appropriate minimum block sizes. The Commission recognizes that traders typically offset their positions in the natural gas and electricity markets through trading OTC forward contracts, swaps, plain vanilla options, non-standard options and other customized arrangements since existing futures contracts listed on DCMs only cover a limited number of electricity delivery points.[239] As discussed in section III.C.4 below, the Commission is proposing to amend appendix B to part 43 of the Commission's regulations to add 13 natural gas and electricity swap contracts, which the Commission previously has determined to be liquid contracts serving a price discovery function. Accordingly, the Commission is proposing that for all swaps that reference natural gas or electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations, the Commission would set the initial appropriate minimum block size at $25 million, which corresponds to the level of the interim and initial cap sizes.[240] The $25 million initial appropriate minimum block size would be applied to natural gas and electricity swaps that reference or are economically related to the natural gas and electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations.

Request for Comment

Q48. Please provide specific comments regarding the Commission's proposed approach to determine the initial appropriate minimum block sizes for publicly reportable swap transactions that reference or are economically related to natural gas or electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations.

Q49. Should the initial appropriate minimum block size for the publicly reportable swap transactions that reference the natural gas or electricity swaps proposed to be listed be greater than or lower than $25 million? If so, then why?

Q50. Should the appropriate minimum block sizes for the gas and electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations be different based on the referenced underlying assets? If so, how should the appropriate minimum block sizes be differentiated and at what levels should the appropriate minimum block sizes be set? Please provide data to support your comment.

Q51. Are there other swaps within the other commodity asset class that should be treated in a manner similar to the manner being proposed for the publicly reportable swap transactions that reference or are economically related to the natural gas and electricity swap contracts proposed to be listed in appendix B to part 43 of the Commission's regulations? If so, which underlying assets should be treated the same and why?

c. Post-Initial Period Methodology for Determining Appropriate Minimum Block Sizes in the Other Commodity Asset Class

In the post-initial period, the Commission provides in proposed § 43.6(f)(3) to determine appropriate minimum block sizes for swaps in the other commodity asset class by using the 67-percent notional amount calculation set forth in proposed § 43.6(c)(1). The 67-percent notional amount calculation would be applied to publicly reportable swap transactions in each swap category observed during the appropriate time period.

Request for Comment

Q52. The Commission requests specific comment regarding its proposed methodology to determine post-initial appropriate minimum block sizes for the swap categories in the other commodity asset class.

Q53. As an alternative to the proposed methodology, should the Commission continue to utilize the initial appropriate minimum block sizes for futures-related swaps in the other commodity asset class as a minimum or floor in the post-initial period? If so, then should this floor only apply to short-dated tenors?[241]

Q54. As another alternative, for the swap categories in the other commodity class that fall under proposed § 43.6(b)(5)(iii), should the Commission group these swaps under a single category and apply a single default appropriate minimum block size to all swaps in the category?

Q54.a. If so, then should the Commission set the default appropriate minimum block size without regard to observed data or by some other mechanism?

Q54.b. If the Commission sets the default appropriate minimum block size without regard to observed data, then at what levels should the Commission set appropriate minimum block sizes? For example, should the Commission set the appropriate minimum block size at $25 million?

5. Special Provisions for the Determination of Appropriate Minimum Block Sizes for Certain Types of Swaps

The Commission recognizes the complexity of the swap market may make it difficult to determine appropriate minimum block sizes for particular types of swaps under the methodologies discussed above. For that reason, the Commission is proposing § 43.6(h), which sets out a series of special rules that apply to the determination of the appropriate minimum block sizes for particular types of swaps. The Commission is proposing special rules in respect of: (a) Swaps with optionality; (b) swaps with composite reference prices[242]; (c) ''physical commodity swaps''[243]; (d) currency conversions; and (e) successor

[239] *See, e.g.,* Statement of Richard McMahon, on Behalf of the Edison Electric Institute, the American Gas Association and the Electric Power Supply Association, before the Committee on Agriculture, U.S. House of Representatives, Mar. 31, 2011 (''[Utilities and energy companies] need the ability to use OTC swaps because existing futures contracts cover limited natural gas and electricity delivery points. The derivatives market has proven to be an extremely effective tool in insulating [their] customers from this risk and price volatility. Utilities and energy companies use both exchange traded and cleared and OTC swaps for natural gas and electric power to hedge commercial risk. About one-half of our gas swaps and about one-third of our power swaps are traded on exchanges.'').

[240] For a discussion of interim and initial cap sizes, see section III.A supra of this Further Proposal.

[241] For example, swaps with a tenor of less than one or three months.

[242] The Commission is proposing to amend § 43.2 to define ''swaps with composite reference prices'' as swaps based on reference prices composed of more than one reference price that are in differing swap categories. The Commission is proposing to use this term in connection with the establishment of a method through which parties to a swap transaction can determine whether a component to their swap would qualify the entire swap as a block trade or large notional off-facility swap.

[243] The Commission is proposing to amend § 43.2 of the Commission's regulations by defining the term ''physical commodity swap'' as a swap in the other commodity asset class that is based on a tangible commodity.

currencies. Each of these special rules is discussed in the subsections below.

a. Swaps With Optionality

A swap with optionality highlights special concerns in terms of determining whether the notional size of such swap would be treated as a block trade or large notional off-facility swap. Proposed § 43.6(h)(1) addresses these concerns and provides that the notional size of swaps with optionality shall equal the notional size of the swap component without the optional component. For example, a LIBOR 3-month call swaption with a calculated notional size of $9 billion for the swap component—regardless of option component, strike price, or the appropriate delta factor—would have a notional size of $9 billion for the purpose of determining whether the swap would qualify as a block trade or large notional off-facility swap.[244]

The Commission is proposing to take this approach with respect to swaps with optionality because, in the Commission's view, it provides an easily calculable method for market participants to ascertain whether their swaps with optionality features would qualify as a block trade or large notional off-facility swap. The Commission is aware that this approach does not take into account the risk profile of a swap with optionality compared to that of a ''plain-vanilla swap,'' but believes that this approach is reasonable to minimize complexity.

b. Swaps With Composite Reference Prices

Swaps with two or more reference prices (*i.e.,* composite reference prices) raise concerns as to which reference price market participants should use to determine whether such swap qualifies as a block trade or large notional off-facility swap.[245] Proposed § 43.6(h)(2) provides that the parties to a swap transaction with composite reference prices (*i.e.,* two or more reference prices) may elect to apply the lowest appropriate minimum block size applicable to any component swap category. This provision also would apply to: (1) Locational or grade-basis swaps that reflect differences between two or more reference prices; and (2) swaps utilizing a reference price based on weighted averages of component reference prices.[246] The Commission is proposing § 43.6(h)(2) in order to provide market participants with a straightforward and uncomplicated way in which determine whether such swap would qualify as a block trade or large notional off-facility swap.

Under proposed § 43.6(h)(2), market participants would need to decompose their composite reference price swap transaction in order to determine whether their swap would qualify as a block trade or large notional off-facility swap. For example, assume that the appropriate minimum block sizes for futures A-related swaps is $3 million, for futures B-related swaps is $800,000, for futures C-related swaps is $1.2 million and for futures D-related swaps is $1 million. If a swap is based on a composite reference price that itself is based on the weighted average of futures price A, futures price B, futures price C, and futures price D (25% equal weightings for each), and the notional size of the swap is $4 million (*i.e.,* $1 million for each component swap category), then the swap would qualify as a block trade or large notional off-facility swap based on the futures B-related swap appropriate minimum block size.

c. Physical Commodity Swaps

Block trade sizes for physical commodities are generally expressed in terms of notional quantities (*e.g.,* barrels, bushels, gallons, metric tons, troy ounces, etc.). The Commission is proposing a similar convention for determining the appropriate minimum block sizes for block trades and large notional off-facility swaps. In particular, proposed § 43.6(h)(3) provides that notional sizes for physical commodity swaps shall be expressed in terms of notional quantities using the notional unit measure utilized in the related futures contract market or the predominant notional unit measure used to determine notional quantities in the cash market for the relevant, underlying physical commodity. This approach ensures that appropriate minimum block size thresholds for physical commodities are not subject to volatility introduced by fluctuating prices. This approach also eliminates complications arising from converting a physical commodity transaction in one currency into another currency to determine qualification for treatment as a block trade or large notional off-facility swap.

d. Currency Conversion

Under proposed § 43.6(h)(4), the Commission provides that when determining whether a swap transaction denominated in a currency other than U.S. dollars qualifies as a block trade or large notional off-facility swap, swap counterparties 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. This proposed approach would enable market participants to use a currency exchange rate that they deem to be the most appropriate or easiest to obtain.

e. Successor Currencies

As noted above, the Commission is proposing to use currency as a criterion to determine swap categories in the interest rate asset class.[247] The Commission is also proposing to classify the euro (EUR) as a super-major currency, among other currencies.[248] Proposed § 43.6(h)(5) provides that for currencies that succeed a super-major currency, the appropriate currency classification for such currency would be based on the corresponding nominal gross domestic product (''GDP'') classification (in U.S. dollars) as determined in the most recent World Bank World Development Indicator at the time of succession. This proposed provision is intended to address the possible removal of one or more of the 17 eurozone member states that use the euro.[249]

Proposed § 43.6(h)(5)(i)–(iii) further specifies the manner in which the Commission would classify a successor currency for each nation that was once a part of the predecessor currency. Specifically, the Commission proposes to use GDP to determine how to classify a successor currency. For countries with a GDP greater than $2 trillion, the Commission would classify the successor currency to be a super-major currency.[250] For countries with a GDP

[244] In essence, this approach would assume a delta factor of one with respect to the underlying swap for swaptions.

[245] Swaps with composite reference prices are composed of reference prices that relate to one another based on the difference between two or more underlying reference prices—for example, a locational basis swap (*e.g.,* a natural gas Rockies Basis swap) that utilizes a reference price based on the difference between a price of a commodity at one location (*e.g.,* a Henry Hub index price) and a price at another location (*e.g.,* a Rock Mountains index price)).

[246] In other words, swaps with a composite reference price composed of reference prices that relate to one another based on an additive relationship. This term would include swaps that are priced based on a weighted index of reference prices.

[247] *See* proposed § 43.6(b)(1)(i) and the related discussion in section II.B.1. of this Further Proposal.

[248] *See* the proposed amendment to § 43.2, defining ''super-major currencies.''

[249] The 17 countries that use the euro are: Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain.

[250] *See* proposed § 43.6(h)(6)(i).

greater than $500 billion but less than $2 trillion, the Commission would classify the successor currency as a major currency.[251] For nations with a GDP less than $500 billion, the Commission would classify the successor currency as a non-major currency.[252]

Request for Comment

Q55. The Commission requests general comments on its proposed special rules in proposed § 43.6(h).

Q56. As an alternative to the proposed method for determining whether a swap with optionality would qualify as a block trade or large notional off-facility swap (*i.e.,* proposed § 43.6(h)(1), should the Commission use a delta-equivalent or gamma-equivalent approach to determine the notional size of swaps with optionality?

Q56.a. What are the direct and indirect costs to market participants of determining delta or gamma equivalents?

Q57. As an alternative to proposed § 43.6(h)(3), should the Commission base notional sizes for physical commodities on the notional amount in the applicable currency?

Q58. As an alternative to proposed § 43.6(h)(4), should the Commission mandate that market participants use the most recent currency exchange rate set at some specified time and location (*e.g.,* 4 p.m. London time from the preceding business day)? This alternative approach could provide greater certainty as to the appropriate conversion rates at the cost of the providing market participants with greater flexibility.

Q59. As another alternative to proposed § 43.6(h)(4), should the Commission publish a currency exchange rate on the Commission's Web site in connection with its regular post-initial appropriate minimum block size determination? If so, then how should the Commission determine the currency exchange rate?

Q60. As an alternative to proposed § 43.6(h)(5), should the Commission classify all successor currencies as major currencies?

Q60.a. Some critics have argued that too much emphasis is currently placed on the importance of GDP as a measure of progress. Should the Commission use a measure other than GDP (*e.g.,* the Index of Sustainable Economic Welfare)?

[251] *See* proposed § 43.6(h)(6)(ii).

[252] *See* proposed § 43.6(h)(6)(iii).

E. Procedural Provisions

1. Proposed § 43.6(a) Commission Determination

The Commission is proposing that it determine the appropriate minimum block size for any swap listed on a SEF or DCM, and for large notional off-facility swaps. Proposed § 43.6(a) specifically provides that the Commission would establish the appropriate minimum block sizes for publicly reportable swap transactions based on the swap categories set forth in proposed § 43.6(b) in accordance with the provisions set forth in proposed §§ 43.6(c), (d), (e), (f) and (h), as applicable. In the Commission's view, this proposed approach would be the least burdensome from a cost-benefit perspective because it significantly reduces the direct costs imposed on SDRs and other registered entities. As noted above, nothing in this Further Proposal would prohibit SEFs and DCMs from setting block sizes for swaps at levels that are higher than the appropriate minimum block sizes determined by the Commission.

Request for Comment

Q61. The Commission requests specific comments on its proposal that the Commission determine appropriate minimum block sizes.

Q62. In the alternative, should the Commission permit SEFs or DCMs to determine the appropriate minimum block size for swaps that the SEFs or DCMs list? Would this alternative lead to unnecessary market fragmentation?

Q62.a. What would be the appropriate parameters or guidance that the Commission should give to SEFs or DCMs in setting appropriate minimum block sizes?

Q62.b. What procedure could the Commission use to ensure that there are standard appropriate minimum block size determinations across all markets?

2. Proposed § 43.6(f)(3) and(4) Publication and Effective Date of Post-Initial Appropriate Minimum Block Sizes

Proposed § 43.6(f)(3) provides that the Commission would publish the post-initial appropriate minimum block sizes on its Web site. Proposed § 43.6(f)(4) provides that these sizes would become effective on the first day of the second month following the date of publication. Per proposed § 43.6(f)(1), the Commission would publish updated post-initial appropriate minimum block sizes in the same manner no less than once each calendar year.

Request for Comment

Q63. The Commission requests specific comment on proposed §§ 43.6(f)(3) and (4).

Q64. Instead of publishing initial appropriate minimum block sizes through proposed appendix F to part 43, should the Commission publish these initial appropriate minimum block sizes on the Commission's Web site at *http://www.cftc.gov*? This approach would ensure that in the post-initial period, no confusion arises in terms of the method for publication and the relevant appropriate minimum block sizes.

3. Proposed § 43.6(g) Notification of Election

Proposed § 43.6(g) sets forth the election process through which a qualifying swap transaction would be treated as a block trade or large notional off-facility swap, as applicable. Proposed § 43.6(g)(1) establishes a two-step notification process relating to block trades. Proposed § 43.6(g)(2) establishes the notification process relating to large notional off-facility swaps.

Proposed § 43.6(g)(1)(i) contains the first step in the two-step notification process relating to block trades. In particular, this section provides that the parties to a publicly reportable swap transaction that has a notional amount at or above the appropriate minimum block size are required to notify the SEF or DCM (pursuant to the rules of such SEF or DCM) of their election to have their qualifying publicly reportable swap transaction treated as a block trade. With respect to the second step, proposed § 43.6(g)(1)(ii) provides that the SEF or DCM, as applicable, that receives an election notification is required to notify the relevant SDR of such block trade election when transmitting swap transaction and pricing data to the SDR for public dissemination.

Proposed § 43.6(g)(2) is very similar to the first step set forth in proposed § 43.6(g)(1). That is, proposed § 43.6(g)(2) provides, in part, that a reporting party who executes an off-facility swap with an notional amount at or above the applicable appropriate minimum block size is required to notify the relevant SDR of its election to treat such swap as a large notional off-facility swap. This section provides further that the reporting party is required to notify the relevant SDR in connection with the reporting party's transmission of swap transaction and pricing data to the SDR pursuant to § 43.3 of the Commission's regulations.

Request for Comment

Q65. The Commission requests specific comments regarding proposed § 43.6(g), the proposed notification process for the election to treat a qualifying swap transaction as a block trade or large notional off-facility swap.

Q66. As a variation of the proposed approach, should the Commission also require SEFs, DCMs and reporting parties to indicate under which swap category they are claiming block trade or large notional off-facility swap treatment in connection with the transmission of an election notification?

Q67. Are there alternative methods through which a reporting party can elect to treat its qualifying swap transaction as a block trade or large notional off-facility?

Q68. Should the Commission establish a special method of election for small end-users when those end users are the reporting party to a qualifying swap transaction?

4. Proposed § 43.7 Delegation of Authority

Under proposed § 43.7(a), the Commission would delegate the authority to undertake certain Commission actions to the Director of the Division of Market Oversight (''Director'') and to other employees as designated by the Director from time to time. In particular, this proposed delegation would grant to the Director the authority to determine: (1) The new swap categories as described in proposed § 43.6(b); (2) the post-initial appropriate minimum block sizes as described in proposed § 43.6(f); and (3) the post-initial cap sizes as described in the proposed amendments to § 43.4(h) of the Commission's regulations.[253] The purpose of this proposed delegation provision is to facilitate the Commission's ability to respond expeditiously to ever-changing swap market and technological conditions. The Commission is of the view that this delegation would help ensure timely and accurate real-time public reporting of swap transaction and pricing data and further ensure anonymity in connection with the public reporting of such data. Proposed § 43.7(b) provides that the Director may submit to the Commission for its consideration any matter that has been delegated pursuant to this authority. Proposed § 43.7(c) provides that the delegation to the Director does not prevent the Commission, at its election, from exercising the delegated authority.

Request for Comment

Q69. The Commission requests specific comment on its proposed delegation of authority to the Director of certain Commission actions.

Q70. Should the Director be given the authority to take other actions not identified in proposed § 43.7 on behalf of the Commission in connection with the calculation of post-initial appropriate minimum block sizes and cap sizes? If so, then what other actions?

III. Further Proposal—Anonymity Protections for the Public Dissemination of Swap Transaction and Pricing Data

A. Policy Goals

Section 2(a)(13)(E)(i) of the CEA directs the Commission to protect the identities of counterparties to swaps subject to the mandatory clearing requirement, swaps excepted from the mandatory clearing requirement and voluntarily cleared swaps. Similarly, section 2(a)(13)(C)(iii) of the CEA requires that the Commission prescribe rules that maintain the anonymity of business transactions and market positions of the counterparties to an uncleared swap.[254] In proposed amendments to §§ 43.4(h) and 43.4(d)(4), the Commission is prescribing measures to protect the identities of counterparties and to maintain the anonymity of their business transactions and market positions in connection with the public dissemination of publicly reportable swap transactions. The Commission is proposing to follow the practices used by most federal agencies when releasing to the public company-specific information—by removing obvious identifiers, limiting geographic detail (*e.g.,* disclosing the general, non-specific geographical information about the delivery and pricing points) and masking high-risk variables by truncating extreme values for certain variables (*e.g.,* capping notional values).[255] Further details about the proposals to determine cap sizes and applying them to various swap categories are described below in section III.B of this Further Proposal. Further details regarding the limitations placed on SDRs in connection with the public disclosure of geographic details for the other commodity asset class are provided below in section III.C of this Further Proposal.

B. Establishing Notional Cap Sizes for Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time

1. Policy Goals for Establishing Notional Cap Sizes

In addition to establishing appropriate minimum block sizes, the Commission is also proposing to amend § 43.4(h) to establish cap sizes for notional and principal amounts that would mask the total size of a swap transaction if it equals or exceeds the appropriate minimum block size for a given swap category. For example, if the block size for a category of interest rate swaps was $1 billion, the cap size was $1.5 billion, and the actual transaction had a notional value of $2 billion, then this swap transaction would be publicly reported with a delay and with a notional value of $1.5+ billion.

The proposed cap size provisions are consistent with the two relevant statutory requirements in section 2(a)(13) of the CEA. First, the cap size provisions would help to protect the anonymity of counterparties' market positions and business transactions as required in section 2(a)(13)(C)(iii) of the CEA.[256] Second, the masking of extraordinarily large positions also takes into consideration the requirement under section 2(a)(13)(E)(iv), which provides that the Commission take into account the impact that real-time public reporting could have in reducing market liquidity.[257]

2. Proposed Amendments Related to Cap Sizes—§ 43.2 Definitions and § 43.4 Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time

The Commission is proposing an amendment to § 43.2 to define the term ''cap size'' as the maximum limit of the principal, notional amount of a swap that is publicly disseminated. This term applies to the cap sizes determined in accordance with the proposed

[253] *See* the discussion of post-initial cap sizes in section III.B. infra. As noted above, the Commission is proposing an amendment to § 43.2 to define the term ''cap size'' as the maximum limit of the principal, notional amount of a swap that is publicly disseminated. This term applies to the cap sizes determined in accordance with the proposed amendments to § 43.4(h) of the Commission's regulations.

[254] This provision does not cover swaps that are ''determined to be required to be cleared but are not cleared.'' *See* 7 U.S.C. 2(a)(13)(C)(iv).

[255] The Commission is following the necessary procedures for releasing microdata files as outlined by the Federal Committee on Statistical Methodology: (i) Removal of all direct personal and institutional identifiers, (ii) limiting geographic detail, and (iii) top-coding high-risk variables which are continuous. *See* Federal Committee on Statistical Methodology, Report on Statistical Disclosure Limitation Methodology 94 (Statistical Policy Working Paper 22, 2d ed. 2005), *http://www.fcsm.gov/working-papers/totalreport.pdf.* The report was originally prepared by the Subcommittee on Disclosure Limitation Methodology in 1994 and was revised by the Confidentiality and Data Access Committee in 2005.

[256] *See* 7 U.S.C. 2(a)(13)(C)(iii).

[257] *See id.* at 2(a)(13)(E)(iv).

amendments to § 43.4(h) of the Commission's regulations.

Section 43.4(h) of the Commission's regulations currently establishes interim cap sizes for rounded notional or principal amounts for all publicly reportable swap transactions. In the Adopting Release, the Commission finalized § 43.4(h) to provide that the notional or principal amounts shall be capped in a manner that adjusts in accordance with the appropriate minimum block size that corresponds to a publicly reportable swap transaction.[258] Section 43.4(h) further provides that if no appropriate minimum block size exists, then the cap size on the notional or principal amount shall correspond to the interim cap sizes that the Commission has established for the five asset classes.[259] In § 43.4(h) and as described in the Adopting Release, the Commission notes that SDRs will apply interim cap sizes until such time as appropriate minimum block sizes are established.[260] The Commission continues to believe that the interim cap sizes for each swap category should correspond with the applicable appropriate minimum block size, to the extent that an appropriate minimum block size exists.[261]

The Commission is now proposing to amend § 43.4(h) both to establish initial cap sizes for each swap category within the five asset classes and also to delineate a process for the post-initial period through which the Commission would establish post-initial cap sizes for each swap category.[262] This Further Proposal would change the term ''interim'' as it is used in § 43.4(h) to ''initial'' in order to correspond with the description of the initial period in proposed § 43.6(e).

a. Initial Cap Sizes

In the initial period,[263] proposed § 43.4(h)(1) sets the cap size for each swap category as the greater of the interim cap sizes set forth in the Adopting Release (existing § 43.4(h)(1)–(5)) or the appropriate minimum block size for the respective swap category.[264] If such appropriate minimum block size does not exist, then the cap sizes shall be set at the interim cap sizes set forth in the Adopting Release (existing § 43.4(h)(1)–(5)).

b. Post-Initial Cap Sizes and the 75-Percent Notional Amount Calculation

In proposed § 43.6(c)(2), the Commission would use the 75-percent notional amount calculation as a means to set post-initial cap sizes for the purpose of reporting block trades or large notional off-facility swaps of significant size. This calculation methodology is different from the 67-percent notional amount calculation methodology that the Commission proposes in § 43.6(c)(1) for determining appropriate minimum block sizes. The Commission is proposing to use the former methodology to set post-initial cap sizes because setting cap sizes above appropriate minimum block sizes would provide additional pricing information with respect to large swap transactions, which are large enough to be treated as block trades (or large notional off-facility swaps), but small enough that they do not exceed the applicable post-initial cap size. This additional information may enhance price discovery by publicly disseminating more information relating to market depth and the notional sizes of publicly reportable swap transactions, while still protecting the anonymity of swap counterparties and their ability lay off risk when executing extraordinarily large swap transactions.

The Commission notes that the appropriate minimum block sizes and the cap sizes seek to achieve the statutory goals set forth in CEA section 2(a)(13)(E)(iv) in different ways.[265] Appropriate minimum block sizes achieve this statutory requirement by providing market participants transacting large notional swaps with a time delay in the public dissemination of swap transaction and pricing data relating to such swaps. As a result of these time delays, market participants are able to offset the risk associated with these swaps. Cap sizes achieve the statutory requirement of CEA section 2(a)(13)(E)(iv) by masking the notional size of large transactions permanently from public dissemination. As a result, market participants conducting extraordinarily large swap transactions would be able to offset risk since an SDR would not publicly disseminate the actual notional amount of such transactions.

While appropriate minimum block sizes and cap sizes both seek to achieve the statutory mandate in CEA section 2(a)(13)(E)(iv), they also seek to address different statutory requirements. As noted above, CEA sections 2(a)(13)(E)(ii) and (iii) require that the Commission specify criteria for determining block trades and large notional off-facility swaps for the purpose of subjecting those trades and swaps to a time delay from public dissemination. In addition, CEA sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i) require that the Commission promulgate regulations ensuring that public reporting does not disclose the identities, business transactions and market positions of any person. Cap sizes primarily address the statutory requirements in CEA sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i), while appropriate minimum block sizes primarily address the statutory requirements in 2(a)(13)(E)(ii) and (iii).

Pursuant to proposed § 43.4(h)(2)(ii), the Commission would use a 75-percent notional amount calculation to determine the appropriate post-initial cap sizes for all swap categories.[266] For the 75-percent notional amount calculation, the Commission would determine the appropriate cap size through the following process, pursuant to proposed § 43.6(c)(2): (step 1) Select all of the publicly reportable swap transactions within a specific swap category using a rolling three-year window of data beginning with a minimum of one year's worth of data and adding one year of data for each calculation until a total of three years of data is accumulated; (step 2) convert to the same currency or units and use a trimmed data set; (step 3) determine the sum of the notional amounts of swaps in the trimmed data set; (step 4) multiply the sum of the notional amount by 75 percent; (step 5) rank order the observations by notional amount from least to greatest; (step 6) calculate the cumulative sum of the

[258] *See* 77 FR 1,247.

[259] Sections 43.4(h)(1)–(5) established the following interim cap sizes for the corresponding asset classes: (1) Interest rate swaps at $250 million for tenors greater than zero up to and including two years, $100 million for tenors greater than two years up to and including 10 years, and $75 million for tenors greater than 10 years; (2) credit swaps at $100 million; (3) equity swaps at $250 million; (4) foreign exchange swaps at $250 million; and (5) other commodity swaps at $25 million.

[260] *See* 77 FR 1,215.

[261] Leading industry trade associations agree that cap sizes are an appropriate mechanism to ensure that price discovery remains intact for block trades, while also protecting post-block trade risk management needs from being anticipated by other market participants. *See* ISDA and SIFMA, Block Trade Reporting for Over-the-Counter Derivatives Market, Jan. 18, 2011.

[262] The Commission does not intend the provisions in this Further Proposal to prevent a SEF or DCM from sharing the exact notional amounts of a swaps transacted on or pursuant to the rules of its platform with market participants on such platform irrespective of the cap sizes set by the Commission. To share the exact notional amounts of swaps, the SEF or DCM must comply with § 43.3(b)(3)(i) of the Commission's regulations. *See* 77 FR 1,245.

[263] The initial period is the period prior to the effective date of a Commission determination to establish an applicable post-initial cap sizes. *See* proposed § 43.4(h)(1).

[264] *See* 77 FR 1,249.

[265] Section 2(a)(13)(E)(iv) of the CEA requires that the Commission ensure that public reporting does not materially reduce market liquidity. *See* 7 U.S.C. 2(a)(13)(E)(iv).

[266] *See* proposed § 43.6(c)(2).

observations until the cumulative sum is equal to or greater than the 75-percent notional amount calculated in step 4; (step 7) select the notional amount associated with that observation; (step 8) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and (step 9) set the appropriate minimum block size at the amount calculated in step 8.

Consistent with the Commission's proposed process to determine the appropriate post-initial minimum block sizes, proposed § 43.4(h)(3) provides that the Commission would publish post-initial cap sizes on its Web site. Proposed § 43.4(h)(4) provides that unless otherwise indicated on the Commission's Web site, the post-initial cap sizes would become effective on the first day of the second month following the date of publication.

c. Alternative Cap Size Calculations

In addition to the 75-percent notional amount calculation, the Commission is considering alternative calculations that it would use to set post-initial cap sizes. These calculations are based on common statistical disclosure controls used by other agencies in making data publicly available.[267]

Specifically, the Commission is considering the following six alternative calculations to the 75-percent notional amount calculation of cap sizes during the post-initial period:

• *67-percent Notional Amount Calculation with a Floor.* As a variation of the 75-percent notional amount calculation the Commission is considering determining post-initial cap sizes as the greater of the result of the 75-percent notional amount calculation or the interim cap sizes described in the Adopting Release (existing §§ 43.4(h)(1)–(5)). The Commission recognizes that in certain markets ''shredding'' may result in smaller transaction sizes,[268] thereby impacting the resulting cap size as determined pursuant to the 75-percent notional amount calculation. As a result, post-initial cap sizes could reach levels that are significantly lower than those adopted as interim cap sizes in § 43.4(h). In order to ensure that the public and market participants are provided with meaningful data related to notional amounts and market depth, the Commission believes that requiring this variation may appropriately enhance price discovery consistent with the purpose of CEA section 2(a)(13)(B).

• *Appropriate Minimum Block Size with a Floor.* The Commission is considering whether to set the post-initial cap sizes equal to the greater of the post-initial appropriate minimum block size or the interim cap sizes described in the Adopting Release (existing §§ 43.4(h)(1)–(5)). This alternative method for determining post-initial cap sizes would directly link the post-initial cap sizes to the post-initial appropriate minimum block sizes.

• *Number of Non-affiliated Markets Participant Calculation.* The Commission is also considering whether to set post-initial cap sizes using a calculation that determines the minimum notional value cap size based on the number of non-affiliated market participants who have transactions with notional values greater than the cap size. This process would determine the post-initial cap size through the following process: (1) Select the swap transaction data for a specific swap category; (2) convert to the same currency or units and use a trimmed data set; (3) determine the transaction distribution of notional amounts using the trimmed data set for the swap category; (4) find the minimum notional value where, for transactions with a notional value greater than that value, there are 10 non-affiliated market participants. The Commission anticipates that under this alternative approach, all market participants from the same legal entity would be considered as one non-affiliated market participant.

• *Non-affiliated Market Participants and Minimum Concentration Calculation.* The Commission is also considering whether to set post-initial cap sizes using a calculation that determines the minimum notional value cap size based on number of market participants and the market concentration of transactions with notional sizes above the cap size. This process would determine the post-initial cap size through the following process: (1) Select the swap transaction data for a specific swap category; (2) convert to the same currency or units and use a trimmed data set; (3) determine the transaction distribution of notional amounts using the trimmed data set for the category; (4) find the minimum notional size such that the number of unique participants in a swap category with transactions greater than that value exceeds 10, the maximum share of any one participant in trades above the minimum notional value is less than 25 percent, or the maximum share of notional value by a participant for transactions greater than the minimum notional value is less than 25 percent.

• *Confidence Interval Test.* The Commission is also considering whether to set post-initial cap sizes using a confidence interval test, which determines the point at which masking one more transaction causes the average notional size—calculated from the data for all publicly reportable swap transactions—to be outside of the expected range of the true notional size. This alternative test takes into account the impact of information loss on the transparency for swap transaction and pricing data. The confidence interval test calculates the minimum notional value as the point where the publicly disseminated average notional size is within the 95-percent confidence interval using the following process: (step 1) Select the swap transaction data for a specific swap category; (step 2) convert to the same currency or units and determine the transaction distribution of notional amounts using the logged[269] and trimmed data set for the swap category; (step 3) calculate the average notional size and the 95-percent confidence interval around this average;[270] (step 4) drop the largest

[267] These are typical of statistical disclosure practices used by other Federal agencies as described in the Report on Statistical Disclosure Limitation Methodology, *see* note 255 *supra.*

[268] The term ''shredding'' refers to the practice of breaking up a large swap transaction into a number of smaller ones. The practice is often done to avoid causing a large impact on prices or to conceal the existence of a large trade originating from a single source. When traders attempt to execute a single large trade they may be required to pay a liquidity or risk premium to encourage traders on the other side of the market to take on the trade. Shredding by market participants may cause a marked decrease in the average notional size of transactions as a participant executes numerous smaller transactions as opposed to a single large transaction. For a further discussion of shredding, *see* note 217 *supra.*

[269] In practice, the natural logarithm of the notional value is preferred over the nominal value to reduce the effect of skewness on sample statistics. In addition to classical statistical methods, the calculation of the confidence interval may be improved by using ''bootstrapping'' methods to estimate the distribution of the average notional trade size.

[270] The confidence interval test assumes sufficient data in a swap category such that a normal distribution is a good approximation to compute an interval estimate. To the extent the actual distribution diverges significantly from a normal distribution, the interval estimate may not reflect the probability at the desired (95 percent) confidence interval. In which case, other methods such as ''bootstrapping'' may be necessary to compute the confidence intervals around the full sample average notional size. The Commission notes the ODSG data sets were not normally distributed, but were nearly symmetric after transforming the notional size by the natural logarithm. Further, according to a TABB Group survey, many market participants expected the average notional transaction size to decline, which may imply a change in the distribution. *See* the presentation of Kevin McPartland, Principal, Tabb

remaining transaction from the distribution [271]; (step 5) conditional on the full-sample 95-percent confidence interval, calculate the sample average notional size using the data resulting from step 4; (step 6) if the sample average notional size is not outside of the 95-percent confidence interval, repeat steps 4 and 5 until it is just outside of the 95-percent confidence interval; and (step 7) once the sample average notional size is outside the 95-percent confidence interval, set the minimum notional value equal to the notional value, rounded pursuant to § 43.4(g), of the largest transaction of the distribution for which the sample average notional size was still within the 95-percent confidence interval.[272]

• *Variation of the Confidence Interval Test.* The Commission is also considering a slightly different methodology for the confidence interval test. This variation still would calculate the average of the entire distribution using all of the available data and the 95-percent confidence interval for that average. However, instead of completely dropping the largest remaining transactions (step 4, as referenced in the previous alternative) and then calculating the sample average notional size for the publicly disseminated information without any information from these ''dropped'' transactions (step 5), this alternative methodology would use the notional value of the largest transaction (that would otherwise have been dropped) as though it were the cap size and would calculate the average notional size of the publicly disseminated data by setting the notional values above that size equal to the cap. This approach would simulate the information known by the public if the notional value of that last transaction was the notional cap size. Since the Commission would calculate the average of publicly disseminated transactions with an approximation of the notional value of such transactions above the cap size, the cap size would be lower than the methodology where all information about the size of the transaction is dropped from the estimation.

Request for Comment

Q71. Please provide specific comments regarding the Commission's proposed approach regarding cap sizes in the initial period.

Q72. Please provide specific comments regarding the Commission's proposed approach to set cap sizes in the post-initial period.

Q73. As an alternative to the proposed approach, should initial and post-initial cap sizes always be equal to the appropriate minimum block size for a particular swap category?

Q74. Please provide comments regarding the above-described alternative methods for determining post-initial cap sizes.

Q74.a. Specifically, would any of these alternatives lead to the unintended public disclosure of the identities, market positions and business transactions of swap counterparties?

Q75. Should the Commission provide a fixed cap size for each asset class rather than varying the cap size by swap category?

Q76. Should the Commission consider using linear sensitivity measures or other statistical disclosure controls outlined in the Report on Statistical Disclosure Limitation Methodology from the Federal Committee on Statistical Methodology to set post-initial cap sizes?

Q77. Is the definition of a ''non-affiliated market participant's as described in the alternative methods for calculating the post-initial cap sizes the correct definition for the purpose of calculating the minimum notional amounts that are publicly disseminated?

Q78. Are there other alternative methods for determining the post-initial notional cap sizes that the Commission should consider that are not described in this Further Proposal? If yes, please explain those methods, as well as any data, studies or additional information to support such method.

C. Masking the Geographic Detail of Swaps in the Other Commodity Asset Class

1. Policy Goals for Masking the Geographic Detail for Swaps in the Other Commodity Asset Class

In the Adopting Release, the Commission sets forth general protections for the identities, market positions and business transactions of swap counterparties in § 43.4(d). Section 43.4(d) generally prohibits an SDR from publicly disseminating swap transaction and pricing data in a manner that discloses or otherwise facilitates the identification of a swap counterparty.[273] Notwithstanding that prohibition, § 43.4(d)(3) provides that SDRs are required to publicly disseminate data that discloses the underlying asset(s) of publicly reportable swap transactions.

Section 43.4(d)(4) contains special provisions for swaps in the other commodity asset class. These swaps raise special concerns because the public disclosure of the underlying asset(s) may in turn reveal the identities, market positions and business transactions of the swap counterparties. To address these concerns, § 43.4(d)(4) limits the types of swaps in the other commodity asset class that are subject to public dissemination. Specifically, § 43.4(d)(4)(ii) of the Commission's regulations provides that, for publicly reportable swap transactions in the other commodity asset class, SDRs must publicly disseminate the actual underlying assets only for: (1) Those swaps executed on or pursuant to the rules of a SEF or DCM; (2) those swaps referencing one of the contracts described in appendix B to part 43; and (3) those swaps that are economically related to one of the contracts described in appendix B to part 43.[274] Essentially, the Commission has determined that these three categories of swap have sufficient liquidity such that the disclosure of the underlying asset would not reveal the identities, market positions and business transactions of the swap counterparties.

In its Adopting Release, the Commission included in appendix B to part 43 a list of contracts that, if referenced as an underlying asset, should be publicly disseminated in full without limiting the commodity or geographic detail of the asset. In this Further Proposal, the Commission is proposing to add 13 contracts to appendix B to part 43 under the ''Other Contracts'' heading.[275] The Commission believes that since it previously has determined that these 13 contracts have material liquidity and price references, among other things, the public dissemination of the full underlying asset for publicly reportable swap transactions that reference such contracts (and any underlying assets

Group, CFTC Technology Advisory Committee Meeting, Dec. 13, 2011, available at *http://www.cftc.gov/PressRoom/Events/opaevent_tac121311.*

[271] The Commission is also considering dropping transactions in one-percent increments until the sample average moves outside the 95-percent confidence interval. The Commission would then drop transactions within the last one-percent increment until the actual transaction is found that moves the sample mean outside of the confidence interval.

[272] *See* § 43.4(g), which provides that the notional or principal amount of a publicly reportable swap transaction, ''as described in appendix A to this part [43], shall be rounded and publicly disseminated by [an SDR]'' based on the range of notional or principal amounts.

[273] *See* § 43.4(d)(1) of the Commission's regulations.

[274] Appendix B to part 43 provides a list of 28 ''Enumerated Physical Commodity Contracts'' as well as one contract under the ''Other Contracts'' heading. *See* 77 FR 1,182 app. B.

[275] Appendix B to part 43 currently lists only Brent Crude Oil (ICE) under the ''Other Contracts'' heading.

that are economically related thereto) would not disclose the identities, market positions and business transactions of swap counterparties.

Pursuant to the Adopting Release, any publicly reportable swap transaction in the other commodity asset class that is excluded under § 43.4(d)(4)(ii) would not be subject to the reporting and public dissemination requirements for part 43 upon the effective date of the Adopting Release. The Commission noted in the Adopting Release that it planned to address the group of other commodity swaps that were not subject to the rules of part 43 in a forthcoming release.[276] Accordingly, the Commission is proposing rules in this Further Proposal to address the public dissemination of swap transaction and pricing data for the group of other commodity swaps that are not covered currently by § 43.4(d)(4)(ii).

The Commission is of the view that given the lack of data on the liquidity for certain swaps in the other commodity asset class, the lack of data on the number of market participants in these other commodity swaps markets, and the statutory requirement to protect the anonymity of market participants,[277] the public dissemination of less specific information for swaps with specific geographic or pricing detail may be appropriate. The Commission anticipates that the public dissemination of the exact underlying assets for swaps in this group of the other commodity asset class may subject the identities, market positions and business transactions of market participants to unwarranted public disclosure if additional protections are not established with respect to the geographic detail of the underlying asset. For that reason, the Commission is proposing that SDRs mask or otherwise disguise the geographic details related to the underlying assets of a swap in connection with the public dissemination of such swap transaction and pricing data.[278]

2. Proposed Amendments to § 43.4

In order to accommodate the policy goals described above, the Commission is proposing to add § 43.4(d)(4)(iii) to part 43 to establish rules regarding the public dissemination of the remaining group of swaps in the other commodity asset class (*i.e.,* those not described in § 43.4(d)(4)(ii)). In the Commission's view, proposed § 43.4(d)(4)(iii) would ensure that the public dissemination of swap transaction and pricing data would not unintentionally disclose the identities, market positions and business transactions of any swap counterparty to a publicly reportable swap transaction in the other commodity asset class. In particular, proposed § 43.4(d)(4)(iii) provides that SDRs must publicly disseminate the details about the geographic location of the underlying assets of the other commodity swaps not described in § 43.4(d)(4)(ii) (*i.e.,* other commodity swaps that have a specific delivery or pricing point) pursuant to proposed appendix E to part 43. Proposed appendix E to part 43 is discussed in the next subsection to this Further Proposal.

The Commission recognizes that requiring the public dissemination of less specific geographic detail for an other commodity swap may, to some extent, diminish the price discovery value of swap transaction and pricing data for such swap. The Commission anticipates, however, that the public dissemination of such data would continue to provide the market with useful information relating to market depth, trading activity and pricing information for similar types of swaps. Further, sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i) of the CEA expressly require that the Commission protect the identity, market positions and business transactions of swap counterparties.

The Commission is also proposing to make conforming amendments to § 43.4(d). Specifically, the Commission is proposing to amend the introductory language to § 43.4(d)(4)(i) by deleting ''§ 43.4(d)(4)(ii)'' and adding in its place ''§§ 43.4(d)(4)(ii) and (iii)'' to make clear that SDRs have to publicly disseminate swaps data under § 43.4(d)(4)(iii) in accordance with part 43.[279]

3. Application of Proposed § 43.4(d)(4)(iii) and Proposed Appendix E to Part 43—Geographic Detail for Delivery or Pricing Points

Proposed appendix E to part 43 includes the system that SDRs must use to mask the specific delivery or pricing points that are a part of an underlying asset in connection with the public dissemination of swap transaction and pricing data for certain swaps in the other commodity asset class. To the extent that the underlying asset of a publicly reportable swap transaction described in proposed § 43.4(d)(4)(iii) does not have a specific delivery or pricing point, then the provisions of proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43 would not be applicable. Specifically, proposed appendix E to part 43 provides top-coding for various geographic regions, both in the United States and internationally.

Subsection (a) below includes a description of the top-coding U.S. regions. Subsection (b) below includes a description of the top-coding non-U.S. regions. Finally, subsection (c) below proposes a system for SDRs to publicly disseminate ''basis swaps''.[280]

a. U.S. Delivery or Pricing Points

Table E1 in appendix E to part 43 lists the geographic regions that an SDR would publicly disseminate for an off-facility swap in the other commodity asset class that is described in proposed § 43.4(d)(4)(iii). The Commission is proposing that an SDR publicly disseminate swap transaction and pricing data for certain energy and power swaps in the other commodity asset class, as described in more detail below, in a different manner than the remaining other commodities. In order to mask the specific delivery or pricing detail of these energy and power swaps, the Commission is proposing to use established regions or markets that are associated with these underlying assets.

i. Natural Gas and Related Products

In proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43, the Commission is setting forth a method to describe the publicly reportable swap transactions that have natural gas or related products as an underlying asset and have a specific delivery or pricing point in the United States. In particular, this proposed section would require SDRs to publicly disseminate a description of the specific delivery or pricing point based on one of the five industry specific natural gas markets set forth by the Federal Energy Regulatory Commission (''FERC'').[281] The FERC Natural Gas Markets reflect natural deviations found in the spot prices in different markets.[282] The Commission

[276] *See* 77 FR 1,211.

[277] *See* sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) of the CEA. 7 U.S.C. 2(a)(13)(C)(iii), (E)(i).

[278] Limiting the geographical detail is a typical statistical disclosure control used by other federal agencies as described in the Report on Statistical Disclosure Limitation Methodology, see note 255 *supra.*

[279] In addition to proposing limitations on the geographic detail for public dissemination of underlying assets for certain swaps in the other commodity asset class, the Commission is also proposing to amend §§ 43.4(g) and (h) to make conforming changes.

[280] For the purposes of this Further Proposal, basis swaps are defined as swap transactions in which one leg of the swap references a contract described in appendix B to part 43 (or is economically related thereto) and the other leg of the swap does not.

[281] *See* FERC, National Gas Markets—Overview, *http://www.ferc.gov/market-oversight/mkt-gas/overview.asp* (last viewed Jan. 31, 2012).

[282] *See* FERC, Natural Gas Market Overview: Spot Gas Prices, *http://www.ferc.gov/market-oversight/mkt-gas/overview/ngas-ovr-avg-spt-ng-pr.pdf*

anticipates that a distinction for natural gas is necessary to enhance price discovery while protecting the identities of the parties, business transactions and market positions of market participants.

The proposed five markets for public dissemination of delivery or pricing points for natural gas swaps are as follows: (i) Midwest (including North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Indiana, Illinois, Iowa, Nebraska, Kansas, Oklahoma, Missouri and Arkansas); (ii) Northeast (including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Kentucky, Ohio, West Virginia, New Jersey, Delaware, Maryland and Virginia)[283] (iii) Gulf (including Louisiana and Texas); (iv) Southeast (including Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama and Mississippi); and (v) Western (including Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Washington, Oregon, California, Nevada and Arizona). For any other pricing points in the United States, SDRs would publicly disseminate ''Other U.S.'' in place of the actual pricing or delivery point for such natural gas swaps.

The Commission is considering alternatives for how to break down the regions or markets with respect to the public dissemination of specific delivery or pricing points for natural gas. The Commission is considering using FERC's Natural Gas Futures Trading Markets, which are different from the FERC Natural Gas Markets described above. The public dissemination regions for delivery or pricing points for such natural gas swaps for this alternative would be as follows: (i) Midwest (including North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Indiana, Illinois, Iowa, Nebraska, Missouri, Ohio and Kentucky); (ii) Northeast (including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, West Virginia, New York, New Jersey, Delaware and Maryland); (iii) South Central (including Kansas, Oklahoma, Arkansas, Louisiana and Texas); (iv) Southeast (including Virginia, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama and Mississippi); (v) Western (including Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Washington, Oregon, California, Nevada and Arizona).[284] For any other pricing points in the United States, SDRs would publicly disseminate ''Other U.S.'' in place of the actual pricing or delivery point for such natural gas swaps.[285]

Finally, the Commission is also considering whether one of the public dissemination methods described for the ''All Remaining Other Commodities'' would be appropriate with respect to the public dissemination for the specific delivery or pricing points related to natural gas swaps.

ii. Petroleum and Products

In proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43, the Commission is setting forth a method to describe the publicly reportable swap transactions that have petroleum products as an underlying asset and have a specific delivery or pricing point in the United States. In particular, this proposed section would require SDRs to publicly disseminate a description of the specific delivery or pricing point based on one of the seven Petroleum Administration for Defense Districts (''PADD'') regions.[286] The PADD regions indicate economically and geographically distinct regions for the purposes of administering oil allocation. The Department of Energy's Energy Information Administration (''EIA'') collects and publishes oil supply and demand data with respect to the PADD regions.[287] Accordingly, to provide consistency with EIA publications and information regarding regional patterns, the Commission is proposing that specific delivery or pricing points with respect to such petroleum product swaps are publicly disseminated based on PADD regions.

The PADD regions for public dissemination of delivery or pricing points for such petroleum product swaps are as follows: (i) PADD 1A (New England); (ii) PADD 1B (Central Atlantic); (iii) PADD 1C (Lower Atlantic); (iv) PADD 2 (Midwest); (v) PADD 3 (Gulf Coast); (vi) PADD 4 (Rocky Mountains); and (vii) PADD 5 (West Coast).[288] For any other pricing points in the United States, SDRs would publicly disseminate the term ''Other U.S.'' in place of the actual pricing or delivery point for such petroleum product swaps.

The Commission is also considering whether one of the public dissemination methods described for the ''All Remaining Other Commodities'' would be appropriate with respect to the public dissemination for the specific delivery or pricing points related to petroleum product swaps.[289]

iii. Electricity and Sources

In proposed § 43.4(d)(4)(iii), the Commission also is setting forth a method to describe publicly reportable swap transactions that have electricity and sources as an underlying asset and have a specific delivery or pricing point in the United States. In particular, this proposed section would require SDRs to publicly disseminate the specific delivery or pricing point based on a description of one of the FERC Electric Power Markets.[290]

The markets for public dissemination of delivery or pricing points for such electricity swaps are as follows: (i) California (CAISO); (ii) Midwest (MISO); (iii) New England (ISO–NE); (iv) New York (NYISO); (v) Northwest; (vi) PJM; (vii) Southeast; (viii) Southwest; (ix) Southwest Power Pool (SPP); and (x) Texas (ERCOT). For any other pricing points in the United States, SDRs would publicly disseminate the term ''Other U.S.'' in place of the actual pricing or delivery point for such electricity and sources swaps.

Alternatively, the Commission is considering using the North American Electric Reliability Corporation (''NERC'') regions for publicly disseminating delivery or pricing points for electricity swaps described in proposed § 43.4(d)(4)(iii). The NERC regions are broader than the FERC regions and include much of Canada. Specifically, the NERC regions are as follows: (i) Florida Reliability Coordinating Council (FRCC); (ii) Midwest Reliability Organization (MRO); (iii) Northeast Power Coordinating Council (NPCC); (iv)

(updated Jan. 1, 2012). In addition, there is evidence that the spot prices in these markets and the corresponding futures prices are highly correlated. D. Murray, Z. Zhu, ''Asymmetric price responses, market integration and market power: A study of the U.S. natural gas market,'' *Energy Economics,* 30 (2008) 748–765.

[283] The District of Columbia would be included in this region, if any specific delivery or pricing points existed at the time of this Further Proposal.

[284] *See* FERC, Gas Futures Trading, Natural Gas Futures Trading Markets, *http://www.ferc.gov/market-oversight/mkt-gas/trading/2011/11-2011-gas-tr-fut-archive.pdf.* (Nov. 2011).

[285] *See* section III.C.3.a.iv *infra.*

[286] *See* PADD Map, Appendix A, Petroleum Administration for Defense Districts, *http://205.254.135.24/pub/oil_gas/petroleum/analysis_publications/oil_market_basics/paddmap.htm.* (last viewed Jan. 31, 2012).

[287] *See* U.S. Energy Information Administration (EIA)—Petroleum & Other Liquids, *http://www.eia.gov/petroleum/data.cfm* (last viewed Jan. 31, 2012).

[288] Alternatively, the Commission is considering combining the East Coast PADD into one category, such that any oil swap with a specific delivery or pricing point as PADD 1A (New England), PADD 1B (Central Atlantic), or PADD 1C (Lower Atlantic) would be publicly disseminated as PADD 1 (East Coast).

[289] *See* section III.C.3.a.iv *infra.*

[290] See FERC, Electric Power Markets—Overview, *http://www.ferc.gov/market-oversight/mkt-electric/overview.asp* (last viewed Jan. 31, 2012).

ReliabilityFirst Corporation (RFC); (v) SERC Reliability Corporation (SERC); (vi) Southwest Power Pool, RE (SPP); (vii) Texas Regional Entity (TRE); (viii) Western Electricity Coordinating Council (WECC).[291]

Finally, the Commission is also considering whether one of the public dissemination methods described below for the ''All Remaining Other Commodities'' would be appropriate with respect to the public dissemination for the specific delivery or pricing points related to electricity and sources swaps.

iv. All Remaining Other Commodities

In proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43, the Commission is setting forth a method to describe any swaps in the other commodity asset class that do not have oil, natural gas or electricity as an underlying asset, but have specific delivery or pricing points in the United States. In particular, the Commission is proposing in this section that SDRs publicly disseminate information with respect to these swaps based on the 10 federal regions established by the U.S. Energy Information Administration (''EIA''). The Commission anticipates that the use of the 10 federal regions would provide consistency among different types of underlying assets in the other commodity asset class with respect to delivery and pricing point descriptions. The Commission anticipates, however, that for some underlying assets, the public dissemination of delivery or pricing points by region may still result in thinly-populated swap categories.

The 10 federal regions that SDRs would use for public dissemination for all remaining other commodity swaps are as follows: (i) Region I (including Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont); (ii) Region II (including New Jersey and New York); (iii) Region III (including Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia); (iv) Region IV (including Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee); (v) Region V (including Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin); (vi) Region VI (including Arkansas, Louisiana, New Mexico, Oklahoma and Texas); (vii) Region VII (including Iowa, Kansas, Missouri and Nebraska); (viii) Region VIII (including Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming); (ix) Region IX (including Arizona, California, Hawaii and Nevada); and (x) Region X (including Alaska, Idaho, Oregon and Washington).[292] The Commission is also considering whether the use of these 10 federal regions is appropriate for the natural gas, oil and/or electricity swap markets as described above.

Alternatively, the Commission is considering whether SDRs should publicly disseminate information with respect to these swaps based on one of the four U.S. Census regions.[293] The Commission is also considering whether the use of the four U.S. Census regions is appropriate for the natural gas, oil and/or electricity swaps markets as described above. Using the U.S. Census regions, however, might provide fewer reporting categories and, as a result, market participants and the public may lose some price discovery as compared to a description system based on the 10 federal regions. The four U.S. Census regions are: (i) Midwest (including North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Indiana, Illinois, Iowa, Nebraska, Missouri, Ohio, Kentucky and Kansas); (ii) Northeast (including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania and New Jersey); (iii) South (including Oklahoma, Arkansas, Louisiana, Texas, West Virginia, Maryland, Delaware, District of Columbia, Virginia, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama and Mississippi); and (iv) West (including Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Washington, Oregon, California, Nevada, Arizona, Alaska and Hawaii).[294]

Finally, the Commission is considering whether it is appropriate to publicly disseminate the specific delivery or pricing points in the United States for certain types of swaps in the other commodity asset class that are not described in proposed § 43.4(d)(4)(ii). Specifically, the Commission is considering whether public disclosure of such information would disclose the identities, business transactions and market positions of any persons and whether price discovery would be enhanced by publicly disseminating more specific information.

b. Non-U.S. Delivery or Pricing Points

Table E2 in proposed appendix E to part 43 provides the appropriate manner for SDRs to publicly disseminate non-U.S. delivery or pricing points for all publicly reportable swap transactions described in the proposed § 43.4(d)(4)(iii). The Commission is of the view that SDRs should not publicly disseminate the actual location for these international delivery or pricing points since the public disclosure of such information may disclose the identities of parties, business transactions and market positions of market participants. In Table E2, the Commission is proposing the countries and regions that an SDR must publicly disseminate. In proposing the use of these geographic breakdowns for the public reporting of international delivery or pricing points, the Commission considered world regions that have significant energy consumption, whether ISDA-specific documentation exists for a particular country, and whether public disclosure would compromise the anonymity of the swap counterparties.

The Commission is proposing the following international regions for publicly disseminating specific delivery or pricing points of publicly reportable swap transactions described in § 43.4(d)(4)(iii): (i) North America (publicly disseminate ''Canada'' or ''Mexico''); (ii) Central America (publicly disseminate ''Central America''); (iii) South America (publicly disseminate ''Brazil'' or ''Other South America''); (iv) Europe (publicly disseminate ''Western Europe,'' ''Northern Europe,'' ''Southern Europe,'' or ''Eastern Europe''); (v) Russia (publicly disseminate ''Russia'')[295]; (vi) Africa (publicly disseminate ''Northern Africa,'' ''Western Africa,'' ''Eastern Africa,'' ''Central Africa,'' or ''Southern Africa''); (vii) Asia-Pacific (publicly disseminate ''Northern Asia,'' ''Central Asia,'' ''Eastern Asia,'' ''Western Asia,'' ''Southeast Asia'' or ''Australia/New Zealand/Pacific Islands''). The Commission is considering whether a more granular approach is necessary for certain regions in order to enhance price discovery while still protecting anonymity. For example, Mexico, Canada and Russia may benefit from a more granular public dissemination of delivery or pricing points given the

[291] *See* NERC, Key Players: Regional Entities, *http://www.nerc.com/page.php?cid=1%7C9%7C119* (last visited Jan. 31, 2012).

[292] *See* U.S. Energy Information Administration, U.S. Federal Region Map, *http://www.eia.gov/cneaf/electricity/page/channel/fedregstates.html* (last visited Jan. 31, 2012).

[293] *See* U.S. Department of Commerce, Economics and Statistics Administration, Census Bureau, Census Regions and Divisions of the United States, *http://www.census.gov/geo/www/us_regdiv.pdf* (last viewed Jan. 31, 2012).

[294] *See* note 293 supra.

[295] Note that Russia is not included in ''Eastern Europe'' or in ''Northern Asia'' and instead should be publicly disseminated as ''Russia.''

amount of energy production in those regions.

Alternatively, the Commission is considering a broader approach to the public dissemination of non-U.S. delivery or pricing points for swaps described in proposed § 43.4(d)(4)(iii). Specifically, the Commission is considering public dissemination of only the top-level regions for certain regions (*e.g.,* ''Africa'' instead of ''North Africa''). The Commission is considering this alternative approach in order to prevent the public disclosure of the identities, business transactions and market positions of swap counterparties.

Finally, the Commission is considering whether it is appropriate to publicly disseminate the specific delivery or pricing points outside the United States for certain types of swaps in the other commodity asset class that are not described in § 43.4(d)(4)(ii). Specifically, the Commission is considering whether public disclosure of such information would disclose the identities, business transactions and market positions of any persons and whether price discovery would be enhanced by publicly disseminating more specific information.

To the extent that a publicly reportable swap transaction described in proposed § 43.4(d)(4)(iii) references the United States as a whole and not a specific delivery or pricing point, proposed appendix E would require an SDR to publicly disseminate that reference. For example, an SDR would publicly disseminate a weather swap that references ''U.S. Heating Monthly'' as ''U.S. Heating Monthly.''

c. Basis Swaps

The Commission is proposing to require SDRs to ensure that specific underlying assets are publicly disseminated for basis swaps that qualify as publicly reportable swap transactions. The Commission recognizes that basis swaps exist in which one leg of the swap references a contract described in appendix B to part 43 (or is economically related to one such contract) and the other leg of the swap references an asset or pricing point not listed in appendix B to part 43. With respect to the leg of a basis swap that does not reference a contract in appendix B to part 43, the Commission is proposing to require SDRs to publicly disseminate the underlying asset of the basis swap pursuant to proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43. That is, § 43.4(d)(4) currently requires an SDR to publicly disseminate the underlying asset of the leg of the basis swap that references a contract listed in appendix B to part 43. To the extent that a basis swap is executed on or pursuant to the rules of a SEF or DCM, an SDR would publicly disseminate the specific underlying asset (*i.e.,* the top-coding provisions of proposed § 43.4(d)(4)(iii) would not apply since those basis swaps are executed on or pursuant to the rules of a SEF or DCM).

Request for Comment

Q79. The Commission requests specific comment on all aspects of the proposed anonymity protections for the public dissemination of publicly reportable swap transactions in the other commodity asset class.

Q80. As an alternative to the proposed approach, should the Commission narrow the limited transaction reporting detail provisions of proposed § 43.4(d)(4)(iii) to exclude other commodity swaps involving many non-affiliated market participants during a sufficiently long observation period—for example, an observation period of at least one year? This alternative approach would be predicated on the notion that reduced market concentration is indicative of a market with very limited or non-existent anonymity concerns.

Q80.a. Would this alternative approach enhance price discovery in other commodity swap markets by providing more granular data to the public? [296]

Q80.b. Does this approach create a risk that SDRs would publicly disclose details regarding the identities of swap counterparties and their business transactions in these markets in light of the other anonymity protections (*e.g.,* the rounded notional or principal amounts provisions of §§ 43.4(g)–(h), the applicable cap size provisions, and any relevant reporting delay)?

Q80.c. Should the Commission adopt a combination of the alternative approach and the proposed top-coding approach? If yes, then how should the Commission apply the combination of these two approaches?

Q81. Would any of the alternatives in the discussion of proposed appendix E to part 43 above improve price discovery? Would any of these alternatives improve anonymity protections?

Q82. From the standpoint of enhancing price discovery and protecting anonymity, would public dissemination of specific delivery or pricing points based on the FERC Natural Gas Futures Trading Markets be a better alternative than the regions established by the FERC Natural Gas Markets?

Q83. Would the benefits of using the same categories or regions for all types of other commodities outweigh the potential loss of enhanced price discovery and/or the potential increased risk of disclosure?

Q84. Would the proposal to use U.S. regions for natural gas products, petroleum and products, electricity and sources and other commodity groups enhance or limit price discovery? Would these regions or markets adequately protect the identities, business transactions and market positions of swap counterparties?

Q85. Would the proposed international regions or markets adequately protect the identities, business transactions and market positions of swap counterparties? Is there sufficient volume to support these different international regions within the different types of other commodities?

Q86. Should the international regions vary for each of the different types of commodities within the other commodities asset class (*i.e.,* natural gas and related products, petroleum and products, electricity and sources, all remaining other commodities)? Are there specific regions which should be identified for each of these different types of other commodities?

Q87. Should the Commission limit the proposed requirement for SDRs to anonymize delivery and pricing points for natural gas and related products to only natural gas?

Q88. Should the Commission limit the proposed requirement for SDRs to anonymize specific delivery and pricing points for electricity and sources to only electricity?

Q89. Should SDRs publicly disseminate the delivery or pricing point with respect to coal in the same manner as the ''All Remaining Other Commodities''?

Q90. For thinly-traded products or illiquid markets, is a less specific delivery or pricing point necessary to protect anonymity? For example, should there only be a distinction between ''U.S.'' and ''International?'' Would such a broad description limit price discovery to market participants and the public?

Q91. As an alternative approach, please provide comments regarding the use of the other commodity groupings in proposed appendix D to part 43 of the Commission regulations as a means to top-code the public dissemination of the underlying commodities for swaps in

[296] *See, e.g.,* IEA, IEF, OPEC, and IOSCO, Oil Price Reporting Agencies, *http://www.g20.org/Documents2011/11/IOs%20Report%20on%20PRA%20Report.pdf.* (Oct. 2011).

the other commodity asset class that are not described in § 43.4(d)(4)(ii). That is, an SDR would publicly disseminate the individual other commodity swap grouping rather than the specific underlying assets.

Q91.a. Should the Commission apply this additional masking to other commodity swaps that are not described in § 43.4(d)(4)(ii)? If yes, please provide specific examples.

Q91.b. Would the public dissemination of proposed ''Individual Other Commodity'' groups per proposed appendix D to part 43 of the Commission's regulations enhance price discovery?

Q91.c. Do the swap categories in proposed appendix D to part 43 of the Commission's regulations adequately mask the actual underlying commodity in such a way that would protect the anonymity of the identities, market positions and business transactions of swap counterparties?

4. Further Revisions to Part 43

a. Additional Contracts Added to Appendix B to Part 43

Appendix B to part 43 currently lists contracts that, if referenced as an underlying asset, would require SDRs to publicly disseminate the full geographic detail of the asset. In the Adopting Release, the Commission provided that SDRs were required to publicly disseminate any underlying asset of a publicly reportable swap transaction that references or is economically related to any contract or contracts listed in appendix B to part 43 in the same manner.

As noted above, the Commission is proposing to add 13 contracts under the ''Other Commodity'' heading in appendix B to part 43. The addition of these 13 contracts effectively would require SDRs to publicly disseminate these contracts the same way as the other contracts that are currently listed in appendix B to part 43. That is, an SDR would publicly disseminate the actual underlying asset (and any underlying asset(s) that are economically related) without any limitation of the geographic detail.

The Commission previously has determined that these 13 contracts are significant price discovery contracts (''SPDCs'') in connection with trading on exempt commercial markets (''ECMs'').[297] Each of the 13 contracts has undergone an analysis in which the Commission considered the following five criteria: (i) Price linkage (the extent to which the contract uses or otherwise relies on a daily or final settlement price of a contract listed for trade on or subject to the rules of a DCM); (ii) arbitrage (the extent to which the price of the contract is sufficiently related to the price of a contract listed on a DCM to permit market participants to effectively arbitrage between the two markets); (iii) material price reference (the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by contracts being traded or executed on the ECM); (iv) material liquidity (the extent to which volume of the contract is sufficient to have a material effect on other contracts listed for trading); and (v) other material factors.[298]

The Commission anticipates that since the Commission already has determined these 13 contracts to have material liquidity and material price reference, among other things, the public dissemination of the full underlying asset for publicly reportable swap transactions that reference such contracts (and any underlying assets that are economically related thereto) would not disclose the identities, market positions and business transactions of market participants and would enhance price discovery in the related markets.

The Commission notes that the Commission already has determined one additional contract, ''Henry Financial LD1 Fixed Price Contract,'' is a SPDC.[299] The Commission, however, is not proposing to add this contract under the heading ''Other Contracts'' in appendix B to part 43. This contract is economically related to the ''New York Mercantile Exchange Henry Hub Natural Gas,'' which is listed under ''Enumerated Physical Commodity Contracts'' in appendix B to part 43. Therefore, listing this contract again would be redundant.

b. Technical Revisions to Part 43

In the Adopting Release, the Commission states that the transactions described §§ 43.4(d)(4)(ii)(A)–(C) are meant to be exclusive of one another. Under these sections, an SDR is required to publicly disseminate the underlying asset(s) of a swap in the other commodity asset class that is executed on or pursuant to the rules of a SEF or DCM regardless of whether the underlying asset is listed on appendix B to part 43 or is economically related to such contracts. Accordingly, the Commission is proposing a technical clarification to § 43.4(d)(4)(ii)(B) to clarify the intent that these elements are exclusive of one another, as articulated in the preamble to the Adopting Release.

Request for Comment

Q92. How would reporting the 13 contracts that the Commission is proposing to list in appendix B to part 43 impact price discovery and anonymity of those contracts and other publicly reportable swap transactions in the other commodity asset class? For example, does the exact reporting of the PJM WH Real Time Peak Contract impact the remaining volume of publicly reportable swap transactions in the other commodity asset class that would be publicly disseminated with a PJM delivery or pricing point?

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') was adopted in 1980 to address concerns that government regulations may have a significant and/or disproportionate effect on small businesses. To mitigate this risk, the RFA requires federal agencies to issue an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking.[300] These analyses must describe: (i) The economic impact of the proposed rule on small entities, including a statement of the objectives and the legal bases for the rulemaking; (ii) an estimate of the number of small entities to be affected; (iii) identification of federal rules that may duplicate, overlap or conflict with the proposed

[297] The Commission is proposing to add the following SPDC designated contracts to appendix B to part 43. The Commission has previously issued orders finding that these contracts perform a significant price discovery function: AECO Financial Basis Contract traded on the IntercontinentalExchange, Inc. (''ICE'') (*See* 75 FR 23,697); NWP Rockies Financial Basis Contract traded on ICE (*See* 75 FR 23,704); PG&E Citygate Financial Basis Contract traded on ICE (*See* 75 FR 23,710); Waha Financial Basis Contract traded on ICE (*See* 75 FR 24,655); Socal Border Financial Basis Contract traded on ICE (*See* 75 FR 24,648); HSC Financial Basis Contract traded on ICE (*See* 75 FR 24,641); ICE Chicago Financial Basis Contract traded on ICE (*See* 75 FR 24,633); SP–15 Financial Day-Ahead LMP Peak Contract traded on ICE (*See* 75 FR 42,380); SP–15 Financial Day-Ahead LMP Off-Peak Contract traded on ICE (*See* 75 FR 42,380); PJM WH Real Time Peak Contract traded on ICE (*See* 75 FR 42,390); PJM WH Real Time Off-Peak Contract traded on ICE (*See* 75 FR 42,390); Mid-C Financial Peak Contract traded on ICE (*See* 75 FR 38,469); Mid-C Financial Off-Peak Contract traded on ICE (*See* 75 FR 38,469).

[298] The Dodd-Frank Act deleted and replaced CEA section 2(h)(7), which contained the five criteria for determining a SPDC. The Dodd-Frank Act amended CEA section 4a(a) to include CEA section 4a(a)(4), which contains a similar version of the five criteria for determining a SPDC in the context of excessive speculation.

[299] *See* 74 FR 37,988.

[300] *See* 5 U.S.C. 601 *et seq.*

rules; and (iv) a description of any significant alternatives to the proposed rule that would minimize any significant impacts on small businesses.[301] The RFA focuses on direct impact to small businesses and not on indirect impacts on these businesses, which may be tenuous and difficult to discern.[302]

As noted above, section 2(a)(13)(E)(ii) of the CEA directs the Commission to prescribe regulations specifying ''the criteria for determining what constitutes a large notional off-facility swap transaction (block trade) for particular markets and contracts.'' In general, proposed § 43.6 sets out, inter alia, the criteria to determine swap categories and the methodologies that the Commission would employ in determining the appropriate minimum block sizes for those swap categories. In addition, the proposed amendments to § 43.4 set out a system to mask the notional amounts of swaps of relative large size, as well as a system to anonymize geographic and underlying asset detail for certain other commodity swaps. The Commission is of the view that these proposed provisions would impose only one direct requirement on businesses, including small businesses.[303] Proposed 43.6(a) would require reporting parties to notify an SDR of its election to treat a qualifying publicly reportable swap transaction as a large notional off-facility swap. The Commission anticipates that the direct impact of this requirement would not be significant for the purposes of the RFA.

Indeed, proposed § 43.6(g) would impose minimal notice requirements on market participants that are subject to part 43 of the Commission's regulations. A more fulsome analysis of the implications that proposed § 43.6(g) may have on small businesses is described immediately below.

A. Potential Economic Impact—Proposed § 43.6(g)—Notification of Election

Proposed § 43.6(g) contains the provisions regarding the election to have a swap transaction treated as a block trade or large notional off-facility swap, as applicable. Proposed § 43.6(g)(1) establishes a two-step notification process relating to block trades. Proposed § 43.6(g)(2) establishes the notification process relating to large notional off-facility swaps.

Proposed § 43.6(g)(1)(i) contains the first step in the two-step notification process relating to block trades. In particular, this section provides that the reporting party to a swap that is executed at or above the appropriate minimum block size is required to notify the SEF or DCM (as applicable) of its election to have its qualifying swap transaction treated as a block trade. With respect to the second step, proposed § 43.6(g)(1)(ii) provides that the SEF or DCM, as applicable, that receives an election notification is required to notify an SDR of a block trade election when transmitting swap transaction and pricing data to such SDR for public dissemination.

Proposed § 43.6(g)(2) is similar to the first step set forth in proposed § 43.6(g)(1). That is, proposed § 43.6(g)(2) provides, in part, that a reporting party who executes a bilateral swap transaction that is at or above the appropriate minimum block size is required to notify the SDR of its election to treat such swap as a large notional off-facility swap. This section provides further that the reporting party is required to notify the SDR in connection with the reporting party's transmission of swap transaction and pricing data to the SDR for public dissemination.

The second step in the two-step process in proposed § 43.6(g)(1) imposes direct burdens on SEFs and DCMs. The Commission previously has determined that these entities are not small businesses for the purposes of the RFA.[304]

In contrast, the first step in the two-step process in proposed § 43.6(g)(1) and the notification election in proposed § 43.6(g)(2) would impose direct burdens on parties to a swap, which the Commission has determined previously may include a percentage of small end users that are considered small businesses for the purposes of the RFA.[305] Notwithstanding the imposition of this burden, however, the Commission anticipates that the notification requirements in proposed §§ 43.6(g)(1)(i) and 43.6(g)(2) would not create significant economic burdens on small end users. The Commission anticipates that the notification requirements imposed in proposed §§ 43.6(g)(1)(i) and 43.6(g)(2) will likely be automated and electronic. Section 43.3 of the Commission's regulations already requires these entities to report their swap transaction and pricing data to an SDR.[306] The Commission is of the view that requiring these entities to include an additional notification or field in conjunction with the reporting of such data would impose, at best, a marginal and incremental cost.

Moreover, as stated in prior RFA determinations, the Commission anticipates the percentage of end users that would fall within the definition of reporting party[307] would likely be minimal since, according to industry data, most end users transact swaps with a swap dealer.[308] Thus, the percentage of small end users that would be required to notify SDRs directly of their election to treat a swap as a block trade or large notional off-facility swap would not likely be significant.

B. Identification of Duplicative, Overlapping or Conflicting Federal Rules

The Commission has not identified any existing federal rules exist that are duplicative, overlapping or conflicting with the provisions in this Further Proposal, including the provisions in proposed § 43.6(g).

C. Alternatives to Proposed Rules That Will Have an Impact

Under the RFA, the Commission is not required to identify alternatives as a result of its determination that the provisions in proposed § 43.6(g) would not have a significant economic impact on a significant number of small businesses.

D. Certification

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a

[301] *See* 5 U.S.C. 603, 604.

[302] *See Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001); *Am. Trucking Assns.* v. *EPA,* 175 F.3d 1027, 1043 (DC Cir. 1985); *Mid-Tex Elec. Coop., Inc.* v. *FERC,* 773 F.2d 327, 340 (DC Cir. 1985).

[303] As discussed below, the Commission is of the view that registered entities such as SDs and MSPs are not small businesses.

[304] *See* 17 CFR part 40 Provisions Common to Registered Entities, 75 FR 67,282 (Nov. 2, 2010); *see also* 47 FR 18,618, 18,619, Apr. 30, 1982 and 66 FR 45,604, 45,609, Aug. 29, 2001.

[305] *See* 77 FR 1,240 (''[T]he Commission recognized that the proposed rule could have an economic effect on certain single end users, in particular those end users that enter into swap transactions with another end-user. Unlike the other parties to which the proposed rulemaking would apply, these end users are not subject to designation or registration with or to comprehensive regulation by the Commission. The Commission recognized that some of these end users may be small entities.''). The term reporting party also includes swap dealers and major swap participants.

The Commission previously has determined that these entities do fall within the definition of small business for the purpose of the RFA. *See* 75 FR at 76,170.

[306] *See* 77 FR 1,240.

[307] *See* 77 FR 1,244.

[308] *See* ISDA/SIFMA Jan. 18, 2011, Block trade reporting over-the-counter derivatives markets, 13–14. *See also* Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products, note 75 *supra.* (''In contrast with the current environment where swap dealers are principals on every trade * * *.'').

significant economic impact on a substantial number of small businesses. Nonetheless, the Commission specifically requests comment on the economic impact that this Further Proposal may have on small businesses.

V. Paperwork Reduction Act

A. Background

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (''PRA'') are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government.[309] The PRA applies with extraordinary breadth to all information, ''regardless of form or format,'' whenever the government is ''obtaining, causing to be obtained [or] soliciting'' information, and includes requires ''disclosure to third parties or the public, of facts or opinions,'' when the information collection calls for ''answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons.'' [310] The PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[311]

To effectuate the purposes of the PRA, Congress requires all agencies to quantify and justify the burden of any information collection it imposes.[312] This requirement includes submitting each collection, whether or not it is contained in a rulemaking, to the Office of Management and Budget (''OMB'') for review. The OMB submission process includes completing a form 83–I and a supporting statement with the agency's burden estimate and justification for the collection. When an information collection is established within a rulemaking, the agency's burden estimate and justification should be provided in the proposed rulemaking, subjecting the proposed information collection to the rulemaking's public comment process.

Proposed § 43.6 and amendments to § 43.4 would result in amendments to an existing collection of information within the meaning of the PRA in two respects. Accordingly, the Commission is submitting this Further Proposal to the OMB for review pursuant to 44 U.S.C. 3507(d) and 5 CFR1320.11. OMB has assigned control number 3038–0070 to the existing collection of information, which is titled ''Part 43—Real-Time Public Reporting.'' If adopted, then responses to this amended collection of information would be mandatory.

B. Description of the Collection

Recently, the Commission issued the Adopting Release, which includes three collections of information requirements within the meaning of the PRA. The first collection of information requirement under Part 43 imposed a reporting requirement on a SEF or DCM when a swap is executed on a trading facility or on the parties to a swap transaction when the swap is executed bilaterally. The second collection of information requirement under Part 43 created a public dissemination requirement on SDRs. The third collection of information requirement created a recordkeeping requirement for SEFs, DCMs, SDRs and any reporting party (as such term is defined in part 43 of the Commission's regulations).

Proposed amendments to § 43.4 and proposed § 43.6 would amend the first and second collections of information within the meaning of the PRA as described below. The analysis with respect to the amended collections as a result of proposed § 43.6 is set out in section 1 below. The analysis with respect to the amended collections as a result of proposed amendments to § 43.4 is set out in section 2 below.

1. Proposed § 43.6(g)—Notification of Election

Proposed § 43.6(g) would amend the first and second collections of information within the meaning of the PRA. In particular, proposed § 43.6(g) contains the provisions regarding the election to have a swap transaction treated as a block trade or large notional off-facility swap, as applicable. Proposed § 43.6(g)(1) establishes a two-step notification process relating to block trades. Proposed § 43.6(g)(2) establishes the notification process relating to large notional off-facility swaps. Proposed § 43.6(g) is an essential part of this rulemaking because it provides the mechanism through which market participants will be able to elect to treat their qualifying swap transaction as a block trade or large notional off-facility swap.

Proposed § 43.6(g)(1)(i) contains the first step in the two-step notification process relating to block trades. In particular, this section provides that the parties to a swap that are executed at or above the appropriate minimum block size for the applicable swap category are required to notify the SEF or DCM (as applicable) of their election to have their qualifying swap transaction treated as a block trade. The Commission understands that SEFs and DCMs use automated, electronic, and in some cases, voice processes to execute swap transactions; therefore, the transmission of the notification of a block trade election also would either be automated, electronic or communicated through voice.

The Commission estimates that there are 125 SDs and MSPs, and 1,000 other non-financial end-user parties.[313] The Commission estimates that, on average, SD/MSP reporting parties would likely notify a SEF or DCM of a block trade election approximately 1,000 times per year while non-SD/MSP reporting parties likely would notify a SEF or DCM of a block trade election approximately five times per year.[314] Thus, the Commission estimates that there would be 130,000 notifications of a block trade election by reporting parties under proposed § 43.6(g) each year.[315]

The Commission estimates that the burden hours associated with the § 43.6(g)(1)(i) would include: (i) 30 seconds on average for parties to a swap to determine whether a particular swap transaction qualifies as a block trade based on the appropriate minimum block size of the applicable swap category; and (ii) 30 seconds on average for the parties to electronically transmit or otherwise communicate their notice of election. SDs, MSPs and reporting parties would use existing traders (or other professionals earning similar salaries) to electronically transmit or otherwise communicate their notice of election. Based on the Securities Industry and Financial Market Association's 2010 Securities Industry Salary Survey, the Commission estimates that these block traders would earn approximately $140.93 per hour in total compensation.[316] Accordingly, the

[309] *See* 44 U.S.C. 3501.

[310] *See* 44 U.S.C. 3502.

[311] *See* 5 CFR 1320.3(c)(1).

[312] *See* 44 U.S.C. 3506.

[313] The Commission has previously estimated that 125 SDs and MSPs will register with the Commission and 1,000 non-financial end-users (i.e., non-SD/non-MSPs) will be required to report swap transactions annually. 77 FR 1,229–30.

[314] The Commission anticipates that these figures will change as a function of changes in the market structure and practices in the U.S. swaps markets.

[315] The Commission estimates the total number of notifications as follows: 125 SDs/MSPs × 1,000 notifications = 125,000 notifications per year; 1,000 non-SDs/non-MSPs × 5 notifications = 5,000 notifications per year; therefore, the total across all types of entities would be 130,000 notifications per year.

[316] The Commission previously has utilized wage rate estimates based on average salary and average prior year bonus information for the securities industry compiled by SIFMA. These wage estimates are derived from an industry-wide survey of participants and thus reflect an average across

Commission estimates that the total annual burden hour costs associated with the first step in proposed § 43.6(g)(1)(i) would be 2,167 hours [317] or $305,396 in total annual burden hours costs [318] and $11.2 million in total start-up capital costs.[319]

With respect to the second step, proposed § 43.6(g)(1)(ii) provides that the SEF or DCM, as applicable, that receives an election notification is required to notify an SDR of a block trade election when transmitting swap transaction and pricing data to such SDR for public dissemination. As noted above, the Commission anticipates that SEFs and DCMs would use automated, electronic and, in some cases, voice processes to execute swap transactions. The Commission estimates that there will be approximately 58 SEFs and DCMs. Accordingly, the Commission estimates that the total annual burden associated with the second step in proposed § 43.6(g)(1)(ii) would be approximately $577,460 in non-recurring annualized capital and start-up costs.[320] The Adopting Release already has addressed the recurring annualized costs for the hour burden, as well as ongoing operational and maintenance costs.

Proposed § 43.6(g)(2) is similar to the first step set forth in proposed § 43.6(g)(1). That is, proposed § 43.6(g)(2) provides, in part, that a reporting party who executes a bilateral swap transaction that is at or above the appropriate minimum block size is required to notify the SDR of its election to treat such swap as a large notional off-facility swap. This section provides further that the reporting party is required to notify the SDR in connection with the reporting party's transmission of swap transaction and pricing data to the SDR for public dissemination. The Commission anticipates that reporting parties may have various methods through which they will transmit information to SDRs, which would include a large notional off-facility swap election. Most reporting parties would use automated and electronic methods to transmit this information; other reporting parties, because of the expense associated with building an electronic infrastructure, may contract with third parties (including their swap counterparty) to transmit the notification of a large notional off-facility swap election.

The Commission estimates that the incremental time and cost burden associated with the § 43.6(g)(2) would include: (i) One minute for a reporting party to determine whether a particular swap transaction qualifies as a large notional off-facility swap based on the appropriate minimum block size of the applicable swap category; and (ii) one minute for the reporting party (or its designee) to electronically transmit or communicate through voice processes its notice of election. The Commission estimates that, of the approximately 2,255 hours incurred by 125 SDs/MSPs and 1,000 non-SD/MSPs, all of those hours would be spent by traders and market analysts (or designee).[321] SIFMA's report states that traders and market analysts make $140.93 per hour in total compensation.[322]

The Commission estimates that, on average, each of the estimated 125 SD/MSP counterparties would likely notify an SDR of a large notional off-facility swap election approximately 500 times per year while each of the estimated 1,000 non-SD/MSP counterparties would notify an SDR approximately five times per year. Accordingly, the Commission estimates that there are, on average, approximately 67,500 notifications large notional off-facility swaps under proposed § 43.6 each year. Accordingly, the Commission estimates that the total annual burden associated with proposed § 43.6(g)(2) would be approximately 2,255 annual labor hours or $317,797 in annual labor costs.[323]

In addition, the Commission estimates that proposed § 43.6(g)(2) would result in $11.2 million in non-recurring annualized capital and start-up costs.[324] The Adopting Release addressed all ongoing operational and maintenance costs.[325]

2. Proposed Amendments to §§ 43.4(d)(4) and 43.4(h)

The Commission addresses the public dissemination of certain swaps in the other commodity asset class in § 43.4(d)(4). Section 43.4(d)(4)(ii)

entities; the Commission notes that the actual costs for any individual company or sector may vary from the average.

The Commission estimated the dollar costs of hourly burdens for different types of relevant professionals using the following calculations:

(1) [(2009 salary + bonus) * (salary growth per professional type, 2009–2010)] = Estimated 2010 total annual compensation. The most recent data provided by the SIFMA report describe the 2009 total compensation (salary + bonus) by professional type, the growth in base salary from 2009 to 2010 for each professional type, and the 2010 base salary for each professional type; therefore, the Commission estimated the 2010 total compensation for each professional type, but, in the absence of similarly granular data on salary growth or compensation from 2010 to 2011 and beyond, did not estimate dollar costs beyond 2010.

(2) [(Estimated 2010 total annual compensation)/(1,800 annual work hours)] = Hourly wage per professional type.]

(3) [(Hourly wage) * (Adjustment factor for overhead and other benefits, which the Commission has estimated to be 1.3)] = Adjusted hourly wage per professional type.]

(4) [(Adjusted hourly wage) * (Estimated hour burden for compliance)] = Dollar cost of compliance for each hour burden estimate per professional type.]

The sum of each of these calculations for all professional types involved in compliance with a given element of this Further Proposal represents the total cost for each counterparty, reporting party, swap dealer, major swap participant, SEF, DCM, or SDR, as applicable to that element of the proposal.

[317] To comply with the election process in proposed § 43.6(g), a market participant likely would need to provide training to its existing personnel and update its written policies and procedures to account for this new process. The total annual burden hours equals the total hours for swap dealers and major swap participants plus the total hours for non-swap dealers and non-major swap participants.

[318] The underlying adjusted labor cost estimate of $140.93 per hour used in this estimate is calculated based on the adjusted wages of swap traders. *See* note 316 *supra.*

[319] The estimated costs are based on the Commission's estimate of the incremental, non-recurring expenditures to reporting entities, including non-SD/non-MSPs (*i.e.,* non-financial end-users) to: (1) update existing technology, including updating its OMS system ($6,761.20); and (2) provide training to existing personnel and update written policies and procedures ($3,195.00). *See* section VI(E)(2)(a)(i)–(ii) infra. The Commission believes that SDs/MSPs would incur similar non-recurring start-up costs. The Commission has previously estimated that 125 SDs and MSPs will register with the Commission and 1,000 non-financial end-users (*i.e.,* non-SD/non-MSPs) will be required to report in a year. *See* 77 FR 1229–30.

[320] The Commission bases this estimate on 58 projected SEFs and DCMs, each of which will incur costs of investing in update technology, including updating its OMS system ($6,761.20); and training existing personnel and updating written policies and procedures ($3,195.00). *See* section VI(E)(2)(a)(i)–(ii) *infra.*

[321] The economic costs associated with entering into a third party service arrangement to transmit an electronic notice to an SDR are difficult to determine. There are too many variables that are involved in determining those costs. Notwithstanding this difficulty, the Commission foresees that, for many reporting parties that infrequently trade swaps, the annualized cost of entering into a third-party service arrangement of this type would likely be less than the total annual cost of building an electronic infrastructure to transmit electronic notices directly to an SDR.

[322] *See* note 316 *supra.*

[323] The labor hour estimate is calculated as follows: (125 SDs/MSPs × 500 notifications) + (1,000 non-SDs/non-MSPs × 5 notifications) = 67,500 notifications × 2 minutes/notification = 135,000 minutes/60 minutes/hour = 2,255 hours. The labor cost estimate is calculated as follows: 2,255 labor hours × $140.93 per hour total compensation = $317,797.

[324] The estimated costs are based on the Commission's estimate of the incremental, non-recurring expenditures to reporting entities, including non-SD/non-MSPs (i.e., non-financial end-users) to (1) update existing technology, including updating its OMS system ($6,761.20); and (2) provide training to existing personnel and update written policies and procedures ($3,195.00). *See* section VI(E)(2)(a)(i)–(ii) infra. The Commission believes that SDs/MSPs would incur similar non-recurring start-up costs. The Commission has previously estimated that 125 SDs and MSPs will register with the Commission and 1,000 non-financial end-users (i.e., non-SD/non-MSPs) will be required to report in a year. 77 FR 1,229–30.

[325] *See* 77 FR at 1,232.

provides that for publicly reportable swaps in the other commodity asset class, the actual underlying assets must be publicly disseminated for: (1) Those swaps executed on or pursuant to the rules of a SEF or DCM; (2) those swaps referencing one of the contracts described in appendix B to part 43; and (3) any publicly reportable swap transaction that is economically related to one of the contracts described in appendix B to part 43. Pursuant to the Adopting Release, any swap that is in the other commodity asset class that does not fall under § 43.4(d)(4)(ii) would not be subject to reporting and public dissemination requirements upon the effective date of the Adopting Release.

In this Further Proposal, the Commission is proposing a new provision (proposed § 43.4(d)(4)(iii)), which would develop a system for the public dissemination of exact underlying assets in the other commodity asset class with a ''mask'' based on geographic detail. The Commission is proposing a new appendix to part 43, which contains the geographical top-codes that SDRs would use in masking certain other commodity swaps in connection with such swaps public dissemination of swap transaction and pricing data under part 43. The Commission anticipates that there will be approximately 50,000 additional swaps reported to an SDR each year in the other commodity asset class, which the Commission estimates would be $117,395 in annualized hour burden costs.[326]

The Commission's regulations currently provide a system establishing cap sizes. Section 43.4(h) of the Commission's regulations provides that cap sizes for swaps in each asset class shall equal the appropriate minimum block size corresponding to such publicly reportable swap transaction. If no appropriate minimum block size exists, then § 43.4(h) sets out specific interim cap sizes for each asset class.[327]

This Further Proposal would amend § 43.4(h) to establish new cap sizes in the post-initial period using a 75-percent notional amount calculation. Under this proposed amendment, the Commission would perform the calculation; however, SDRs would update their technology and other systems at a minimum of once per year to publicly disseminate swap transaction and pricing data with the cap sizes issued by the Commission.

The Commission estimates that the incremental, start-up costs associated with proposed amendment to §§ 43.4(d)(4) and 43.4(h) for an SDR would include: (1) Reprograming its technology infrastructure to accommodate the proposed masking system and proposed post-initial cap sizes methodology; (2) updating its written policies and procedures to ensure compliance with proposed § 43.4(d)(4)(iii) and the proposed amendment to § 43.4(h); and (3) training staff on the new policies and procedures.[328] The Commission estimates that the total annual burden associated with proposed § 43.4(d)(4)(iii) and the proposed amendments to 43.4(h) would be 1,000 labor hours and approximately $75,900.[329]

C. Request for Comments on Collection

The Commission requests comments on the accuracy of these estimates provided in these proposed amendments to existing collections of information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the burden of the proposed amendments to the collections of information that are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed amendments to the collections of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the proposed amendments to the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs of OMB by fax at (202) 395–6566 or by email at *OIRAsubmissions@omb.eop.gov*. Please provide the Commission with a copy of the submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the ''Addresses'' section of this Further Proposal for comment submission instructions to the Commission. A copy of the supporting statements for the collection of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully effective if received by OMB and the Commission within 30 days after publication of this Further Proposal. Nothing in this Further Proposal affects the deadline enumerated above for public comment to the Commission.

VI. Cost-Benefit Considerations

A. Introduction

Title VII of the Dodd-Frank Act added section 2(a)(13) to the CEA to direct the Commission to promulgate rules requiring the real-time public reporting of swap transaction and pricing data, while protecting market liquidity for block trades and large notional off-facility swaps. Transaction reporting is a fundamental component of the Dodd-Frank Act's general objectives to reduce risk, increase transparency and promote market integrity within the financial system and the swaps market in particular.

Four provisions in section 2(a)(13) are relevant to this Further Proposal. Section 2(a)(13)(E)(ii) requires the Commission to establish criteria for determining what constitutes a large notional off-facility swap or block trade for particular markets and contracts. Section 2(a)(13)(E)(iii) requires the Commission to specify the appropriate time delay for reporting large notional off-facility swaps and block trades. Finally, sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) collectively require the Commission to protect the identities of counterparties to swaps and to maintain the anonymity of business transactions

[326] The Commission estimates that there will be 5 SDRs, which will collect swaps data in the other commodity asset class. Each SDR would collect swaps data on approximately 10,000 swap transactions in the other commodity asset class. The commission estimates that it will take each SDR on average approximately 1 minute to publicly disseminate swaps data related to these new swap transactions. The number of burden hours for these SDRs would be 833 hours. As referenced in note 318 supra, the total labor costs for a swap trader is $140.93. Thus, the total number of burden hour costs equal the total number of burden hours (833 burden hours) × $140.93.

[327] The Adopting Release calculated and addressed the total ongoing burden hours and burden hour costs. *See* 77 FR 1,1232.

[328] The economic costs associated with entering into a third party service arrangement to transmit an electronic notice to an SDR are difficult to determine because of too many variables involved in determining those costs. Notwithstanding this difficulty, the Commission believes that, for many reporting parties that infrequently trade swaps, the annualized cost of entering into a third-party service arrangement of this type would likely be less than the total annual cost of building an electronic infrastructure to transmit electronic notices directly to an SDR.

[329] This estimate is calculated as follows: Senior Programmer cost ($81.52 adjusted hourly wage × 250 hours) + Systems Analyst ($54.89 adjusted hourly wage × 250 hours) + Compliance Manager ($77.77 adjusted hourly wage × 250 hours) + Compliance Attorney (i.e., Assistant General Counsel) ($89.43 adjusted hourly wage × 250 hours).

and market positions of those counterparties.

The Commission has implemented three of the four provisions in section 2(a)(13). The Adopting Release issued on January 9, 2012 sets forth, *inter alia:* (i) Definitions for the terms ''large notional off-facility swap'' and ''block trade''; (ii) the appropriate time delay for reporting these swaps and trades; and (iii) a system to protect the anonymity of parties to a swap, including the establishment of interim cap sizes and the creation of an exception from the real-time public reporting requirement for certain swaps in the other commodity asset class.

While part 43 defines the terms large notional off-facility swap and block trade and sets forth time delays for reporting such swaps and trades, part 43 as adopted does not ''specify the criteria for determining what constitutes a large notional [off-facility] swap transaction [or block trade] for particular markets and contracts.'' [330] Since the Commission has not yet specified criteria, by default, all publicly reportable swap transactions are now subject to a time delay. The provisions of this Further Proposal would, if adopted, become effective against this baseline—that is, at a point in time when all publicly reportable swap transactions are subject to a time delay and are not publicly reported in real-time (*i.e.,* as soon as technologically practicable).

This Further Proposal seeks to amend part 43 by establishing criteria to group swaps into categories and methodologies to determine appropriate minimum block sizes for each swap category. In addition, this Further Proposal seeks to establish additional measures to protect the identities of swap counterparties and their business transactions. This Further Proposal does not affect provisions relating to the appropriate time delay for block trades and large notional off-facility swaps. Similarly, this Further Proposal does not amend or further propose provisions that would require swap market participants to develop a completely new infrastructure or hire new personnel in order to comply with the existing provisions of part 43.[331]

In the sections that follow, the Commission identifies and considers certain costs and benefits associated with the Further Proposal to amend part 43 as required by section 15(a) of the CEA. The Commission requests comment on all aspects of its proposed consideration of costs and benefits, including identification and assessment of any costs and benefits not discussed in this analysis. In addition, the Commission requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions on the Commission's proposed consideration of costs and benefits.

B. The Requirements of Section 15(a)

Section 15(a) of the CEA [332] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing an order. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following 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. To the extent that these new regulations reflect the statutory requirements of the Dodd-Frank Act, they will not create costs and benefits beyond those resulting from Congress's statutory mandates in the Dodd-Frank Act. However, to the extent that the new regulations reflect the Commission's own determinations regarding implementation of the Dodd-Frank Act's provisions, such Commission determinations may result in other costs and benefits. It is these other costs and benefits resulting from the Commission's own determinations pursuant to and in accordance with the Dodd-Frank Act that the Commission considers with respect to the section 15(a) factors.

C. Structure of the Commission's Analysis; Cost Estimation Methodology

Of the two parts to this Further Proposal, ''Part One'' establishes block trade rules, and ''Part Two'' addresses anonymity protections. Part One further proposes regulations specifying criteria for categorizing swaps and determining the appropriate minimum block size for each swap category. In particular, in Part One the Commission is proposing: (i) The criteria for determining swap categories and the methodologies that it would use to determine the initial and post-initial appropriate minimum block sizes for large notional off-facility swaps and block trades; and (ii) a method by which parties to a swap, SEFs, and DCMs would elect to treat the parties' qualifying swap transactions as block trades or large notional off-facility swaps, as applicable. The Commission has considered the costs and benefits associated with Part One separately for each of the two above-specified groups of provisions since different parties would bear primary compliance obligations for each group. That is, the provisions establishing criteria for determining swap categories and appropriate minimum block size methodologies primarily impose obligations on the Commission, and the provisions establishing election methodology primarily impose obligations on parties to a swap and registered entities.

Part Two provides: (i) A methodology for determining post-initial-period cap sizes; and (ii) a system for the public dissemination of swap transaction and pricing data for certain other commodity swaps with specific underlying assets and geographic detail in a manner that does not disclose the business transactions and market positions of swap market participants. Since Part Two's provisions would impose the same or similar costs (*e.g.,* technology re-programming costs) and confer the same or similar benefits on swap market participants (*e.g.,* anonymity protections with respect to the identities of the parties to a swap and their market transactions), the Commission analyzed the costs and benefits of these provisions in one group section.

Wherever reasonably feasible, the Commission has endeavored to quantify the costs and benefits of this Further Proposal. In a number of instances, however, the Commission lacks or is otherwise unaware of information needed as a basis for quantification. In these instances, the Commission has requested data from the public to aid the Commission in considering the quantitative effects of its rulemaking. Where it has not been feasible to quantify (*e.g.,* because of the lack of accurate data), the Commission has considered the costs and benefits of this Further Proposal in qualitative terms.

The conditions now existent under part 43—*i.e.,* all publicly reportable swap transactions qualify for a time-delay—provide the baseline for the Commission's consideration of incremental costs and benefits that would arise from this Further Proposal.[333] These baseline costs and benefits are discussed in the Adopting Release. As a reference point for estimating the incremental costs and benefits against this baseline, the Commission has used a non-financial

[330] See CEA section 2(a)(13)(E)(ii). 7 U.S.C. 2(a)(13)(E)(ii).

[331] For a discussion of the costs and benefits of the time delay and development of an infrastructure for block trades and large notional off-facility swaps, *see* the Adopting Release, 77 FR 1,232.

[332] 7 U.S.C. 19(a).

[333] *See* 77 FR 1,232.

end-user that already has developed the technical capability and infrastructure necessary to comply with the requirements set forth in part 43.[334] Relative to this reference point, however, the Commission anticipates that in many cases the actual costs to established market participants (including swap counterparties, SDRs and other registered entities) would be lower—perhaps significantly so, depending on the type, flexibility, and scalability of systems already in place. Moreover, the Commission anticipates that with respect to SDRs specifically, they may recover their incremental costs by passing them on as fees assessed on reporting parties—SEFs and DCMs—for use of the SDRs' public dissemination services.[335] In addition, the Commission recognizes that its choice of an alternative method for determining appropriate minimum block sizes and cap sizes may alter the cost and benefit estimates described below.

D. Background; Objectives of This Further Proposal

In the Adopting Release, the Commission stated that it planned to ''issue a separate notice of proposed rulemaking that would specifically address the appropriate criteria for determining appropriate minimum block trade sizes in light of the data and comments received.'' [336] Accordingly, in this Further Proposal, the Commission is specifically proposing to: (1) Establish criteria by creating the concept of a ''swap category'' (*i.e.,* groupings of swaps within the same asset class based on underlying characteristics) [337]; (2) prescribe initial appropriate minimum block sizes based on the Commission's review and analysis of swap market data across certain asset classes [338]; (3) establish a methodology for calculating post-initial appropriate minimum block sizes [339]; (4) establish an obligation for the Commission to calculate appropriate minimum block sizes; (5) provide the method through which parties to a swap may elect block trade or large notional off-facility swap treatment for their swap transaction [340]; (6) establish a system to ensure the anonymity of certain swaps in the other commodity asset class [341]; and (7) establish a methodology for the calculation of post-interim or post-initial cap sizes.[342]

Items (1) through (5) referenced above are addressed in Part One of this Further Proposal since they relate to the proposed criteria, methodology and election for block sizes and large notional off-facility swaps. Items (6) and (7) are discussed in Part Two since they relate to protecting the identity of parties to a swap in accordance with sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) of the CEA.

E. Costs and Benefits Relevant to the Block Trade Rules Section of the Further Proposal (§§ 43.6(a)–(f) and (h))

The Commission has organized its cost-benefit discussion of the provisions within Part One of this Further Proposal as follows: (1) The proposed criteria for establishing swap categories and a proposed methodology for determining appropriate minimum block sizes; and (2) the proposed method through which the parties to a swap may elect to treat their qualifying swap transaction as a block trade or large notional off-facility swap, as applicable. The Commission has performed a separate section 15(a) analysis with respect to each group of provisions.

1. Costs and Benefits Relevant to the Proposed Criteria and Methodology

In proposed §§ 43.6(a)–(f) and (h), the Commission specifies criteria for establishing swap categories and a proposed methodology that the Commission would use in determining appropriate minimum block sizes. In the subsections that follow, the Commission sets forth brief summaries of the relevant proposed provisions, followed by a discussion of associated costs and benefits.

a. Proposed § 43.6(a) Commission Determination

Pursuant to proposed § 43.6(a), the Commission would determine the appropriate minimum block size for any swap listed on a SEF or DCM, and for large notional off-facility swaps. Following an initial period (as described below), the Commission would calculate and publish all appropriate minimum block sizes across all asset classes no less than once each calendar year.

b. Proposed § 43.6(b) Swap Category

The Commission is proposing a tailored approach to group swaps within each asset class. Section 43.6(b) proposes unique swap categories based on the underlying asset class, relevant economic indicators and the Commission's analysis of relevant swap market data.

c. Proposed §§ 43.6(c)–(f) and (h) Methods for Determining Appropriate Minimum Block Sizes

The Commission is proposing in §§ 43.6(c)–(f) and (h) a phased-in approach, with an initial period and a post-initial period, to determine appropriate minimum block sizes for each swap category. During the initial period, the Commission is proposing a schedule of initial appropriate minimum block sizes in appendix F to part 43. The Commission is proposing to determine the appropriate minimum block sizes for the interest rate and credit asset classes differently from the sizes for the equity, FX and other commodity asset classes. With respect to the interest rate and credit asset class, the Commission established the initial appropriate minimum block sizes based on data it had received from the Over-the-Counter Derivatives Supervisors Group.[343] In calculating these sizes, the Commission has applied the 67-percent notional amount calculation, which is set forth in proposed § 43.6(c)(1).

In proposed § 43.6(d), the Commission would disallow swaps in the equity asset class from being eligible for treatment as block trades or large notional off-facility swaps (*i.e.,* equity swaps would not be subject to a time delay as provided in part 43). As noted above, the Commission is of the view that applying this treatment to the equity asset class is inappropriate given, inter alia, the depth of liquidity in the underlying equity cash market.

With respect to the FX and other commodity asset classes, the appropriate minimum block sizes for

[334] A non-financial end-user is a new market entrant with no prior swaps market participation or infrastructure. This reference point is different from the reference point(s) used in the PRA analysis in section V above for the following two reasons: (1) The burdens in the PRA are narrower than the costs discussed in this section (*i.e.,* the PRA analysis solely discusses costs relating to collections of information, whereas this cost-benefit analysis considers all costs relating to the proposed rules); and (2) as discussed above, the cost-benefit analysis determines costs relative to one market participant that presumably would bear the highest burdens in implementing the proposed rules, whereas the PRA analysis seeks to estimate the costs of the proposed rules on all market participants.

[335] *See* § 43.3(i) of the Commission's regulations, which authorizes an SDR to charge fees to persons reporting swap transaction and pricing data for real-time public dissemination, so long as such fees are equitable and non-discriminatory. The Commission currently does not have sufficient data on which to estimate the fees that an SDR would charge to person reporting swap transaction and pricing data. 77 FR 1,246.

[336] *See* 77 FR 1,185.

[337] *See* proposed § 43.6(b), which defines swap category by asset class.

[338] *See* proposed § 43.6(e) and proposed appendix F to part 43.

[339] *See* proposed §§ 43.6(c) and (f).

[340] *See* proposed § 43.6(g).

[341] *See* proposed amendments to § 43.4(d)(4).

[342] *See* proposed §§ 43.4(h) and 43.6(c).

[343] A discussion of the ODSG is set forth in section II.C.1 of this Further Proposal.

swaps during the initial period would be divided primarily between swaps that are futures-related swaps and those that are not futures related.[344] Proposed appendix F to part 43 lists the proposed initial appropriate minimum block sizes for swap categories in the FX and other commodity asset classes. For those swaps in the FX and other commodity asset classes that are not listed in proposed appendix F to part 43, the Commission generally provides in proposed § 43.6(e)(2) that these swaps would qualify as block trades or large notional off-facility swaps.

After an SDR has collected reliable data for a particular asset class, proposed § 43.6(f)(1) provides that the Commission shall determine post-initial appropriate minimum block sizes for all swaps in the interest rate, credit, FX and other commodity asset classes based on the 67-percent notional amount calculation. The Commission is also proposing special rules for the determination of appropriate minimum block sizes that would apply to all asset classes.

In the following paragraphs, the Commission estimates the costs of the proposed criteria and methodology and discusses their benefits, before considering these costs and benefits in light of the five public interest areas of section 15(a) of the CEA.

d. Proposed §§ 43.6(a)–(f) and (h) Costs Relevant to the Proposed Criteria and Methodology

The Adopting Release identifies the baseline of direct, quantifiable costs to reporting parties, SDRs, SEFs and DCMs from current part 43.[345] The Commission foresees that proposed §§ 43.6(a)–(f) and (h) would impose incremental direct costs on swap market participants and registered entities (i.e., SEFs, DCMs, or SDRs) through the need to reprogram and update their technology to accommodate the Commission's publication of post-initial appropriate minimum block sizes at least once each calendar year following the initial period. The Commission does not anticipate that proposed §§ 43.6(a)–(f) and (h) would impose any direct costs on the general public. As noted above, proposed § 43.6(a) provides that the Commission shall set appropriate minimum block sizes for block trades and large notional off-facility swaps following the procedures set forth in proposed §§ 43.6(b)–(f) and (h). The Commission would determine these sizes both in the initial and post-initial periods. The Commission anticipates that the requirements proposed in § 43.6(a) likely would mitigate new costs since the proposed approach seeks to build on the existing connectivity, infrastructure and arrangements that market participants and registered entities have established in complying with the requirements in part 43 of the Commission's regulations.[346] The Commission anticipates that market participants and registered entities may have to reprogram or update their technology to accommodate the Commission's publication of post-initial appropriate minimum block sizes at least once each calendar year following the initial period. The Commission anticipates that compliance would be slightly different for market participants and registered entities.

Market participants, and specifically non-financial end users, likely would need to provide training to their existing personnel and update their written policies and procedures in order to comply with proposed § 43.6(a)–(f) and (h). The Commission estimates that providing training to existing personnel and updating written policies and procedures would impose an initial non-recurring burden of approximately 15 personnel hours at an approximate cost of $1,431.26 for each non-financial end-user.[347] This cost estimate includes the number of potential burden hours required to produce and design training materials, conduct training with existing personnel, and revise and circulate written policies and procedures in compliance with the proposed requirements.

Registered entities would likely need to update their existing technology in order to comply with proposed § 43.6(a)–(f) and (h). The Commission estimates that registered entities updating existing technology would impose an initial non-recurring burden of approximately 40 personnel hours at an approximate cost of $2,728 for each registered entity.[348] This cost estimate includes the number of potential burden hours required to amend internal procedures, reprogram systems and implement processes to account for each swap category and to update appropriate minimum block sizes at least once each calendar year.

The Commission anticipates that the publication of swap transaction and pricing data may enhance market liquidity. The Commission also anticipates, however, that the immediate reporting of block trades and large notional off-facility swaps may have the potential to increase the costs associated with the trading of those swaps. If these costs increase, then market liquidity may decrease. In these circumstances, swap market participants may experience difficulty managing the risks attendant to their trading activity.

The Commission anticipates that some market participants may face increased, indirect costs if block trades and large notional off-facility swaps are reported without a time delay (*i.e.,* as soon as technologically practicable). Some market makers could experience higher trading costs as a result of increased liquidity risks attendant to the need to offset large swap positions. Market makers ultimately would pass those costs onto their end-user clients. The Commission anticipates that the proposed criteria and methodology may mitigate the potential increase in costs by addressing both liquidity concerns and enhanced price discovery. The Commission also anticipates that its proposed approach of establishing specific criteria for grouping swaps into a finite set of defined swap categories might provide a clear organizational framework that avoids administrative burdens for market participants that otherwise could arise from more numerous and/or non-uniform swap categories.

The Commission anticipates that the potential costs of disruptions to market liquidity and trading activity are

[344] As noted above, the Commission is of the view that the difference in methodology for determining initial appropriate minimum block sizes for swaps in the FX and other commodity asset classes is warranted because: (1) Swaps in these asset classes are closely linked to futures markets; (2) tying block sizes to their economically related futures contracts reduces opportunities for regulatory arbitrage; and (3) DCMs have experience in setting block sizes in such a way that maintains market liquidity.

[345] In the Adopting Release, the Commission noted that ''the direct, quantifiable costs imposed on reporting parties, SEFs and DCMs will take the forms of (i) non-recurring expenditures in technology and personnel; and (ii) recurring expenses associated with systems maintenance, support, and compliance.'' *See* 77 FR 1,231.

[346] In its report, ISDA states that end-users ''will face significant technology and operational challenges as well as increased regulatory reporting requirements. Dealers will have to upgrade infrastructure to deal with automated trading and comply with increased regulatory reporting and recordkeeping.'' *See* Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products note 75 *supra,* at 24.

[347] This estimate is calculated as follows: (Compliance Manager at 10 hours) + (Director of Compliance at 3 hours) + (Compliance Attorney at 2 hours) = 15 hours per non-financial end-user who is a reporting party. A compliance manager's adjusted hourly wage is $77.77. A director of compliance's hourly wage is $158.21. A compliance attorney's hourly wage is $89.43. *See* note 316 *supra.*

[348] The estimate is calculated as follows: (Senior Programmer at 20 hours) + (Systems Analyst at 20 hours). A senior programmer's adjusted hourly wage is $81.52. A systems analyst's adjusted hourly wage is $54.89. *See* note 316 *supra.*

minimized through the proposed regime. That is, the Commission anticipates that the phase-in approach should provide swap market participants with an adequate amount of time to incrementally adjust their trading practices, technology infrastructure and business arrangements to comply with the new block trade regime. This approach also may ensure efficient compliance with the proposal while minimizing the impact of implementation costs to swap market participants, registered entities and the general public.

The Commission anticipates that market participants, registered entities and the general public may bear some indirect costs due to the increased degree of transparency that would result from the criteria and methodology in proposed §§ 43.6(a)–(f) and (h). However, the Commission proposed that the appropriate minimum block trade sizes specified in this Further Proposal are sufficiently moderate to mitigate these indirect costs. The Commission also anticipates that the benefits of transparency would be significant relative to the costs occasioned by the tailored institution of appropriate minimum block size levels proposed in the initial period.

e. Benefits Relevant to Proposed §§ 43.6(a)–(f) and (h)

The Commission anticipates that proposed §§ 43.6(a)–(f) and (h) would generate several overarching, although presently unquantifiable, benefits to swap market participants, registered entities and the general public. Most notably, the Commission expects that the proposed criteria and methodologies for setting appropriate minimum block sizes would provide greater price transparency for a substantial portion of swap transactions in a manner modulated to mitigate any negative impact to swaps market liquidity. More specifically, the proposed regulations would provide price transparency by lifting the current part 43 real-time reporting time delay [349] for swap transactions with notional values under specified threshold levels. At the same time, the Commission's proposed criteria and methodology—including carefully crafted block trades and large-notional off-facility swap categories—are designed to retain time-delay status for those high-notional-value transactions exceeding thresholds intended to avoid a negative market liquidity impact. The phased-in implementation proposed by the Commission is intended to introduce greater transparency in an incremental, measured and flexible manner so that appropriate minimum block sizes are responsive to changing markets.[350] The Commission also intends the proposed approach to enhance price transparency in a manner that respects market participants' and registered entities' efficiency needs. Under proposed § 43.6(a), the Commission would be required to set all appropriate minimum block sizes. The Commission anticipates that its proposed approach would impose significantly fewer direct burdens on market participants and registered entities than an alternative that would require them to engage in a more quantitative analysis to ascertain appropriate minimum block sizes for themselves. Such an alternative approach could lead to market fragmentation, adversely affect market liquidity, or reduce price transparency.

f. Application of the Section 15(a) Factors to Proposed §§ 43.6(a)–(f) and (h)

As noted above, section 15(a) directs the Commission to consider the following five areas in evaluating the costs and benefits of a particular Commission action.

i. Protection of Market Participants and the Public

The Commission anticipates that the criteria and methodology in proposed §§ 43.6(a)–(f) and (h) would protect swap market participants by extending the delay for reporting for publicly reportable swap transactions, as appropriate, while also accommodating the market participant and public interest with enhanced transparency. By setting appropriate minimum block sizes in a thoughtful and measured manner as contemplated in the Further Proposal, the Commission strives to attain at least a near-optimal balance between transparency and liquidity interests. As a result, swap market participants would retain a means to offset risk exposures related to their swap transactions (including outsize swap transactions) at competitive prices. While the Commission notes that all publicly reportable swap transactions would remain subject to a time delay, the Commission foresees a resulting swap-market transparency counterbalance that could benefit swap market participants by promoting greater competition for their businesses. Specifically, the Commission expects that the availability of real-time pricing information for carefully enumerated categories of swap transactions could draw increased swap market liquidity through the competitive appeal of improved pricing efficiency that greater transparency affords. More liquid, competitive swap markets, in turn, allow businesses to offset costs more efficiently than in completely opaque markets, thus serving well the interests of both market participants and the public who should benefit through lower costs of goods and services.[351]

ii. Efficiency, Competitiveness and Financial Integrity of Markets [352]

The Commission anticipates that the proposed criteria and methodology would promote market efficiency, competitiveness and financial integrity of markets in a number of respects, including the following:

- They impose minimal administrative burdens on swap market participants as a result of Commission-specified swap categories and the Commission's responsibility to determine of appropriate minimum block sizes (as opposed to requiring registered entities to establish such categories and determine such sizes).
- With respect to futures-related swaps in the FX and other commodity asset classes, by synchronizing the appropriate minimum block sizes for swaps with DCM block trade sizes for futures during the initial period, they can be expected to reduce opportunities for regulatory arbitrage between the underlying cash or futures markets and the swap markets.
- They retain needed flexibility in light of the changes that the Commission anticipates will occur in swap markets following the implementation of part 43 and other implementing regulations. More specifically, the proposed methodology in §§ 43.6(c)–(f) and (h) would recalibrate appropriate minimum block sizes regularly to ensure that those sizes remain appropriate for, and responsive to, these changing markets.

[349] *See* 77 FR 1,240.

[350] Proposed § 43.6(f)(2) permits the Commission to set appropriate minimum block sizes no less than once annually during the post-initial period. If swap market conditions were to change significantly after the implementation of the provisions of this Further Proposal, the Commission could react to further improve price transparency or to mitigate adverse effects on market liquidity.

[351] There may be a de minimis cost in the form of increased offsetting costs, but the Commission foresees that its proposed criteria and methodology would likely mitigate that cost. A discussion of this de minimis cost is set forth above.

[352] The Commission is presently unable to identify any potential impact to the financial integrity of futures markets from the proposed criteria and methodology in its consideration of section 15(a)(2)(B) of the CEA. Although by its terms, section 15(a)(2)(B) applies to futures (not swaps), the Commission finds this factor useful in analyzing the costs and benefits of swaps regulation, as well.

• As discussed above with respect to the protection of market participants and the public, they would introduce increased market transparency for swaps in a careful, measured manner that seeks to optimize the balance between liquidity and transparency concerns.[353] The Commission anticipates that this enhanced transparency would be introduced in a manner capable of fostering greater competition among swap market participants drawn to the improved pricing efficiency that transparency fosters.

iii. Price Discovery

The Commission anticipates that the proposed criteria and methodology will enhance swap market price discovery by eliminating, to the extent appropriate, the time delays for the real-time public reporting of those swaps as now provided in the Adopting Release. The proposed criteria and methodology of this Further Proposal would ensure that an SDR could be able to publicly disseminate data for certain swaps as soon as technologically practicable. As more trades are published in real-time, reported prices are likely to be better indicators of competitive pricing.

iv. Sound Risk Management Practices

As discussed above, the Commission anticipates that the proposed criteria and methodology, if adopted, would likely result in enhanced price discovery since SDRs would be able to publicly disseminate some swaps as soon as technologically practicable. With better and more accurate data, valuation, and risk assessment information, swap market participants would likely be better able to measure risk. An ability to better manage risk at an entity level is likely to translate to improved market participant risk management generally. Improved risk measurement and management potential, in turn, may reduce the risk of another financial crisis since, presumably, it should better equip market participants to value their swap contracts and other assets during times of market instability. In addition, the proposed criteria and methodology may avoid higher costs that could cause some market participants to abandon swaps transactions in favor of more imperfect financial risk management tools.

The Commission also anticipates that as the market price reflects more accurate economic information, volatility is likely to be reduced, therefore smoothing market risk for participants.

v. Other Public Interest Considerations

The Commission does not anticipate that the proposed criteria and methodology discussed above would have a material effect on public interest considerations other than those identified above.

g. Specific Questions Regarding the Proposed Criteria and Methodology

The Commission requests comments on its cost and benefit considerations with respect to the proposed criteria and methodology. While comments are welcome on all aspects of the proposal, the Commission notes the following specifically:

Q93. Please provide comments regarding views on the accuracy and/or inaccuracy of: (1) The facts cited in support of the Commission's analysis of the identified considerations relating to the proposed criteria and methodology in proposed §§ 43.6(a)–(f) and (h); and (2) the Commission's general analysis.

Q93.a. Please provide estimates or data regarding the direct, quantifiable costs associated with the criteria and methodology in proposed §§ 43.6(a)–(f) and (h).

Q93.b. Please provide estimates or data regarding the indirect, quantifiable costs associated with the criteria and methodology in proposed §§ 43.6(a)–(f) and (h).

Q93.c. Please comment and provide data on whether the proposed criteria and methodology would decrease or increase liquidity in swaps markets.

Q93.d. How can these costs be avoided by the use of alternative trading strategies (*e.g.,* splitting larger trades into smaller trades)? What are the costs related to those alternative trading strategies?

Q93.e. Please provide estimates of the fees that SDRs and other registered entities would charge reporting parties and other market participants in order to pass along the incremental costs associated with proposed §§ 43.6(a)–(f) and (h).

Q93.f. Would market participants abandon swap transactions in favor of more imperfect financial risk management tools?

Q93.g. Does the 67-percent notional amount calculation meet the optimization goal of balancing liquidity and transparency concerns?

Q94. Other than those public interest considerations identified herein, are there any other public interest considerations that the Commission should examine in finalizing proposed §§ 43.6(a)–(f) and (h)?

Q94.a. One of the Commission's rationales for its proposed criteria and methodology is the objective of deterring regulatory arbitrage as between swaps and futures markets. Should the Commission also be concerned regarding the costs and benefits related to regulatory arbitrage as between swaps and forwards markets?

Q95. In a discussion paper titled ''Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products,'' ISDA examined the likely costs and benefits of mandating the execution of interest rate swaps on DCMs and SEFs.[354] ISDA's paper provided an analysis of, inter alia, liquidity and transaction costs in the interest futures and options markets, in addition to a review of liquidity and transaction costs in the OTC derivatives market. ISDA surveyed financial and non-financial end users to estimate the incremental costs resulting from the introduction of the electronic execution requirement in the Commission's proposal for SEFs.[355] The paper identifies some potential costs that are relevant to this Further Proposal, such as technology costs and costs associated with development of algorithms for block trades. This paper also identifies potential costs that are either beyond the scope of this Further Proposal (*e.g.,* costs necessary to establish a SEF) or are irrelevant to an analysis under section 15(a) of the CEA (*e.g.,* costs to regulators). The Commission requests comments on the analysis and conclusions reached in ISDA's paper.

Q96. Will end users that desire to transact large trades under the appropriate minimum block size find it necessary to develop some form of algorithmic trading procedure? If so, what are the direct and indirect costs and benefits related to the development?

Q97. The Commission seeks comment with respect to whether there is a feasible alternative approach to the one now contemplated in proposed § 43.6(a) (*i.e.,* the Commission would assume all responsibilities for determining and publishing appropriate minimum block sizes) that would impose less regulatory

[353] As noted above, under part 43 of the Commission's regulations (as now promulgated in the Adopting Release), all publicly reportable swap transactions are subject to a time delay pending further amending regulation to establish the criteria and methodology to distinguish block trades and large notional off-facility swaps from those swaps that do not meet those definitions. *See* 77 FR 1,217. As a result, SDRs as of now are not required to publicly disseminate publicly reportable swap transactions as soon as technologically practicable.

[354] *See* Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products note 75316 *supra.*

[355] *See* Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1,214, Jan. 7, 2011.

burden on swap market participants and the general public.

Q98. The Commission anticipates that increased bid/ask spreads could make it difficult for end users to obtain more competitive pricing for outsize swap transactions. Under this Further Proposal, would the price of executing outsize swap transactions be generally higher? Would bid/ask spreads widen in yield as a result of this Further Proposal?

Q98.a. Whether, and to what extent, do market participants anticipate that their knowledge of bid/ask spreads or of liquidity in a swap market generally will improve as a result of this Further Proposal?

Q98.b. Whether, and to what extent, do market participants anticipate that their knowledge of the competitive price for swaps will improve as a result of this Further Proposal?

Q98.c. Would increased knowledge of the competitive price in a market encourage market participants that may not be current liquidity providers to provide liquidity to the market?

Q99. On average, what are current transaction costs for standard size swaps in comparison to transaction costs in the futures markets? Would transaction costs for swap markets increase as a result of this Further Proposal? If so, by how much? Would the difference between swaps and futures transaction costs induce more market participants to trade futures instead of transacting swaps?

Q100. What effects, if any, would this Further Proposal have on access to swaps markets? Would the Further Proposal positively or negatively impact access opportunities for small end users?

2. Cost-Benefit Considerations Relevant to the Proposed Block Trade/Large Notional Off-Facility Swap Election Process (Proposed § 43.6(g))

Proposed § 43.6(g) contains the provisions regarding the election to have a swap transaction treated as a block trade or large notional off-facility swap, as applicable. Proposed § 43.6(g)(1) establishes a two-step notification process relating to block trades. Proposed § 43.6(g)(2) establishes the notification process relating to large notional off-facility swaps.

Proposed § 43.6(g)(1)(i) contains the first step in the two-step notification process relating to block trades. In particular, this section provides that the parties to a swap executed at or above the appropriate minimum block size for the applicable swap category are required to notify the SEF or DCM, as applicable, of their election to have their qualifying swap transaction treated as a block trade. The Commission anticipates that SEFs and DCMs will use automated, electronic—and in some cases voice—processes to execute swap transactions; and that the transmission of the notification of a block trade election also will be either automated, electronic or communicated through voice processes. A discussion of the costs and benefits relevant to proposed § 43.6(g) is set forth in the subsections that follow.

a. Costs Relevant to the Proposed Election Process (Proposed § 43.6(g))

Non-financial end-users who are reporting parties, as well as SEFs, DCMs, and SDRs would likely bear the costs of complying with the election process in proposed § 43.6(g). The Commission anticipates, however, that these entities already will have made non-recurring expenditures in technology and personnel in connection with the requirements set forth in part 43. In addition, these entities already will be required to incur recurring expenses associated with systems maintenance, support and compliance as described in the cost-benefit discussion in the Adopting Release.[356] As such, the Commission assumes that these non-financial end-users, SEFs, DCMs, and SDRs would likely be able to leverage their existing technology, systems and personnel in complying with the election process in proposed § 43.6(g). Based on this assumption, the Commission anticipates that non-financial end-users, SEFs, DCMs and SDRs would likely have the following direct, quantifiable costs: (i) An incremental, non-recurring expenditure to update existing technology; (ii) an incremental non-recurring expenditure for training existing personnel and updating written policies and procedures for compliance with amendments to part 43; and (iii) incremental recurring expenses associated with compliance, maintenance and operational support in connection with the proposed election process. SDRs also would have incremental, non-recurring expenditures to update existing technology.[357] In the paragraphs that follow, the Commission discusses each of these costs.

i. Incremental, Non-Recurring Expenditure to a Non-Financial End-User, SEF or DCM to Update Existing Technology[358]

To comply with the election process in proposed § 43.6(g), a non-financial end-user, SEF, or DCM likely would need to: (1) Update its OMS system to capture the election to treat a qualifying publicly reportable swap transaction as a block trade or large notional off-facility swap. The Commission estimates that updating an OMS system to permit notification to an SDR of a block trade or large notional off-facility swap election would impose an initial non-recurring burden of approximately 80 personnel hours at an approximate cost of $6,761.20 for each non-financial end-user, SEF or DCM.[359] This cost

[356] *See* 77 FR 1,237. As noted in the Adopting Release, non-financial end-users (that do not contract with a third party) will have initial costs consisting of: (i) Developing an internal order management system capable of capturing all relevant data ($26,689 per non-financial end-user) and a recurring annual burden of ($27,943 per non-financial end-user); (ii) establishing connectivity with an SDR that accepts data ($12,824 per non-financial end-user); (iii) developing written policies and procedures to ensure compliance with part 43 ($14,793 per non-financial end-user); and (iv) compliance with error correction procedures ($2,063 per non-financial end-user). *See id.* With respect to recurring costs, a non-financial end-user will have: (i) Recurring costs for compliance, maintenance and operational support ($13,747 per non-financial end-user); (ii) recurring costs to maintain connectivity to an SDR ($100,000 per non-financial end-user); and (iii) recurring costs to maintain systems for purposes of reporting errors or omissions ($1,366 per non-financial end user). *See id.*

SDRs (that do not enter into contracts with a third party) would have incremental costs related to compliance with part 43 beyond those costs identified in the release adopting part 49 of the Commission's regulations. *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54,538 (Sept. 1, 2011). In the Adopting Release, the Commission stated that each SDR would have: (i) A recurring burden of approximately $856,666 and an annual burden of $666,666 for system maintenance per SDR; (ii) non-recurring costs to publicly disseminate ($601,003 per SDR); and (iii) recurring costs to publicly disseminate ($360,602 per SDR). *See id.*

In the Adopting Release, the Commission assumed that SEFs and DCMs will experience the same or lower costs as a non-financial end-user. *See id.*

[357] SDRs that do not enter into contracts with a third party would have incremental costs related to compliance with part 43 of the Commission's regulations beyond those costs identified in the release adopting part 49 of the Commission's regulations. *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54,538, Sept. 1, 2011. In the Adopting Release, the Commission stated that each SDR would have: (1) A recurring burden of approximately $856,666 and an annual burden of $666,666 for system maintenance per SDR; (2) non-recurring costs to publicly disseminate ($601,003 per SDR); and (3) recurring costs to publicly disseminate ($360,602 per SDR). *See id.*

[358] For the same reasons stated in the Adopting Release, the Commission assumes that SEFs and DCMs would experience the same or less costs as a non-financial end-user. *See* 77 FR 1,236. Under proposed § 43.6(g)(1), SEFs or DCMs would be required to transmit a block trade election to an SDR only when the SEF or DCM receives notice of a block trade election from a reporting party.

[359] This estimate is calculated as follows: (Compliance Manager at 15 hours) + (Director of Compliance at 10 hours) + (Compliance Attorney at 5 hours) + (Senior Systems Analyst at 30) + (Senior Programmer at 20) = 80 hours per non-financial

estimate includes an estimate of the number of potential burden hours required to amend internal procedures, reprogram systems and implement processes to permit a non-financial end-user to elect to treat their qualifying swap transaction as a block trade or large notional off-facility swap in compliance with the requirements set forth in proposed § 43.6(g).

ii. Incremental, Non-Recurring Expenditure to a Non-Financial End-User, SEF or DCM To Provide Training to Existing Personnel and Update Written Policies and Procedures

To comply with the election process in proposed § 43.6(g), a non-financial end-user likely would need to provide training to its existing personnel and update its written policies and procedures to account for this new process. The Commission estimates that providing training to existing personnel and updating written policies and procedures would impose an initial non-recurring burden of approximately 39 personnel hours at an approximate cost of $3,195.00 for each non-financial end-user.[360] This cost estimate includes the number of potential burden hours required to produce design training materials, conduct training with existing personnel, and revise and circulate written policies and procedures in compliance with the requirements set forth in proposed § 43.6(g).

iii. Incremental, Recurring Expenses to a Non-Financial End-User, DCM or SEF Associated With Incremental Compliance, Maintenance and Operational Support in Connection With the Proposed Election Process

A non-financial end-user, DCM or SEF likely would incur costs on an annual basis in order to comply with the election process in proposed § 43.6(g). The Commission estimates that annual compliance, maintenance and operation support would impose an incremental, recurring burden of approximately five personnel hours at an approximate cost of $341.60 for each non-financial end-user, DCM or SEF.[361] This cost estimate includes the number of potential burden hours required to design training materials, conduct training with existing personnel, and revise and circulate written policies and procedures in compliance with the requirements set forth in proposed § 43.6(g).

iv. Incremental, Non-Recurring Expenditure to an SDR To Update Existing Technology To Capture and Publicly Disseminate Swap Data for Block Trades and Large Notional Off-Facility Swaps

To comply with the election process in proposed § 43.6(g), an SDR likely would need to update its existing technology to capture elections and disseminate qualifying publicly reportable swap transactions as block trades or large notional off-facility swaps. The Commission estimates that updating existing technology to capture elections would impose an initial non-recurring burden of approximately 15 personnel hours at an approximate cost of $1,317.58 for each SDR.[362] This cost estimate includes the number of potential burden hours required to amend internal procedures, reprogram systems, and implement processes to capture and publicly disseminate swap transaction and pricing data for block trades and large notional off-facility swaps in compliance with the requirements set forth in proposed § 43.6(g).

b. Benefits Relevant to the Proposed Election Process (Proposed § 43.6(g))

The Commission has identified two overarching, although presently unquantifiable, benefits that the proposed election process in § 43.6(g) would confer on swap market participants, registered entities and the general public. First, although proposed § 43.6(g) sets out a purely administrative process with which market participants and registered entities must comply, the Commission submits that this proposed process is an integral component of the block trade framework in this Further Proposal and in part 43. Consequently, this proposed election process would benefit market participants, registered entities and the general public by providing greater price transparency in swaps markets than currently exists under part 43.[363]

Second, the Commission foresees that the election process would promote market efficiency by creating a standardized process in proposed § 43.6(g) for market participants to delineate which publicly reportable swap transactions qualify for block trade or large notional off-facility swap treatment. In addition, this standardized process would further promote efficiency by allowing market participants and registered entities to leverage their existing technology infrastructure, connectivity, personnel and other resources required under parts 43 and 49 of the Commission's regulations. The Commission has endeavored to craft the Further Proposal in such a manner that its elements work together and avoid duplicative or conflicting obligations on market participants and registered entities.

c. Application of the Section 15(a) Factors to Proposed § 43.6(g)

As noted above, section 15(a) directs the Commission to consider five particular factors in evaluating the costs and benefits of a particular Commission action. These factors are considered below with respect to proposed § 43.6(g).

i. Protection of Market Participants and the Public

Although proposed § 43.6(g) sets out a purely administrative process with which market participants and registered entities must comply, the Commission foresees this proposed process as integral to the effective functioning of the block trade framework in this Further Proposal and in part 43. Consequently, this proposed election process contributes to providing greater swap market transparency than what currently exists under part 43 of the Commission's regulations. Market participants, registered entities and the general public benefit from this enhanced swap market price transparency.

ii. Efficiency, Competitiveness and Financial Integrity [364]

As noted above, the proposed election process would promote efficiency by providing market participants and

end-user who is a reporting party. *See* note 316 *supra.*

[360] This estimate is calculated as follows: (Compliance Manager at 5 hours) + (Director of Compliance at 2 hours) + (Compliance Attorney at 2 hours) + (Senior Systems Analyst at 10) + (Senior Programmer at 20) = 39 hours per non-financial end-user who is a reporting party. A compliance manager has adjusted hourly wages of $77.77. *See* note 316 *supra.*

[361] This estimate is calculated as follows: (Director of Compliance at 1 hour) + (Compliance Clerk at 3 hours) + (Compliance Attorney at 1 hour) = 5 hours per year per non-financial end-user who is a reporting party. A director of compliance has adjusted hourly wages of $158.21. A compliance clerk (junior compliance advisor) has adjusted hourly wages of $31.22. A compliance attorney has adjusted hourly wages of 89.43. *See* note 316 *supra.*

[362] This estimate is calculated as follows: (Sr. Programmer at 8 hours) + (Sr. Systems Analyst at 3 hours) + (Compliance Manager at 2 hours) + (Director of Compliance at 2 hours) = 15 hours per SDR. A senior programmer has adjusted hourly wages of $81.52. A senior systems analyst has adjusted hourly wages of $64.50. A compliance manager has adjusted hourly wages of $77.77. A director of compliance has adjusted hourly wages of $158.21. *See* note 316 *supra.*

[363] *See* the discussion of benefits in section VI.E.1.e above with respect to proposed §§ 43.6(a)–(f) and (h).

[364] Although by its terms, section 15(a)(2)(B) of the CEA applies to futures and not swaps, the Commission finds this factor useful in analyzing the costs and benefits of regulating swaps, as well. *See* 7 U.S.C. 19(a)(2)(B).

registered entities with a standardized process to delineate which publicly reportable swap transactions are block trades or large notional off-facility swaps. In addition, the proposed election process would promote efficiency by allowing non-financial end-users, SEFs, DCMs and SDRs to leverage their existing technology infrastructure, connectivity, personnel and other resources required under part 43 and part 49 of the Commission's regulations. The use of existing technologies, connectivity, personnel and other resources would create efficiencies for these entities and significantly minimize costs in connection with implementation of, and compliance with, proposed § 43.6(g).

The Commission has identified no potential impact on competitiveness and financial integrity that would result from the implementation of the proposed election process.

iii. Price Discovery

The Commission has identified no potential material impact to price discovery that would result from the implementation of the proposed election process.

iv. Sound Risk Management Practices

The Commission has identified no potential impact on sound risk management practices that would result from the implementation of the proposed election process.

v. Other Public Interest Considerations

The Commission has identified no potential impact on other public interest considerations (other than those identified above) that would result from the implementation of the proposed election process.

d. Specific Questions Regarding the Proposed Election Process

The Commission requests comments on its cost and benefit consideration with respect to the proposed election process. While comments are welcome on all aspects of the proposal, the Commission is particularly interested in the following:

Q101. Please provide comments regarding the Commission's estimates of direct and indirect costs to non-financial end-users and SDRs.

Q102. Please provide comments regarding views on the accuracy and/or inaccuracy of: (1) The facts cited in support of the Commission's analysis of the identified considerations relating to the proposed election process; and (2) the Commission's analysis.

Q103. Are there any other public interest considerations that the Commission should examine in finalizing proposed § 43.6(g)?

Q104. Are there other alternative processes that would further reduce burdens on market participants and registered entities?

F. Costs and Benefits Relevant to Proposed Anonymity Protections (Amendments to §§ 43.4(d)(4) and (h))

The Commission has organized its cost-benefit discussion of the two proposed amendments to § 43.4 of the Commission's regulations into one section. Section 43.4 as now promulgated prescribes the manner in which SDRs must publicly disseminate swap transaction and pricing data. One amendment proposes to add a system for masking the geographical data for certain other commodity swaps, which are not currently subject to public dissemination. The other amendment proposes to establish a methodology to establish cap sizes for large swap transactions that is different than the methodology for determining appropriate minimum block sizes. Both amendments seek to protect the anonymity of the parties to swaps while providing increased transparency in swaps markets.

A discussion of each amendment is set out immediately below, followed by a discussion of the costs and benefits of the amendments, as well as an analysis of the costs and benefits in light of the five factors identified in section 15(a) of the CEA.

1. Proposed Amendments to § 43.4(d)(4)

The Commission addresses the public dissemination of certain swaps in the other commodity asset class in § 43.4(d)(4). Section 43.4(d)(4)(ii) provides that for publicly reportable swaps in the other commodity asset class, information identifying the actual underlying assets must be publicly disseminated for: (a) Those swaps executed on or pursuant to the rules of a SEF or DCM; (b) those swaps referencing one of the contracts described in appendix B to part 43; and (c) any publicly reportable swap transaction that is economically related to one of the contracts described in appendix B to part 43. Pursuant to the Adopting Release, any swap that is in the other commodity asset class that falls under § 43.4(d)(4)(ii) would be subject to reporting and public dissemination requirements.

In this Further Proposal, the Commission is proposing a new provision, § 43.4(d)(4)(iii), which would establish develop a system for the public dissemination of exact underlying assets in the other commodity asset class with a ''mask'' that is based on commodity detail and geographic detail. The Commission also is proposing a new appendix to part 43, which contains the geographical details that SDRs would use in masking certain other commodity swaps in connection with public dissemination of swap transaction and pricing data.

2. Proposed Amendments to § 43.4(h)

Section 43.4(h) of the Commission's regulations establishes cap sizes for rounded notional or principal amounts that are publicly disseminated for publicly reportable swap transactions. The purpose of establishing cap sizes is to provide anonymity to large swap transactions that, if the notional or principal amounts were revealed, would likely identify the parties to the swap or their business transactions. The Commission notes that the objective of cap sizes differs from the primary objective underlying the establishment of appropriate minimum block sizes. With respect to the latter, the objective is tied to ensuring that a block trade or large notional off-facility swap can be sufficiently offset during a relative short reporting delay.

Section 43.4(h) currently requires SDRs to publicly disseminate the notional or principal amounts of a publicly reportable swap transaction represented by a cap size (*i.e.,* $XX+) that adjusts in accordance with their respective appropriate minimum block size for the relevant swap category. Section 43.4(h) further provides that if no appropriate minimum block size exists with respect to a swap category, then the cap size on the notional or principal amount will correspond with interim cap sizes that the Commission has established for the five asset classes.[365]

The proposed amendment to § 43.4(h) would continue to require SDRs to publicly disseminate cap sizes that correspond with their respective appropriate minimum block sizes during an initial period. However, upon publishing post-initial appropriate minimum block sizes in accordance with proposed § 43.6(f), the Commission also would publish post-initial cap sizes for each swap category by applying the 75-percent notional amount calculation on data collected by SDRs. The Commission would apply the 75-percent notional amount calculation on a three-year rolling window (*i.e.,* beginning with a minimum of one year and adding one year of data for each calculation until a total of three years of

[365] *See* note 259 *supra,* which lists the interim cap sizes set forth in §§ 43.4(h)(1)–(5).

data is accumulated) of such data corresponding to each relevant swap category for each calendar year.

3. Costs Relevant to the Proposed Amendments to §§ 43.4(d)(4) and (h)

SDRs potentially would bear the costs of complying with the proposed amendments to §§ 43.4(d)(4) and (h).[366] The Commission anticipates that these entities already will have made non-recurring expenditures in technology and personnel in connection with the requirements set forth in part 43 and part 49 (which contain rules regarding the registration and regulation of SDRs). As such, SDRs already will be required to pay recurring expenses associated with systems maintenance, support and compliance as described in the cost-benefit discussion in the Adopting Release.[367] Notwithstanding these recurring expenses, an SDR would have additional non-recurring expenditures associated with the amendments to § 43.4. Specifically, the Commission estimates that updating existing technology to capture elections would impose an initial non-recurring burden of approximately 34 personnel hours at an approximate cost of $3,195.00 for each SDR.[368] This cost estimate includes an estimate of the number of potential burden hours required to amend internal procedures, reprogram systems and implement processes to capture and publicly disseminate swap transaction and pricing data for block trades and large notional off-facility swaps in compliance with the requirements set forth in proposed § 43.6(g).

In the Commission's view, these additional non-recurring and recurring costs are not likely to be significant to an SDR given the likelihood that it will leverage its existing technology, systems and personnel in complying with the proposed amendments to § 43.4.

In addition, the Commission anticipates that proposed § 43.4(d)(4)(iii) may result in some incremental, recurring costs for SDRs because they will be required to publicly disseminate other commodity swaps data that were not previously within the scope of the public dissemination requirement in § 43.4. At this time, however, the Commission does not have sufficient data to quantify these costs.

The Commission also anticipates that proposed § 43.4(d)(4)(iii) may result in some indirect costs to the market through reduced information bearing on the contours of total trading in the market. The Commission currently lacks data to quantify the costs associated with the reduction of information.

4. Benefits Relevant to the Proposed Amendments to § 43.4

The Commission anticipates that the proposed anonymity provisions of § 43.4 would generate several overarching, although presently unquantifiable, benefits to swap market participants, registered entities and the general public. In the first instance, the Commission anticipates that the proposed cap size amendments to § 43.4(h) would benefit market participants, registered entities and the general public by providing greater price transparency with respect to swaps with notional amounts that fall between the post-initial appropriate minimum block size and post-initial cap size for a particular swap category. During the post-initial period, the Commission would set appropriate minimum block sizes based on the 67-percent notional amount calculation [369] and cap sizes based on the 75-percent notional amount calculation.[370] Although swaps with notional amounts that fall between these two sizes would be subject to a time delay, the exact notional amounts of these swaps eventually would be publicly disclosed. The Commission is of the preliminary view that the delayed public disclosure of the notional amount of these swaps would provide market participants, registered entities and the general public with meaningful price transparency.

The proposed masking provisions in the amendment to § 43.4(d)(4) and proposed appendix D to part 43 would further benefit market participants, registered entities and the general public by enhancing price discovery with respect to swaps that currently are not required to be publicly disclosed under part 43. Section 43.4(d)(4) currently requires SDRs to publicly disseminate swap transaction and pricing data for publicly reportable swap transactions that reference or are economically related to the 29 contracts identified in appendix B to part 43. The Commission is of the preliminary view that there are a significant number of swaps in the other commodity asset class that are not economically related to the 29 contracts identified in appendix to part 43. The proposed amendment creating new § 43.4(d)(4)(iii) would require the public dissemination of data on these swaps. The Commission proposes that the real-time public reporting of these swaps would enhance price discovery in the other commodity asset class.

Moreover, the Commission's proposed amendments to the anonymity provisions are intended to reduce impacts on market liquidity. As noted above, CEA section 2(a)(13) requires the Commission to prescribe rules for the real-time public reporting of all swap transactions in order to enhance price transparency, while taking into account the effects of such transparency on market liquidity. The Commission's proposed approach would introduce greater transparency in a flexible manner so that post-initial cap sizes are responsive to changing markets. Proposed § 43.4(h) would permit the Commission to set cap sizes no less than once annually during the post-initial period. If swap market conditions change significantly after the implementation of the provisions of this Further Proposal, then the Commission could react in a timely manner to further improve price transparency or to mitigate adverse effects on market liquidity.[371]

Finally, the proposed approach would promote market efficiency for market participants and registered entities. Under proposed § 43.4(h), Commission would be required to set all cap sizes. The Commission anticipates that its proposed approach would impose significantly fewer direct burdens on market participants and registered entities that they otherwise would have

[366] The Commission anticipates that reporting parties, SEFs and DCMs would not incur any new costs related to the proposed amendments to § 43.4 because this section relates to the data that an SDR must publicly disseminate. Section 43.3 of the Commission's regulations sets out the requirements for reporting parties, SEFs and DCMs in terms of what is transmitted to an SDR.

[367] *See* 76 FR 54,572–75. As noted in SDR final rule, SDRs (that do not enter into contracts with a third party) would have incremental costs related to compliance with part 43 beyond those costs identified in the release adopting part 49 of the Commission's regulations. *See* 76 FR 54,573. In the Adopting Release, the Commission stated that each SDR would have: (i) A recurring burden of approximately $856,666 and an annual burden of $666,666 for system maintenance per SDR; (ii) non-recurring costs to publicly disseminate ($601,003 per SDR); and (iii) recurring costs to publicly disseminate ($360,602 per SDR). *See* 77 FR 1,238.

[368] This estimate is calculated as follows: (Sr. Programmer at 20 hours) + (Sr. Systems Analyst at 10 hours) + (Compliance Manager at 2 hours) + (Director of Compliance at 2 hours) = 34 hours per SDR. A senior programmer has adjusted hourly wages of $81.52. A senior systems analyst has adjusted hourly wages of $64.50. A compliance manager has adjusted hourly wages of $77.77. A director of compliance has adjusted hourly wages of $158.21. *See* note 316 *supra.*

[369] *See* proposed § 43.6(c)(1).

[370] *See* proposed § 43.6(c)(2).

[371] This benefit is consistent with one of the considerations for implementation identified by ISDA and SIFMA in their January 18, 2011 report. *See* Block trade reporting for over-the-counter derivatives markets, note 54 supra.

in the alternative (*e.g.,* requiring market participants and/or registered entities to set cap sizes for the entire swaps market). An alternative approach could lead to market fragmentation, adverse effects on market liquidity, or reduced price transparency.

5. Application of the Section 15(a) Factors to the Proposed Amendments to § 43.4

As noted above, section 15(a) directs the Commission to consider five particular areas in evaluating the costs and benefits of a particular Commission action. These five areas with respect to proposed amendments to § 43.4 are considered below.

a. Protection of Market Participants and the Public

The Commission anticipates that the proposed amendments to § 43.4 would ensure the protection of swap counterparty anonymity on an ongoing basis. While cap sizes for some transactions could exceed appropriate minimum block sizes in certain circumstances (resulting in the public dissemination of notional/principal-amount information after a time delay), the Commission intends and expects that for the vast majority of (if not all) impacted swap transactions, the proposed cap-size process and methodology is sufficient to distinguish correctly between those for which masking of notional or principal amount is required to maintain anonymity and those for which it is not.[372]

b. Efficiency, Competitiveness and Financial Integrity [373]

The Commission anticipates that proposed amendments to § 43.4(h) would promote market efficiencies and competitiveness since the proposed approach would provide market participants with the ability to continue transacting swaps with the protection of anonymity, while promoting greater price transparency.

The Commission has identified no potential impact on financial integrity that would result from the implementation of the proposed election process.

c. Price Discovery

As noted above, the Commission anticipates that the proposed cap size amendments to § 43.4(h) would benefit market participants, registered entities and the general public by providing greater price transparency with respect to swaps with notional amounts that fall in between the post-initial appropriate minimum block size and post-initial cap size for a particular swap category. During the post-initial period, the Commission would set appropriate minimum block sizes based on the 67-percent notional amount calculation [374] and cap sizes based on the 75-percent notional amount calculation.[375] Although swaps with notional amounts that fall in between these two sizes would be subject to a time delay, the exact notional amounts of these swaps eventually would be publicly disclosed.

The proposed masking provisions in the amendment to § 43.4(d)(4) and proposed appendix D to part 43 could furt-er benefit market participants, registered entities and the general public by enhancing price discovery with respect to swaps that currently are not required to be publicly disclosed under part 43. The proposed amendment creating new § 43.4(d)(4)(iii) would require the public dissemination of data on these swaps. The Commission anticipates that the real-time public reporting of these swaps would enhance price discovery in the other commodity asset class.

d. Sound Risk Management Practices

To the extent that the proposed amendments to § 43.4 mask the identity, business transactions and market positions of swap counterparties, the Commission anticipates that the proposed amendments to § 43.4 would preserve the viability of swaps as a risk management tool for those traders that otherwise might feel compelled to switch to a less well-suited risk management tool.

e. Other Public Interest Considerations

The Commission does not anticipate that the proposed amendment to § 43.4(h) would have a material effect on public interest considerations other than those identified above.

6. Specific Questions Regarding the Proposed Amendments to § 43.4

The Commission requests comments on its cost and benefit considerations with respect to the proposed amendments to § 43.4. While commenters are welcome to comment on all aspects of this Further Proposal, the Commission is particularly interested in the following:

Q105. Please provide comments regarding the Commission's estimates of direct and indirect costs to SDRs of the proposed amendments to § 43.4.

Q105a. Please provide comments regarding any potential direct or indirect costs to non-financial end-users.

Q106. Please provide comments regarding views on the accuracy and/or inaccuracy of the facts cited in support of the Commission's analysis of the identified considerations relating to the proposed anonymity protections.

Q107. Are there any other public interest considerations not discussed above that the Commission should examine in finalizing the proposed amendments to § 43.4?

Q108. Please provide comments regarding the sufficiency of the Commission's proposed rules to protect market participant anonymity and whether the rules could be expected to cause certain swap counterparties to forego swap transactions and, if so, the magnitude of any likely liquidity impact.

VII. Example of a Post-Initial Appropriate Minimum Block Size Determination Using the 67-Percent Notional Amount Calculation

The example below describes the steps necessary for the Commission to determine the post-initial appropriate minimum block size based on § 43.6(c)(1) for a sample set of data in ''Swap Category Z.'' For the purposes of this example, Swap Category Z had 35 transactions over the given observation period. The observations are described in table A below and are ordered by time of execution (*i.e.,* Transaction #1 was executed prior to Transaction #2).

[372] The Commission recognizes that adoption of rules that delineate cap sizes insufficient to provide anonymity could cause prospective counterparties to forego swap transactions, thus adversely impacting market liquidity.

[373] Although by its terms, section 15(a)(2)(B) applies to futures and not swaps, the Commission finds this factor useful in analyzing the costs and benefits of swaps regulation, as well. 7 U.S.C. 19(a)(2)(B).

[374] *See* proposed § 43.6(c)(1).

[375] *See* proposed § 43.6(c)(2).

Table A – Swap Category Z Transactions

Transaction #1	Transaction #2	Transaction #3	Transaction #4	Transaction #5
5,000,000	25,000,000	50,000,000	1.05	3,243,571
Transaction #6	Transaction #7	Transaction #8	Transaction #9	Transaction #10
100,000,000	525,000,000	10,000,000	15,000,000	25,000,000
Transaction #11	Transaction #12	Transaction #13	Transaction #14	Transaction #15
100,000,000	265,000,000	25,000,000	100,000,000	100,000,000
Transaction #16	Transaction #17	Transaction #18	Transaction #19	Transaction #20
100,000,000	150,000,000	50,000,000	100,000,000	50,000,000
Transaction #21	Transaction #22	Transaction #23	Transaction #24	Transaction #25
75,000,000	82,352,124	100,000,000	1,235,726	60,000,000
Transaction #26	Transaction #27	Transaction #28	Transaction #29	Transaction #30
100,000,000	50,000,000	50,000,000	100,000,000	100,000,000
Transaction #31	Transaction #32	Transaction #33	Transaction #34	Transaction #35
100,000,000	100,000,000	32,875,000	50,000,000	440,000,000

Step 1: Remove the transactions that do not fall within the definition of ''publicly reportable swap transactions'' as described in § 43.2.

In this example, assume that five of the 35 transactions in Swap Category Z do not fall within the definition of ''publicly reportable swap transaction.'' These five transactions, listed in table B below would be removed for the data set that will be used to determine the post-initial appropriate minimum block size.

TABLE B—TRANSACTIONS THAT DO NOT FALL WITHIN THE DEFINITION OF ''PUBLICLY REPORTABLE SWAP TRANSACTION''

Transaction #4	Transaction #13	Transaction #16	Transaction #20	Transaction #21
1.05	25,000,000	100,000,000	50,000,000	75,000,000

Step 2A: Convert the publicly reportable swap transactions in the swap category to the same currency or units.

In order to accurately compare the transactions in a swap category and apply the appropriate minimum block size calculation, the transactions must be converted to the same currency or unit.

In this example, the publicly reportable swap transactions were all denominated in U.S. dollars, so no conversion was necessary. If the notional amounts of any of the publicly reportable swap transactions in Swap Category Z had been denominated in a currency other than U.S. dollars, then the notional amounts of such publicly reportable swap transactions would have been adjusted by the daily exchange rates for the period to arrive at the U.S. dollars equivalent notional amount.

Step 2B: Examine the remaining data set for any outliers and remove any such outliers, resulting in a trimmed data set.

The publicly reportable swap transactions are examined to identify any outliers. If an outlier is discovered, then it would be removed from the data set. To conduct this analysis, the notional amounts of all of the publicly reportable swap transactions remaining after step 1 and step 2A are transformed by Log_{10}. The average and standard deviation (''STDEV'') of these transformed notional amounts would then be calculated. Any transformed notional amount of a publicly reportable swap transaction that is larger than the average of all transformed notional amounts plus four times the standard deviation would be omitted from the data set as an outlier.

In the data set used in this example, none of the observations were large enough to qualify as an outlier, as shown in the calculations described in Table C.

Table C – Testing for Outliers in the Publicly Reportable Swap Transaction Data Set

Log10 Average	7.75	4*STDEV+Average	10.2
Log10 STDEV	0.611359	Omitted Values	None
4* STDEV	2.45		

Step 3: Sum the notional amounts of the remaining publicly reportable swap transactions in the data set resulting after step 2B. Note: The notional amounts being summed in this step are the original amounts following step 2A

and not the Log_{10} transformed amounts used for the process in step 2B used to identify and omit any outliers.

Using the equation described immediately below, the notional amounts are added to determine the sum total of all notional amounts remaining in the data set for a particular swap category. In this example, the notional amounts of the 30 remaining publicly reportable swap transactions in Swap Category Z are added together to come up with a net value of 2,989,706,421.

$$\sum_{i=1}^{30} Ti_{\square} = PRST_{NV}$$

30 = Notional amount of swap transaction
i = Index variable of summation for the set
T_i = Indicator for publicly reportable swap transactions
$PRST_{NV}$ = Sum total of the notional amounts of all remaining publicly reportable swap transactions in the set

$PRST_{NV}$ =	2,989,706,421

Step 4: Calculate the 67 Percent Notional Amount.

Using the resulting amount from step 2B, a 67-percent notional amount value would be calculated by using the equation:

$PRST_{NV}$ * 0.67 = G
G = 67 percent of the sum total of the notional amounts of all remaining publicly reportable swap transactions in the set
G = 2,003,103,302

Step 5: Order and rank the observations based on notional amount of the publicly reportable swap transaction from least to greatest.

The remaining publicly reportable swap transactions having previously been converted to U.S. dollar equivalents must be ranked, based on the notional sizes of such transactions, from least to greatest. The resulting ranking yields the $PRST_t$. Table D below reflects the ranking of the remaining publicly reportable swap transactions based on their notional amount sizes for this example.

$PRST_t$ = a publicly reportable swap transaction in the data set ranked from least to greatest based on the notional amounts of such transactions.

Step 6A: Calculate the running sum of all $PRST_t$.

A running sum would be calculated by adding together the ranked and ordered publicly reportable swap transactions from step 5 ($PRST_t$) in least to greatest order. The calculations of running sum values with respect to this example are reflected in Table D below.

RS Values = Running sum values

Table D - $PRST_i$ Values and RS Values

	Rank Order #1	Rank Order #2	Rank Order #3	Rank Order #4	Rank Order #5
$PRST_i$ Values	1,235,726	3,243,571	5,000,000	10,000,000	15,000,000
RS Values	1,235,726	4,479,297	9,479,297	19,479,297	34,479,297
	Rank Order #6	Rank Order #7	Rank Order #8	Rank Order #9	Rank Order #10
$PRST_i$ Values	25,000,000	25,000,000	32,875,000	50,000,000	50,000,000
RS Values	59,479,297	84,479,297	117,354,297	167,354,297	217,354,297
	Rank Order #11	Rank Order #12	Rank Order #13	Rank Order #14	Rank Order #15
$PRST_i$ Values	50,000,000	50,000,000	50,000,000	60,000,000	82,352,124
RS Values	267,354,297	317,354,297	367,354,297	427,354,297	509,706,421
	Rank Order #16	Rank Order #17	Rank Order #18	Rank Order #19	Rank Order #20
$PRST_i$ Values	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000
RS Values	609,706,421	709,706,421	809,706,421	909,706,421	1,009,706,421
	Rank Order #21	Rank Order #22	Rank Order #23	Rank Order #24	Rank Order #25
$PRST_i$ Values	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000
RS Values	1,109,706,421	1,209,706,421	1,309,706,421	1,409,706,421	1,509,706,421
	Rank Order #26	Rank Order #27	Rank Order #28	Rank Order #29	Rank Order #30
$PRST_i$ Values	100,000,000	150,000,000	265,000,000	440,000,000	525,000,000
RS Values	1,609,706,421	1,759,706,421	2,024,706,421	2,464,706,421	2,989,706,421

Step 6B: Select first RS Value that is greater than or equal to G.

In this example, G is equal to 2,003,103,302, meaning that the RS Value that must be selected would have to be greater than that number. The first RS Value that is greater than or equal to G can be found in the observation that corresponds to Rank Order #28 (see Table D). The RS Value of the Rank Order #28 observation is 2,024,706,421.

Step 7: Select the $PRST_t$ that corresponds to the observation determined in step 6B.

In this example, the $PRST_t$ that corresponds to the RS Value determined in step 6B (Rank Order #28) is 265,000,000.

Step 8: Determine the rounded notional amount.

Calculate the rounded notional amount under the process described in the proposed amendment to § 43.2. The 265,000,000 amount would be rounded to the nearest 10 million for public dissemination, or 270,000,000.

Step 9: Set the appropriate minimum block size at the amount calculated in step 8.

In this example, the appropriate minimum block size for swap category Z would be 270,000,000 for the observation period.

Post-Initial Appropriate Minimum Block Size = $270,000,000

VIII. List of Commenters Who Responded to the Initial Proposal

1. Markit.
2. Asset Management Group of the Securities Industry and Financial Markets Association (''SIFMA AMG'').
3. Managed Funds Association (''MFA'').
4. Argus Media, Inc. (''Argus'').
5. J.P. Morgan (''JP Morgan'').
6. Gibson Dunn on behalf of the Coalition for Derivatives End-Users (''Coalition for Derivatives End-Users'').
7. Committee on Capital Markets Regulation (''CCMR'').
8. Goldman Sachs & Co. (''Goldman'').
9. Barclays Capital, Inc. (''Barclays'').
10. Air Transport Association (''ATA'').
11. Pacific Investment Management Company, LLC (''PIMCO'').
12. Committee on the Investment of Employee Benefit Assets & American Benefits Council (''ABC/CIEBA'').
13. Better Markets, Inc. (''Better Markets'').
14. Investment Company Institute (''ICI'').
15. MarkitSERV.
16. Coalition of Physical Energy Companies (''COPE'').
17. International Options Markets Association/World Federation of Exchanges (''World Federation of Exchanges'').
18. UBS Securities LLC (''UBS'').
19. Global Foreign Exchange Division of Association for Financial Markets in Europe (''AFME''), the Securities Industry and Financial Markets Association (''SIFMA'') and the Asia Securities Industry and Financial Markets Association (''ASIFMA'') (collectively, ''SIFMA/AFME/ASIFMA'').
20. CME Group, Inc. (''CME'').
21. Coalition of Energy End-Users.
22. International Swaps and Derivatives Association & Securities Industry and Financial Markets Association (''ISDA/SIFMA'').
23. Morgan Stanley.
24. Hunton & Williams LLP on behalf of the Working Group of Commercial Energy Firms (''Hunton & Williams'').
25. Freddie Mac.
26. Vanguard.
27. TriOptima.
28. BlackRock, Inc. (''BlackRock'').
29. Dominion Resources, Inc. (''Dominion'').
30. Sadis & Goldberg LLP (''Sadis & Goldberg'').
31. Metlife, Inc. (''Metlife'').
32. Wholesale Markets Brokers' Association, Americas (''WMBAA'').

33. Depository Trust & Clearing Corporation (''DTCC'').
34. Cleary Gottlieb on behalf of Bank of America Merrill Lynch, BNP Paribas, Citi; Credit Agricole Corporate and Investment Bank; Credit Suisse Securities (USA), Deutsche Bank AG, Morgan Stanley, Nomura Securities International, In., PNC Bank, National Association, Société Générale, UBS Securities LLC, Wells Fargo & Company (''Cleary Gottlieb'').
35. Financial Industry Regulatory Authority (''FINRA'').
36. International Swaps and Derivatives Association (''ISDA'').
37. Association of Institutional Investors (''AII'').
38. Swaps & Derivatives Market Association (''SDMA'').

List of Subjects in 17 CFR Part 43

Real-time public reporting; Block trades; Large notional off-facility swaps; Reporting and recordkeeping requirements.

Accordingly, 17 CFR Part 43, as proposed to be added at 77 FR 1,243, January 9, 2012, is proposed to be further amended as follows.

PART 43—REAL-TIME PUBLIC REPORTING

1. The authority citation for part 43 shall continue to read as follows:

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

2. Amend § 43.2 by adding the following definitions in alphabetical order to read as follows:

§ 43.2 Definitions.

* * * * *

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.

* * * * *

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.

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.

* * * * *

Physical commodity swap means a swap in the other commodity asset class that is based on a tangible commodity.

* * * * *

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.

* * * * *

Super-major currencies means the currencies of the European Monetary Union, Japan, 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.

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.

* * * * *

3. Revise section 43.4(h) to read as follows:

§ 43.4 Swap transaction and pricing data to be publicly disseminated in real-time.

* * * * *

(h) *Cap sizes.* (1) *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)(2), 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 to this part or the respective cap sizes in paragraphs (h)(1)(i) through (v) of this section. If appendix F to 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 (h)(1)(i) through (v) of this section.

(i) For swaps in the interest rate asset class, the publicly disseminated notional or principal amount for an interest rate swap subject to the rules in this part 43 the cap size shall be:

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

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

(C) USD 75 million for swaps with a tenor greater than ten years;

(ii) For swaps in the credit asset class, the publicly disseminated notional or principal amount for a credit swap subject to the rules in this part 43 shall be USD 100 million;

(iii) For swaps in the equity asset class, the publicly disseminated notional or principal amount for an equity swap subject to the rules in this part 43 shall be USD 250 million;

(iv) For swaps in the foreign exchange asset class, the publicly disseminated notional or principal amount for a foreign exchange swap subject to the rules in this part 43 shall be USD 250 million; and

(v) For swaps in the other commodity asset class, the publicly disseminated notional or principal amount for any other commodity swap subject to the rules in this part 43 shall be USD 25 million.

(2) *Post-initial cap sizes.* Pursuant to the process described in § 43.6(f)(1), the Commission shall establish post-initial cap sizes using reliable data collected by registered swap data repositories, as determined by the Commission, based on the following:

(i) A three-year rolling window (beginning with a minimum of one year and adding one year of data for each calculation until a total of three years of data is accumulated) 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 paragraph (c)(2) of this section applied to the swap transaction and pricing data described in paragraph (h)(2)(i) of this section.

(3) *Commission publication of post-initial cap sizes.* The Commission shall publish post-initial cap sizes on its Web site at *http://www.cftc.gov*.

(4) *Effective date of post-initial cap sizes.* Unless otherwise indicated on the Commission's Web site, the post-initial cap sizes shall be effective on the first day of the second month following the date of publication. * * *

4. Amend § 43.4(d)(4)(i) by deleting ''§ 43.4(d)(4)(ii).'' and replacing it with ''§§ 43.4(d)(4)(ii) and (iii).''

5. Amend § 43.4(d)(4)(ii)(B) by deleting ''; and'' and replacing it with ''; or''; and

6. Add § 43.4(d)(4)(iii) to read as follows:

(iii) The underlying assets of swaps in the other commodity asset class that are not described in 43.4(d)(4)(ii) shall be publicly disseminated by limiting the geographic detail of the underlying assets. 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 to this part.

7. Add section 43.6 to part 43 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 § 43.6(b) in accordance with the provisions set forth in §§ 43.6(c), (d), (e), (f) or (h), as applicable.

(b) *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 three months (0 to 107 days);

(B) Three months to six months (108 to 198 days);

(C) Greater than six months to one year (199 to 381 days);

(D) Greater one to two years (382 to 746 days);

(E) Greater than two to five years (747 to 1,842 days);

(F) Greater than five to ten years (1,843 to 3,668 days);

(G) Greater than ten to 30 years (3,669 to 10,973 days); or

(H) 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; and

(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 (4,581 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 super-major currencies, major currencies and the currencies of Brazil, China, Czech Republic, Hungary, Israel, Mexico, Poland, Russia, and Turkey; or

(ii) By unique currency combinations not included in subparagraph (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 to this part, by the relevant contract as referenced in appendix B to this part; or

(ii) For swaps that are not economically related to contracts in appendix B to this part, by the following futures-related swaps—

(A) CME Cheese;

(B) CBOT Distillers' Dried Grain;

(C) CBOT Dow Jones-UBS Commodity Index Excess Return;

(D) CBOT Ethanol;

(E) CME Frost Index;

(F) CME Goldman Sachs Commodity Index (GSCI), (GSCI Excess Return Index);

(G) NYMEX Gulf Coast Gasoline;

(H) NYMEX Gulf Coast Sour Crude Oil;

(I) NYMEX Gulf Coast Ultra Low Sulfur Diesel;

(J) CME Hurricane Index;

(K) CME International Skimmed Milk Powder;

(L) NYMEX New York Harbor Ultra Low Sulfur Diesel;

(M) CME Nonfarm Payroll;

(N) CME Rainfall Index;

(O) CME Snowfall Index;

(P) CME Temperature Index;

(Q) CME U.S. Dollar Cash Settled Crude Palm Oil; or

(R) CME Wood Pulp; or

(iii) For swaps that are not covered in subparagraphs (i) and (ii) of this section, the relevant product type as referenced in appendix D to this part.

(c) *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) Select all of the publicly reportable swap transactions within a specific swap category using a rolling three-year window of data beginning with a minimum of one year's worth of data and adding one year of data for each calculation until a total of three years of data is accumulated; (ii) convert 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 (iv); (vii) select the notional amount associated with that observation; (viii) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to 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 (viii).

(2) *75-percent notional amount calculation.* The Commission shall use the following procedure in determining the 75-percent notional amount calculation: (i) Select all of the publicly reportable swap transactions within a specific swap category using a rolling three-year window of data beginning with a minimum of one year's worth of data and adding one year of data for each calculation until a total of three years of data is accumulated; (ii) convert 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 75 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 75-percent notional amount calculated in (iv); (vii) select the notional amount associated with that observation; (viii) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to 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 (viii).

(d) *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.

(e) *Initial appropriate minimum block sizes.* Prior to the Commission making a determination as described in paragraph (f)(1) of this section, the following initial appropriate minimum block sizes shall apply:

(1) *Prescribed appropriate minimum block sizes.* Except as otherwise provided in paragraph (e)(1) of this section, for any publicly reportable swap transaction that falls within the swap categories described in §§ 43.6(b)(1), (b)(2), (b)(4)(i), (b)(5)(i) and (b)(5)(ii), the initial appropriate minimum block size for such publicly reportable swap transaction shall be the appropriate minimum block size that is in appendix F to this part.

(2) *Certain swaps in the foreign exchange and other commodity asset classes.* All swaps or instruments in the swap categories described in §§ 43.6(b)(4)(ii) and (b)(5)(iii) 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 § 43.6(b)(5)(i) that are economically related to a futures contract in appendix B to 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.

(f) *Post-initial process to determine appropriate minimum block sizes.*

(1) *Post-initial period.* After a registered swap data repository has collected at least one year of reliable data for a particular asset class, as determined by Commission, the Commission shall establish by swap categories, the post-initial appropriate minimum block sizes as described in this subsection. 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 certain swaps.* The Commission shall determine post-initial appropriate minimum block sizes for the swap categories described in §§ 43.6(b)(1), (b)(2), (b)(4) and (b)(5) by utilizing a three-year rolling window (beginning with a minimum of one year and adding one year of data for each calculation until a total of three years of data is accumulated) 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.

(3) *Commission publication of post-initial appropriate minimum block sizes.* The Commission shall publish the appropriate minimum block sizes determined pursuant to § 43.6(f)(1) on its Web site at *http://www.cftc.gov*.

(4) *Effective date of post-initial appropriate minimum block sizes.* Unless otherwise indicated on the Commission's Web site, the post-initial appropriate minimum block sizes described in § 43.6(f)(1) shall be effective on the first day of the second month following the date of publication.

(g) *Required notification.*

(1) *Block trade election.* (i) The parties to a publicly reportable swap transaction that has a notional amount at or above the appropriate minimum block size shall notify the registered swap execution facility or designated contract market, as applicable, pursuant to the rules of such registered swap execution facility or designated contract market, of its election to have the publicly reportable swap transaction treated as a block trade.

(ii) The registered swap execution facility or designated contract market, as applicable, pursuant to the rules of which a block trade is executed shall notify the registered swap data repository of such a block trade election when transmitting swap transaction and pricing data to such swap data repository in accordance with § 43.3(b)(1).

(2) *Large notional off-facility swap election.* A reporting party who executes an off-facility swap that has a notional amount at or above the appropriate minimum block size shall notify the applicable registered swap data repository that such swap transaction qualifies as a large notional off-facility swap concurrent with the transmission of swap transaction and pricing data in accordance with part 43.

(h) *Special provisions relating to appropriate minimum block sizes and cap sizes.* The following special rules shall apply to the determination of appropriate minimum block sizes and cap sizes—

(1) *Swaps with optionality.* The notional amount of swaps 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 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 market 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 43, 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.

8. Add section 43.7 to part 43 to read as follows:

§ 43.7 Delegation of authority.

(a) *Authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(1) To determine whether swaps fall within specific swap categories as described in § 43.6(b);

(2) To determine post-initial, appropriate minimum block sizes as described in § 43.6(f); and

(3) To determine post-initial cap sizes as described in § 43.4(h).

(b) *Submission* for Commission consideration. The Director of the Division of Market Oversight may submit to the Commission for its

consideration any matter that has been delegated pursuant to this section.

(c) *Commission reserves authority.* Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section. * * *

9. *Amend* appendix B to part 43 to add the following after ''Brent Crude Oil (ICE)'':

SP–15 Financial Day-Ahead LMP Peak Contract
SP–15 Financial Day-Ahead LMP Off-Peak Contract
PJM WH Real Time Peak Contract
PJM WH Real Time Off-Peak Contract
Mid-C Financial Peak Contract
Mid-C Financial Off-Peak Contract
ICE Chicago Financial Basis Contract
HSC Financial Basis Contract
Socal Border Financial Basis Contract
Waha Financial Basis Contract
AECO Financial Basis Contract
NWP Rockies Financial Basis Contract
PG&E Citygate Financial Basis Contract

10. Add ''Appendix D to Part 43—Other Commodity Swap Categories'' after ''Appendix C to Part 43—Time Delays for Public Dissemination'' to read as follows:

Appendix D—Other Commodity Swap Categories

Other Commodity Group

Individual Other Commodity

GRAINS
- OATS
- WHEAT
- CORN
- RICE
- GRAINS—OTHER

LIVESTOCK/MEAT PRODUCTS
- LIVE CATTLE
- PORK BELLIES
- FEEDER CATTLE
- LEAN HOGS
- LIVESTOCK/MEAT PRODUCTS–OTHER

DAIRY PRODUCTS
- MILK
- BUTTER
- CHEESE
- DAIRY PRODUCTS—OTHER

OILSEED AND PRODUCTS
- SOYBEAN OIL
- SOYBEAN MEAL
- SOYBEANS
- OILSEED AND PRODUCTS—OTHER

FIBER
- COTTON
- FIBER—OTHER

FOODSTUFFS/SOFTS
- COFFEE
- FROZEN CONCENTRATED ORANGE JUICE
- SUGAR
- COCOA
- FOODSTUFFS/SOFTS—OTHER

PETROLEUM AND PRODUCTS
- JET FUEL
- ETHANOL
- BIODIESEL
- FUEL OIL
- HEATING OIL
- GASOLINE
- NAPHTHA
- CRUDE OIL
- DIESEL
- PETROLEUM AND PRODUCTS—OTHER

NATURAL GAS AND RELATED PRODUCTS
- NATURAL GAS LIQUIDS
- NATURAL GAS
- NATURAL GAS AND RELATED PRODUCTS—OTHER

ELECTRICITY AND SOURCES
- COAL
- ELECTRICITY
- URANIUM
- ELECTRICITY AND SOURCES—OTHER

PRECIOUS METALS
- PALLADIUM
- PLATINUM
- SILVER
- GOLD
- PRECIOUS METALS—OTHER

BASE METALS
- STEEL
- COPPER
- BASE METALS—OTHER

WOOD PRODUCTS
- LUMBER
- PULP
- WOOD PRODUCTS—OTHER

REAL ESTATE
- REAL ESTATE

CHEMICALS
- CHEMICALS

PLASTICS
- PLASTICS

EMISSIONS
- EMISSIONS

WEATHER
- WEATHER

MULTIPLE COMMODITY INDEX
- MULTIPLE COMMODITY INDEX

OTHER AGRICULTURAL
- OTHER AGRICULTURAL

OTHER NON-AGRICULTURAL
- OTHER NON-AGRICULTURAL

11. Add ''Appendix E to Part 43—Other Commodity Geographic Identification for Public Dissemination Pursuant to § 43.4(d)(4)(iii)'' after ''Appendix D to Part 43—Other Commodity Product Swap Categories'' to read as follows:

Appendix E—Other Commodity Geographic Identification for Public Dissemination Pursuant to § 43.4(d)(4)(iii)

Registered swap data repositories shall publicly disseminate any specific delivery point or pricing point associated with publicly reportable swap transactions in the ''other commodity'' asset class (as described in § 43.4(d)(4)(iii)) pursuant to Tables E1 and E2. If the underlying asset of a publicly reportable swap transaction described in § 43.4(d)(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. If the underlying asset of a publicly reportable swap transaction described in § 43.4(d)(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.

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
- CALIFORNIA (CAISO)
- MIDWEST (MISO)
- NEW ENGLAND (ISO–NE)
- NEW YORK (NYISO)
- NORTHWEST
- PJM
- SOUTHEAST
- SOUTHWEST
- SOUTHWEST POWER TOOL (SPP)
- TEXAS (ERCOT)
- 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 With Countries or Sub-Regions

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

12. Add ''Appendix F to Part 43—Initial Appropriate Minimum Sizes for Block Trades and Large Notional Off-facility Swaps'' after ''Appendix E to Part 43—Other Commodity Geographic Identification for Public Dissemination Pursuant to § 43.4(d)(4)(iii)(B)'' to read as follows:

APPENDIX F—INITIAL APPROPRIATE MINIMUM BLOCK SIZES BY ASSET CLASS

Currency group	Currencies
Super-Major Currencies	United States dollar (USD), European Union Euro Area euro (EUR), United Kingdom pound sterling (GBP), and Japan yen (JPY).
Major Currencies	Australia dollar (AUD), Switzerland franc (CHF), Canada dollar (CAD), Republic of South Africa rand (ZAR), Republic of Korea won (KRW), Kingdom of Sweden krona (SEK), New Zealand dollar (NZD), Kingdom of Norway krone (NOK), and Denmark krone (DKK).
Non-Major Currencies	All other currencies.

INTEREST RATE SWAPS

Currency group	Tenor greater than	Tenor less than or equal to	67% Notional (in millions)
Super-Major		Three months (107 days)	6,400
Super-Major	Three months (107 days)	Six months (198 days)	1,900
Super-Major	Six months (198 days)	One year (381 days)	1,600
Super-Major	One year (381 days)	Two years (746 days)	750
Super-Major	Two years (746 days)	Five years (1,842 days)	380
Super-Major	Five years (1,842 days)	Ten years (3,668 days)	290
Super-Major	Ten years (3,668 days)	30 years (10,973 days)	210
Super-Major	30 years (10,973 days)		130
Major		Three months (107 days)	970
Major	Three months (107 days)	Six months (198 days)	470
Major	Six months (198 days)	One year (381 days)	320
Major	One year (381 days)	Two years (746 days)	190
Major	Two years (746 days)	Five years (1,842 days)	110
Major	Five years (1,842 days)	Ten years (3,668 days)	73
Major	Ten years (3,668 days)	30 years (10,973 days)	50
Major	30 years (10,973 days)		22
Non-Major		Three months (107 days)	320
Non-Major	Three months (107 days)	Six months (198 days)	240
Non-Major	Six months (198 days)	One year (381 days)	160
Non-Major	One year (381 days)	Two years (746 days)	79
Non-Major	Two years (746 days)	Five years (1,842 days)	40
Non-Major	Five years (1,842 days)	Ten years (3,668 days)	22
Non-Major	Ten years (3,668 days)	30 years (10,973 days)	24
Non-Major	30 years (10,973 days)		22

CREDIT SWAPS

Spread group (basis points)	Traded tenor greater than	Traded tenor less than or equal to	67% Notional (in millions)
Less than or equal to 175		Two years (746 days)	510
Less than or equal to 175	Two years (746 days)	Four years (1,477 days)	300
Less than or equal to 175	Four years (1,477 days)	Six years (2,207 days)	190
Less than or equal to 175	Six years (2,207 days)	Eight years and six months (3,120 days).	250
Less than or equal to 175	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	130
Less than or equal to 175	Twelve years and six months (4,581 days).		110
Greater than 175 and less than or equal to 350.		Two years (746 days)	210
Greater than 175 and less than or equal to 350.	Two years (746 days)	Four years (1,477 days)	130
Greater than 175 and less than or equal to 350.	Four years (1,477 days)	Six years (2,207 days)	36

CREDIT SWAPS—Continued

Spread group (basis points)	Traded tenor greater than	Traded tenor less than or equal to	67% Notional (in millions)
Greater than 175 and less than or equal to 350.	Six years (2,207 days)	Eight years and six months (3,120 days).	26
Greater than 175 and less than or equal to 350.	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	64
Greater than 175 and less than or equal to 350.	Twelve years and six months (4,581 days).		120
Greater than 350		Two years (746 days)	110
Greater than 350	Two years (746 days)	Four years (1,477 days)	73
Greater than 350	Four years (1,477 days)	Six years (2,207 days)	51
Greater than 350	Six years (2,207 days)	Eight years and six months (3,120 days).	21
Greater than 350	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	21
Greater than 350	Twelve years and six months (4,581 days).		51

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Foreign Exchange Swaps

		Super-major currencies			
		EUR (Euro)	GBP (British Pound)	JPY (Japanese Yen)	USD (U.S. Dollar)
Super-major currencies	EUR		6,250,000	6,250,000	18,750,000
	GBP	6,250,000*		6,250,000	6,250,000
	JPY	6,250,000*	6,250,000*		1,875,000,000
	USD	18,750,000*	6,250,000*	1,875,000,000*	
Major currencies	AUD	6,250,000*	-	10,000,000	10,000,000
	CAD	6,250,000*	-	10,000,000	10,000,000
	CHF	6,250,000*	6,250,000*	12,500,000	12,500,000
	DKK				
	KRW	-	-	-	6,250,000,000
	SEK	6,250,000*	-	-	10,000,000
	NOK	6,250,000*	-	-	10,000,000
	NZD	-	0	0	5,000,000
	ZAR	-	-	-	25,000,000
Non-major currencies	BRL	-	0	0	5,000,000
	CZK	200,000,000	0	0	200,000,000
	HUF	1,500,000,000	0	0	1,500,000,000
	ILS	0	0	0	50,000,000
	MXN	0	0	0	50,000,000
	PLN	25,000,000	0	0	25,000,000
	RMB	50,000,000	0	50,000,000	50,000,000
	RUB	-	0	0	125,000,000
	TRY	6,250,000*	0	0	10,000,000*

All values that do not have an asterisk are denominated in the currency of the left hand side. All values that have an asterisk (*) are denominated in the currency indicated on the top of the table.

		AUD (Australian Dollar)	CAD (Canadian Dollars)	CHF (Swiss Francs)	DKK (Danish Krone)	KRW (Korean Won)	SEK (Swedish Kronor)	NOK (Norwegian Krone)	NZD (New Zealand Dollar)	ZAR (South African Rand)
Super-major currencies	EUR	6,250,000	6,250,000	6,250,000		-	6,250,000	6,250,000	-	-
	GBP	-	-	6,250,000		-	-	-	0	-
	JPY	10,000,000*	10,000,000*	12,500,000 *		-	-	-	0	-
	USD	10,000,000*	10,000,000*	12,500,000 *		6,250,000,000*	10,000,000 *	10,000,000 *	5,000,000 *	25,000,000*
Major currencies	AUD		10,000,000	-		-	-	-	10,000,000	-
	CAD	10,000,000*		-		-	-	-	0	-
	CHF	-	-			-	-	-	0	-
	DKK									
	KRW	-	-	-			-	-	0	-
	SEK	-	-	-		-		-	0	-
	NOK	-	-	-		-	-		0	-
	NZD	10,000,000*	-	-		0	0	0	-	0
	ZAR	-	-	-		-	-	-	0	
Non-major currencies	BRL	0	0	0		0	0	0	0	0
	CZK	0	0	0		0	0	0	0	0
	HUF	0	0	0		0	0	0	0	0
	ILS	0	0	0		0	0	0	0	0
	MXN	0	0	0		0	0	0	0	0
	PLN	0	0	0		0	0	0	0	0
	RMB	0	0	0		0	0	0	0	0
	RUB	0	0	0		0	0	0	0	0
	TRY	0	0	0		0	0	0	0	0

All values that do not have an asterisk are denominated in the currency of the left hand side. All values that have an asterisk (*) are denominated in the currency indicated on the top of the table.

		BRL (Brazilian Real)	CZK (Czech Koruna)	HUF (Hungarian Forint)	ILS (Israeli Shekel)	MXN (Mexican Peso)	PLN (Polish Zloty)	RMB (Chinese Renminbi)	RUB (Russian Ruble)	TRY (Turkish Lira)
Super-major currencies	EUR	0	200,000,000 *	1,500,000,000 *	0	0	25,000,000 *	50,000,000 *	0	6,250,000
	GBP	0	0	0	0	0	0	0	0	0
	JPY	0	0	0	0	0	0	50,000,000 *	0	0
	USD	5,000,000 *	200,000,000 *	1,500,000,000 *	50,000,000 *	50,000,000 *	25,000,000 *	50,000,000 *	125,000,000 *	10,000,000
Major currencies	AUD	0	0	0	0	0	0	0	0	0
	CAD	0	0	0	0	0	0	0	0	0
	CHF	0	0	0	0	0	0	0	0	0
	DKK									
	KRW	0	0	0	0	0	0	0	0	0
	SEK	0	0	0	0	0	0	0	0	0
	NOK	0	0	0	0	0	0	0	0	0
	ZAR	0	0	0	0	0	0	0	0	0
Non-major currencies	BRL		0	0	0	0	0	0	0	0
	CZK	0		0	0	0	0	0	0	0
	HUF	0	0		0	0	0	0	0	0
	ILS	0	0	0		0	0	0	0	0
	MXN	0	0	0	0		0	0	0	0
	NZD	0	0	0	0	0	0	0	0	0
	PLN	0	0	0	0	0		0	0	0
	RMB	0	0	0	0	0	0		0	0
	RUB	0	0	0	0	0	0	0		0
	TRY	0	0	0	0	0	0	0	0	

All values that do not have an asterisk are denominated in the currency of the left hand side. All values that have an asterisk (*) are denominated in the currency indicated on the top of the table.

Other Commodity Swaps

Related Futures Contract	Initial Appropriate Minimum Block Size	Units
AECO Financial Basis Contract	25,000,000	dollars
Brent Crude (ICE and NYMEX)	100,000	bbl.
Cheese (CME)	400,000	lbs.
Class III Milk (CME)	NO BLOCKS	
Cocoa (ICE and NYSE LIFFE and NYMEX) (futures)	1,000	metric tons
Cocoa (ICE) (options)	3,500	metric tons
Coffee (ICE and NYMEX)	3,750,000	lbs.
Coffee (ICE) (options)	3,750,000	lbs.
Copper (COMEX)	2,500,000	lbs.
Corn (CBOT)	NO BLOCKS	bushels
Cotton No. 2 (ICE and NYMEX) (futures)	5,000,000	lbs.
Cotton No. 2 (ICE) (options)	12,500,000	lbs.
Distillers' Dried Grain (CBOT)	1,000	short tons
Dow Jones-UBS Commodity Index (CME)	3,000 times index	dollars
Ethanol (CBOT)	290,000	gallons
Feeder Cattle (CME)	NO BLOCKS	
Frost Index (CME)	200,000 times index	euros
Frozen Concentrated Orange Juice (ICE) (options)	1,500,000	lbs.
Gold (COMEX and NYSE Liffe) (futures)	20,000	troy oz.
Gold (COMEX and NYSE Liffe) (options)	30,000	troy oz.
Goldman Sachs Commodity Index (GSCI), GSCI Excess Return Index (CME)	30,000 times index	dollars
Gulf Coast Gasoline (NYMEX)	4,200,000	gallons
Gulf Coast Sour Crude Oil (NYMEX)	200,000	bbl.
Gulf Coast Ultra Low Sulfur Diesel (NYMEX)	4,200,000	gallons
Hard Red Spring Wheat (MGEX)	NO BLOCKS	
Hard Winter Wheat (KCBT)	NO BLOCKS	
Henry Hub Natural Gas (NYMEX) (futures)	1,000,000	mmBtu
Henry Hub Natural Gas (NYMEX)	5,500,000	mmBtu

(options)		
HSC Financial Basis Contract	25,000,000	dollars
Hurricane Index (CME)	20,000 times index	dollars
ICE Chicago Financial Basis Contract	25,000,000	dollars
International Skimmed Milk Powder (CME)	400	metric tons
Lean Hogs (CME)	NO BLOCKS	
Light Sweet Crude Oil (NYMEX)	100,000	bbl.
Live Cattle (CME)	NO BLOCKS	
Mid-C Financial Off-Peak Contract	25,000,000	dollars
Mid-C Financial Peak Contract	25,000,000	dollars
New York Harbor Blendstock Gasoline (NYMEX)	NO BLOCKS	
New York Harbor No. 2 Heating Oil (NYMEX) (futures)	50,000	bbl.
New York Harbor No. 2 Heating Oil (NYMEX) (options)	300,000	bbl.
New York Harbor Ultra Low Sulfur Diesel (NYMEX)	4,200,000	gallons
Nonfarm Payroll (CME)	NO BLOCKS	
NWP Rockies Financial Basis Contract	25,000,000	dollars
Oats (CBOT)	NO BLOCKS	
Palladium (NYMEX)	NO BLOCKS	
PG&E Citygate Financial Basis Contract	25,000,000	dollars
PJM WH Real Time Off-Peak Contract	25,000,000	dollars
PJM WH Real Time Peak Contract	25,000,000	dollars
Platinum (NYMEX)	NO BLOCKS	
Rainfall Index (CME)	10,000 times index	dollars
Rough Rice (CBOT)	NO BLOCKS	
Silver (COMEX and NYSE Liffe) (futures)	1,000,000	troy oz.
Silver (COMEX and NYSE Liffe) (options)	750,000	troy oz.
Snowfall Index (CME)	10,000 times index	dollars
Socal Border Financial Basis Contract	25,000,000	dollars
Soybean (CBOT)	NO BLOCKS	
Soybean Meal (CBOT)	NO BLOCKS	
Soybean Oil (CBOT)	NO BLOCKS	
SP-15 Financial Day-Ahead LMP Peak Contract	25,000,000	dollars
SP-15 Financial Day-Ahead LMP	25,000,000	dollars

Off-Peak Contract		
Sugar #11 (ICE and NYMEX) (futures)	5,000	metric tons
Sugar #11 (ICE) (options)	12,500	metric tons
Sugar #16 (ICE) (futures)	NO BLOCKS	
Sugar #16 (ICE) (options)	NO BLOCKS	
Temperature Index (CME)	400 times index	currency units
U.S. Dollar Cash Settled Crude Palm Oil (CME)	250	metrics tons
Waha Financial Basis Contract	25,000,000	dollars
Wheat (CBOT)	NO BLOCKS	
Wood Pulp (CME)	500	metric tons

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Issued in Washington, DC, on February 23, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades—Commission Voting Summary and Statements of Commissioners

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

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton and Wetjen voted in the affirmative; Commissioners Sommers and O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the block rule proposal, which promotes both pre-trade and post-trade transparency. The derivatives reforms in the Dodd-Frank Wall Street Reform and Consumer Protection Act, including bringing transparency to the swaps market, will lead to significant benefits for the real economy—that which makes up over 94 percent of private sector jobs in America. Transparency also helps all Americans who depend on pension funds, mutual funds, community banks and insurance companies.

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