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FEDERAL REGISTER

Vol. 84 Thursday,
No. 206 October 24, 2019

Pages 56929–57308

OFFICE OF THE FEDERAL REGISTER

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AE84

Company-Run Stress Testing Requirements for FDIC-Supervised State Nonmember Banks and State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule to amend the FDIC's company-run stress testing regulations applicable to state nonmember banks and state savings associations, consistent with section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Specifically, the final rule revises the minimum threshold for applicability from $10 billion to $250 billion, revises the frequency of required stress tests by FDIC-supervised institutions, and reduces the number of required stress testing scenarios from three to two. The final rule also makes certain conforming and technical changes.

DATES: The final rule is effective November 25, 2019.

FOR FURTHER INFORMATION CONTACT: Ryan Sheller, Section Chief, (202) 412–4861, *RSheller@FDIC.gov,* Large Bank Supervision, Division of Risk Management Supervision; or Benjamin Klein, Counsel, (202) 898–7027, *bklein@FDIC.gov;* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Policy Objective

The policy objective of the final rule is to conform the FDIC's regulations to section 401 of EGRRCPA, which raises the applicability threshold for company-run stress testing required by section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) from $10 billion to $250 billion, revises the required periodicity of such stress testing from ''annual'' to ''periodic,'' and removes the requirement that such stress testing include an ''adverse'' scenario.

II. Background

Prior to the enactment of EGRRCPA, section 165(i)(2) of the Dodd-Frank Act required a financial company, including an insured depository institution, with total consolidated assets of more than $10 billion and regulated by a primary federal regulatory agency to conduct annual stress tests and submit a report to the Board of Governors of the Federal Reserve System (Board) and to its primary federal regulatory agency.[1] Section 165(i)(2)(C) required each primary federal regulator to issue consistent and comparable regulations to: (1) Implement the stress testing requirements, including establishing methodologies for conducting stress tests that provided for at least three different sets of conditions, including baseline, adverse, and severely adverse; (2) establish the form and content of the required reports, and (3) require companies to publish a summary of the stress test results.

In October 2012, the FDIC published in the **Federal Register** its rule implementing the Dodd-Frank Act stress testing requirement.[2] The FDIC regulation at 12 CFR part 325 implements the company-run stress test requirements of section 165(i)(2) of the Dodd-Frank Act with respect to state nonmember banks and state savings associations with more than $10 billion in assets (covered banks). Although 12 CFR part 325 applies to all covered banks that exceed $10 billion in assets, the regulation differentiates between ''$10 billion to $50 billion covered banks'' and ''over $50 billion covered banks.''

EGRRCPA, enacted on May 24, 2018,[3] amended certain aspects of the company-run stress-testing requirements in section 165(i)(2) of the Dodd-Frank Act. Specifically, section 401 of EGRRCPA raises the minimum asset threshold for the company-run stress testing requirement from $10 billion to $250 billion; replaces the requirement for banks to conduct stress tests ''annually'' with the requirement to conduct stress tests ''periodically;'' and no longer requires the ''adverse'' stress testing scenario, thus reducing the number of required stress testing scenarios from three to two. The EGRRCPA amendments to the section 165(i)(2) stress testing requirements are effective eighteen months after enactment.

Prior to the enactment of EGRRCPA, on April 2, 2018, the FDIC issued a notice of proposed rulemaking that also proposed certain revisions to the FDIC stress testing regulations (April 2018 NPR).[4] Certain changes proposed in the April NPR, particularly those establishing a stress testing transition process for ''over $50 billion covered banks'' are no longer relevant as a result of EGRRCPA's increase in the stress testing asset threshold to $250 billion. However, other revisions originally proposed in the April NPR remain necessary to ensure the FDIC's stress testing regulations remain consistent with those of the Board and the Office of the Comptroller of the Currency (OCC).

III. Proposed Rule

On December 28, 2018, the FDIC published in the **Federal Register** a notice of proposed rulemaking (proposed rule or proposal) to amend 12 CFR part 325 consistent with section 401 of EGRRCPA. Specifically, the proposal would have raised the applicability threshold for covered banks required to conduct stress tests from $10 billion to $250 billion, reduced the frequency by which covered banks would generally be required to conduct stress tests from annually to biennially, and eliminated the requirement that covered banks use the ''adverse'' scenario when conducting stress tests. The proposal also included various technical changes to facilitate the above revisions, a proposed transition period, and proposed revisions to the regulation's

[1] Public Law 111–203, section 165(i)(2), 124 Stat. 1376, 1430–31 (2010).

[2] 77 FR 62417 (October 15, 2012). The Board and the Office of the Comptroller of the Currency contemporaneously issued comparable regulations. *See* 77 FR 62380 (October 12, 2012) (Board); 77 FR 61238 (October 9, 2012) (OCC).

[3] Public Law 115–174, 132 Stat. 1296–1368 (2018).

[4] 83 FR 13880 (April 2, 2018).

reservation of authority. The proposed rule also included certain provisions initially proposed in the April 2018 NPR, such as extending the as-of date range for trading and counterparty components for covered banks with significant trading activities.

The FDIC received six comments in response to the proposed rule. With respect to raising the applicability threshold from $10 to $250 billion, some commenters supported raising the threshold, others acknowledged that such a revision was statutorily required, and others expressed concern that eliminating stress testing requirements for banks under $250 billion may raise prudential concerns. Similarly, some commenters supported the proposed rule's elimination of the ''adverse'' scenario, positing that the adverse scenario is of limited utility,[5] some acknowledged that removing the ''adverse'' scenario is statutorily required, and others expressed concern that eliminating the ''adverse'' scenario may reduce the efficacy of company-run stress testing. The FDIC appreciates the concerns raised by commenters, but does not believe that they warrant changes to the proposal, and is finalizing without change the proposal to align the regulatory threshold for company-run stress testing by covered banks with the statutory threshold of $250 billion established by section 401 of EGRCCPA, and to eliminate the ''adverse'' scenario requirement, consistent with section 401 of EGRCCPA.

With respect to the proposed rule's requirement that covered banks generally be subject to biennial stress testing, some commenters supported biennial stress testing as being an appropriate frequency for most covered banks, while others contended that reducing the frequency from annual to biennial would not be appropriate. Among the concerns highlighted by these commenters was that such a reduction in the frequency of stress testing could lead to complacency by covered banks in managing risk, and that biennial stress tests would not be sufficiently current to be credible. One commenter specifically suggested that a data-driven empirical analysis should support the change from annual to biennial stress testing, and that biennial stress testing would not be appropriate since firms make choices about dividends and repurchases on an annual basis. This commenter also suggested that the risks associated with reducing the frequency of stress testing would be amplified by other regulatory proposals addressing capital and liquidity requirements.

Based on its experience in overseeing and reviewing the results of company-run stress testing, the FDIC believes that biennial stress testing would be appropriate under most conditions for covered banks. The FDIC expects biennial stress testing to sufficiently satisfy the purposes of stress testing, including assisting in an overall assessment of a covered bank's capital adequacy, identifying risks and the potential impact of adverse financial and economic conditions on a covered bank's capital adequacy, and determining whether additional analytical techniques and exercises would be appropriate for a covered bank to employ in identifying, measuring, and monitoring risks to the soundness of the covered bank. In addition, the FDIC would continue to review the covered bank's stress testing processes and procedures. Under the final rule, all covered banks that conduct stress tests on a biennial basis are required to conduct stress tests in the same reporting year (*i.e.,* the reporting years for biennial stress testing covered banks would be synchronized). By requiring these covered banks to conduct their stress tests in the same reporting year, the final rule allows the FDIC to make comparisons across banks for supervisory purposes and assess macroeconomic trends and risks to the banking industry. The FDIC also notes that it retains the ability to require more frequent stress testing pursuant to its reservation of authority under 12 CFR 325.1(c).

IV. Final Rule

The FDIC is adopting without change the proposed revisions to the FDIC's stress testing rule, as described in detail below.

A. Covered Banks

Section 401 of EGRRCPA amended section 165 of the Dodd-Frank Act by raising the minimum asset threshold for banks required to conduct stress tests from $10 billion to $250 billion. The final rule implements this change by eliminating the two existing subcategories of ''covered bank''—''$10 to $50 billion covered bank'' and ''over $50 billion covered bank''—and revising the term ''covered bank'' to mean a state nonmember bank or state savings association with average total consolidated assets that are greater than $250 billion. In addition, the final rule makes certain technical and conforming changes to 12 CFR part 325 in order to consolidate requirements, such as those related to reporting and publication, that are currently referenced separately with respect to $10 billion to $50 billion covered banks and over $50 billion covered banks.

B. Frequency of Stress Testing

Section 401 of EGRRCPA also changed the requirement under section 165 of the Dodd-Frank Act to conduct stress tests from ''annual'' to ''periodic.'' Consistent with proposals by the Board and the OCC, the final rule provides that, in general, an FDIC-supervised institution that is a covered bank as of December 31, 2019, is required to conduct, report, and publish a stress test once every two years, beginning on January 1, 2020, and continuing every even-numbered year thereafter (*i.e.,* 2022, 2024, 2026, etc.). The final rule also adds a new defined term, ''reporting year,'' to the definitions at 12 CFR 325.2. A covered bank's reporting year is the year in which a covered bank must conduct, report, and publish its stress test. As noted above, the ''reporting year'' for most covered banks would generally be every even-numbered year.

Certain covered banks may be required to conduct stress tests annually under the final rule. This subset of covered banks is limited to those that are consolidated under holding companies that are required to conduct stress tests more frequently than once every other year. On November 29, 2018, the Board published a proposed rule that would establish risk-based categories for determining the application of prudential standards, including stress testing.[6] The proposed rule would distinguish between four risk-based categories for holding companies. Three of these categories—''global systemically important BHCs,'' ''Category II bank holding companies,'' and ''Category III bank holding companies''—would be required to conduct company-run stress tests. Category I holding companies and Category II holding companies would be required to conduct company-run stress tests annually, while Category III holding companies would be required to conduct company-run stress tests biennially.[7]

[5] One commenter recommended that the FDIC, OCC, and FRB (agencies) not include the adverse scenario in the 2019 stress tests. The FDIC did not consider it necessary to do so, and notes that the EGRRCPA amendments to the Dodd-Frank Act's company-run stress testing requirements are effective November 24, 2019.

[6] *See* ''Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies,'' 83 FR 61408 (Nov. 29, 2018).

[7] A Category III holding company would be a holding company that is not a Category II holding company and that has (1) $250 billion or more in average total consolidated assets or (2) $100 billion

Because the FDIC's final stress testing rule would require a covered institution to conduct stress tests annually if its parent holding company is required to do so under Board regulations, the FDIC's stress testing regulation would adopt by reference any potential changes to stress testing frequency in the Board's regulations, including from the Board's proposed rule. This treatment aligns with the FDIC's, OCC's, and Board's long-standing policy of applying similar standards to holding companies and their subsidiary banks, and reflects the FDIC's expectation that covered banks that would be required to stress test on an annual basis would be subsidiaries of the largest and most systemically important banking organizations, (*i.e.,* under the Board's proposed rule, subsidiaries of global systemically important bank holding companies or bank holding companies that have $700 billion or more in total assets or cross-jurisdictional activity of $75 billion). There are currently no FDIC-supervised covered banks that are subsidiaries of bank holding companies that would be required to conduct annual company-run stress tests under the Board's proposed rule.

For covered banks that are required to conduct stress tests biennially or annually, the dates and deadlines in the FDIC's stress testing rule applies for each reporting year for a covered bank. For example, a biennial stress testing covered bank preparing its 2022 stress test would rely on financial data available as of December 31, 2021; use stress test scenarios that would be provided by the FDIC no later than February 15, 2022; provide its report of the stress test to the FDIC by April 5, 2022; and publish a summary of the results of its stress test in the period starting June 15 and ending July 15 of 2022.

C. Removal of ''Adverse'' Scenario

As enacted by the Dodd-Frank Act, section 165(i)(2)(C) required the FDIC to establish methodologies for conducting stress tests and further required the inclusion of at least three different stress-testing scenarios: ''Baseline,'' ''adverse,'' and ''severely adverse.'' EGRRCPA amended section 165(i) to no longer require the FDIC to include an ''adverse'' stress-testing scenario and to reduce the minimum number of required stress test scenarios from three to two. Given that the ''adverse'' stress-testing scenario has provided limited incremental information to the FDIC and market participants beyond what the ''baseline'' and ''severely adverse'' stress testing scenarios provide, the final rule removes the ''adverse'' scenario in the FDIC's stress testing rule and maintains the requirement to conduct stress tests under the ''baseline'' and ''severely adverse'' stress testing scenarios. The final rule also amends the definition of ''severely adverse scenario'' so that the term is defined relative to the ''baseline scenario,'' rather than relative to the ''adverse scenario.''

D. Transition Process for Covered Banks

Currently, 12 CFR 325.3 provides for a transition period between when a bank becomes a covered bank and when the bank must report its first stress test. The final rule revises the transition period in 12 CFR 325.3 to conform to the other changes in this final rule. Accordingly, paragraph (a)(2) generally requires a state nonmember bank or state savings association that becomes a covered bank after December 31, 2019, to conduct its first stress test under this part in the first reporting year that begins more than three calendar quarters after the date the state nonmember bank or state savings association becomes a covered bank. For example, if a covered bank that conducts stress tests on a biennial basis becomes a covered bank on March 31 of a non-reporting year (*e.g.,* 2023), the bank would report its first stress test in the subsequent calendar year (*i.e.,* 2024), which is its first reporting year. If the same bank becomes a covered bank on April 1 of a non-reporting year (*e.g.,* 2023), it would skip the subsequent reporting calendar year and the following, non-reporting calendar year, and would report its first stress test in the next reporting year (*i.e.,* 2026). As with other aspects of the stress test rule, the rule reserves to the FDIC the authority to change the transition period for a particular covered bank, as appropriate in light of the nature and level of the activities, complexity, risks, operations, and regulatory capital of the covered bank, in addition to any other relevant factors.[8]

The final rule does not establish a transition period for covered banks that move from a biennial stress testing requirement to an annual stress testing requirement. Accordingly, a covered bank that becomes subject to annual stress testing would be required to begin stress testing annually as of the next reporting year. The FDIC expects that covered banks would anticipate and make arrangements for this development. To the extent that particular circumstances warrant the extension of a transition period, the FDIC would do so based on its reservation of authority and supervisory discretion.

E. Review by Board of Directors

Currently, 12 CFR 325.5(b)(2) requires a covered bank's board of directors, or a committee thereof, to approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the bank's condition may warrant, but no less than annually. The final rule revises the frequency of this requirement from ''annual'' to ''once every reporting year'' in order to make review by the board of directors consistent with the covered bank's stress testing cycle.

F. Reservation of Authority

12 CFR 325.1(c) currently includes a reservation of authority, pursuant to which the FDIC may revise the frequency and methodology of the stress testing requirement as appropriate for a particular covered bank. The final rule amends the reservation of authority by clarifying the FDIC's authority to exempt a covered bank from the requirement to conduct a stress test in a particular reporting year.

G. New Range of As-of Dates for Trading Scenario Component

Under 12 CFR 325.4(c), the FDIC may require a covered bank with significant trading activities to include trading and counterparty components in its adverse and severely adverse scenarios. The trading data to be used in this component is as of a date between January 1 and March 1 of a calendar year.[9] On February 3, 2017, the Board published a final rule that extended this range to run from October 1 of the calendar year preceding the year of the stress test to March 1 of the calendar year of the stress test.[10] On February 23, 2018, the OCC published a final rule making the same change to its stress testing regulation.[11] On April 2, 2018, the FDIC issued a notice of proposed rulemaking that proposed such a change, and the proposed rule re-proposed this provision.[12] No comments were received regarding this aspect of the proposal. The final rule adopts the same change to the FDIC's stress testing regulation, extending the range of as-of dates from October 1 of

or more in average total consolidated assets and $75 billion or more in total consolidated assets in one of three risk indicators.

[8] 12 CFR 325.1(c).

[9] 12 CFR 325.4(c).

[10] 82 FR 9308 (Feb. 3, 2017).

[11] 83 FR 7951 (Feb. 23, 2018).

[12] 83 FR 13880 (April 2, 2018).

the preceding calendar year to March 1 of the calendar year of the stress test. Extending the as-of date range ensures consistency with the Board and OCC rules and increases the FDIC's flexibility to choose an appropriate as-of date.

H. Other Changes

As originally proposed in the April NPR and in the proposed rule, the final rule removes certain obsolete transitional language in 12 CFR 325.3 that was included to facilitate a 2014 shift in the dates of the annual stress testing cycle.[13] That transition is now complete and the regulatory transition language is no longer necessary.

Additionally, in order to update and standardize the language used in part 325, references to ''this subpart'' is changed to ''this part'' following the redesignation of the FDIC's stress test rule from Subpart C of 12 CFR part 325 to occupy all of part 325.[14] Lastly, the final rule eliminates the reference to supervisory guidance in 12 CFR 325.5(b)(1).[15]

IV. Regulatory Analysis

A. Riegle Community Development and Regulatory Improvement Act of 1994

The RCDRIA requires that the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[16] In addition, in order to provide an adequate transition period, new regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

The final rule imposes no additional reporting, disclosure, or other requirements on IDIs, including small depository institutions, nor on the customers of depository institutions. The final rule reduces the frequency of company-run stress tests for a subset of banks, raises the threshold for covered banks from $10 billion to $250 billion, and reduces the number of required stress test scenarios from three to two for all covered banks. The requirement to conduct, report, and publish a company-run stress testing is a previously existing requirement imposed by section 165(i) of the Dodd-Frank Act. Accordingly, RCDRIA does not apply to the final rule.

The final rule is effective 30 days after publication in the **Federal Register**.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities.[17] However, a regulatory flexibility analysis is not required if the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than $600 million in total assets.[18] For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The FDIC has considered the potential impact of the final rule on small entities in accordance with the RFA. The FDIC supervises 3,424 depository institutions,[19] of which, 2,665 are defined as small banking entities by the terms of the RFA.[20] As discussed in the Background Section, 12 CFR part 325 implements company-run stress test requirements for all state nonmember banks and state savings associations with more than $10 billion in assets (covered banks). The final rule raises the threshold for covered banks required to conduct company-run stress testing from $10 billion to $250 billion. No FDIC-supervised institutions with total consolidated assets of $600 million or less are subject to 12 CFR part 325. Therefore, the final rule would not affect any small, FDIC-supervised institutions.

C. The Paperwork Reduction Act

The FDIC has determined that this final rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 *et seq.*).

A Federal agency may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. The FDIC has obtained an OMB control number for this information collection (3064–0189) and will make a submission to OMB in connection with the final rule. The FDIC did not receive any comments on its estimated total annual burden for the stress testing rule. The estimates are as follows:

Revised Information Collection Title: Stress Test Reporting Templates and Documentation for Covered Banks with Total Consolidated Assets of $250 Billion or More.

OMB Number: 3064–0189.

Form Number: FDIC DFAST 14A Summary; FDIC DFAST 14A Scenario.

Affected Public: Insured state nonmember banks

Burden Estimate:

[13] 79 FR 69365 (Nov. 21, 2014).

[14] 83 FR 17737 (Apr. 24, 2018). Additional technical amendments to part 325 were recently proposed in a notice of proposed rulemaking to implement the current expected credit losses methodology for allowances. 83 FR 22312 (May 14, 2018).

[15] *See* Interagency Statement Clarifying the Role of Supervisory Guidance, Financial Institution Letter 49–2018 (Sep. 11, 2018).

[16] 12 U.S.C. 4802.

[17] 5 U.S.C. 601 *et seq.*

[18] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[19] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[20] FDIC Call Report, June 30, 2019.

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Methodologies and Practices	Recordkeeping	Mandatory	*1	Annually	640	640
Stress Test Reporting	Reporting	Mandatory	*1	Annually	240	240
Publications	Disclosure	Mandatory	*1	Annually	160	160

***Note:** FDIC estimates that none of the existing FDIC-supervised institutions are currently subject to the recordkeeping, reporting or disclosure requirements in the proposed rule. However, FDIC is reporting one respondent as a placeholder to preserve the burden estimate in case an institution becomes subject to these requirements in the future.

Estimated Total Annual Burden: 1,040 hours.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. In the proposal, the FDIC requested comment on how to make this proposed rule easier to understand, and received no responsive comments.

F. The Congressional Review Act

Pursuant to the Congressional Review Act, the Office of Management and Budget's Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined at 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 325

Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements, State savings associations, Stress tests.

Authority and Issuance

For the reasons stated in the preamble, the FDIC amends 12 CFR part 325 as follows:

PART 325—STRESS TESTING

■ 1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 5365(i)(2), 12 U.S.C. 5412(b)(2)(C), 12 U.S.C. 1818, 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1831o, and 12 U.S.C. 1831p–1.

■ 2. The heading for part 325 is revised to read as set forth above.

■ 3. In part 325, revise all references to ''subpart'' to read ''part''.

■ 4. Amend § 325.1 by revising paragraphs (b) and (c) to read as follows:

§ 325.1 Authority, purpose, and reservation of authority.

* * * * *

(b) *Purpose.* This part implements 12 U.S.C. 5365(i)(2), which requires the Corporation (in coordination with the Board of Governors of the Federal Reserve System (Board) and the Federal Insurance Office) to issue regulations that require each covered bank to conduct periodic stress tests, and establishes a definition of stress test, methodologies for conducting stress tests, and reporting and disclosure requirements.

(c) *Reservation of authority.* Notwithstanding any other provisions of this part, the Corporation may modify some or all of the requirements of this part.

(1) The Corporation may accelerate or extend any deadline for stress testing, reporting, or publication of the stress test results.

(2) The Corporation may require different or additional tests not otherwise required by this part or may require or permit different or additional analytical techniques and methodologies, different or additional scenarios (including components for the scenarios), or different assumptions for the covered bank to use in meeting the requirements of this part. In addition, the FDIC may specify a different as-of date for any or all categories of financial data used by the stress test.

(3) The Corporation may modify the reporting requirements of a report under this part or may require additional reports. The Corporation may modify the publication requirements of this part and or may require different or additional publication disclosures.

(4) The Corporation may also exempt a covered bank from the requirement to conduct a stress test in a particular reporting year.

(5) Factors considered: Any exercise of authority under this section by the Corporation will be in writing and will consider the activities, level of complexity, risk profile, scope of operations, and the regulatory capital of the covered bank, in addition to any other relevant factors.

(6) Notice and comment procedures: In exercising its authority to require different or additional stress tests and different or additional scenarios (including components for the scenarios) under paragraph (c)(2) of this section, the Corporation will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 324.5, as appropriate.

(7) Nothing in this subpart limits the authority of the Corporation under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe and unsound practices or conditions, or violations of law or regulation.

■ 4. Amend § 325.2 by:

■ a. Removing paragraph (a) and redesignating paragraphs (b) through (h) as paragraphs (a) through (g);

■ b. Revising newly redesignated paragraph (c)

■ c. Adding a new paragraph (h); and

■ d. Revising paragraphs (i), (j), and (m).

The revisions and addition read as follows:

§ 325.2 Definitions.

* * * * *

(c) *Covered bank* means any state nonmember bank or state savings association with average total consolidated assets calculated as required under this part that are greater than $250 billion.

* * * * *

(h) *Reporting year* means the calendar year in which a covered institution must conduct, report, and publish its stress test, as required under 12 CFR 325.4(d).

(i) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a covered bank that the Corporation determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline and severely adverse scenarios.

(j) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered bank and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

* * * * *

(m) *Stress test cycle* means the period beginning January 1 of a reporting year and ending on December 31 of that reporting year.

■ 5. Revise § 325.3 to read as follows:

§ 325.3 Applicability.

(a) *Covered banks subject to stress testing.* (1) A state nonmember bank or state savings association that is a covered bank as of December 31, 2019, is subject to the requirements of this subpart for the 2020 reporting year.

(2) A state nonmember bank or state savings association that becomes a covered bank after December 31, 2019, shall conduct its first stress test under this part in the first reporting year that begins more than three calendar quarters after the date the state nonmember bank or state savings association becomes a covered bank, unless otherwise determined by the Corporation in writing.

(b) *Ceasing to be a covered bank.* A covered bank shall remain subject to the stress test requirements of this part unless and until total consolidated assets of the covered bank falls to $250 billion or less for each of four consecutive quarters as reported on the covered bank's most recent Call Reports. The calculation will be effective on the as-of date of the fourth consecutive Call Report.

(c) *Covered bank subsidiaries of a bank holding company or savings and loan holding company subject to periodic stress test requirements.* (1) Notwithstanding the requirements applicable to covered banks under this section, a covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company that is required to conduct a periodic company-run stress test under applicable regulations of the Board of Governors of the Federal Reserve System may elect to conduct its stress test and report to the FDIC on the same timeline as its parent bank holding company or savings and loan holding company.

(2) A covered bank that elects to conduct its stress test under paragraph (c)(1) of this section will remain subject to the same timeline requirements of its parent company until otherwise approved by the FDIC.

■ 6. Revise § 325.4 to read as follows:

§ 325.4 Periodic stress tests required.

Each covered bank must conduct the periodic stress test under this part subject to the following requirements:

(a) *Financial data.* A covered bank must use financial data as of December 31 of the calendar year prior to the reporting year.

(b) *Scenarios provided by the Corporation.* In conducting the stress test under this part, each covered bank must use the scenarios provided by the Corporation. The scenarios provided by the Corporation will reflect a minimum of two sets of economic and financial conditions, including baseline and severely adverse scenarios. The Corporation will provide a description of the scenarios required to be used by each covered bank no later than February 15 of the reporting year.

(c) *Significant trading activities.* The Corporation may require a covered bank with significant trading activities, as determined by the Corporation, to include trading and counterparty components in its severely adverse scenarios. The trading and counterparty position data used in this component will be as of a date between October 1 of the year preceding the reporting year and March 1 of the reporting year, and the Corporation will communicate a description of the component to the covered bank no later than March 1 of the reporting year.

(d) *Frequency.* A covered bank that is consolidated under a holding company that is required, pursuant to applicable regulations of the Board of Governors of the Federal Reserve System, to conduct a stress test at least once every calendar year must treat every calendar year as a reporting year, unless otherwise determined by the Corporation. All other covered banks must treat every even-numbered calendar year beginning January 1, 2020 (*i.e.,* 2022, 2024, 2026, etc.), as a reporting year, unless otherwise determined by the Corporation.

■ 7. Amend § 325.5 by revising paragraph (b) to read as follows:

§ 325.5 Methodologies and practices.

* * * * *

(b) *Controls and oversight of stress testing processes.* (1) The senior management of a covered bank must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress test processes satisfy the requirements in this part. These policies and procedures must, at a minimum, describe the covered bank's stress test practices and methodologies, and processes for validating and updating the covered bank's stress test practices and methodologies consistent with applicable laws and regulations.

(2) The board of directors, or a committee thereof, of a covered bank must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the covered bank may warrant, but no less than once every reporting year. The board of directors and senior management of the covered bank must receive a summary of the results of the stress test.

(3) The board of directors and senior management of each covered bank must consider the results of the stress tests in the normal course of business, including but not limited to, the covered bank's capital planning, assessment of capital adequacy, and risk management practices.

■ 8. Revise § 325.6 to read as follows:

§ 325.6 Required reports of stress test results to the FDIC and the Board of Governors of the Federal Reserve System.

(a) *Report required for periodic stress test results.* A covered bank must report to the FDIC and to the Board of Governors of the Federal Reserve System, on or before April 5 of the reporting year, the results of the stress test in the manner and form specified by the FDIC.

(b) *Content of reports.* (1) The reports required under paragraph (a) of this section must include under the baseline scenario, severely adverse scenario, and any other scenario required by the Corporation under this part, a description of the types of risks being included in the stress test, a summary description of the methodologies used in the stress test, and, for each quarter of the planning horizon, estimates of aggregate losses, pre-provision net revenue, provision for loan and lease losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the FDIC). In addition, the report must include an explanation of the most significant causes for the changes in regulatory capital ratios and any other information required by the Corporation.

(2) The description of aggregate losses and net income must include the cumulative losses and cumulative net income over the planning horizon, and the description of each regulatory capital ratio must include the beginning value, ending value, and minimum value of each ratio over the planning horizon.

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Corporation under this part and related materials will be determined in accordance with applicable law including any available exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Rules and Regulations regarding the Disclosure of Information (12 CFR part 309).

■ 9. Amend § 325.7 by revising paragraphs (a) and (b) and paragraph (c) introductory text to read as follows:

§ 325.7 Publication of stress test results.

(a) *Publication date.* A covered bank must publish a summary of the results of its stress tests in the period starting June 15 and ending July 15 of the reporting year, provided:

(1) Unless the Corporation determines otherwise, if the covered bank is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Board of Governors of the Federal Reserve System under 12 CFR part 252, then, within the June 15 to July 15 period, such covered bank may not publish the required summary of its periodic stress test earlier than the date that the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company.

(2) If the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company prior to June 15, then such covered bank may publish its stress test results prior to June 15, but no later than July 15, through actual publication by the covered bank or through publication by the parent holding company under paragraph (b) of this section.

(b) *Publication method.* The summary required under this section may be published on the covered bank's website or in any other forum that is reasonably accessible to the public. A covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company that is required to conduct a company-run stress test under applicable regulations of the Board of Governors of the Federal Reserve System will be deemed to have satisfied the public disclosure requirements under this subpart if it publishes a summary of its stress test results with its parent bank holding company's or savings and loan holding company's summary of stress test results. Subsidiary covered banks electing to satisfy their public disclosure requirement in this manner must include a summary of changes in regulatory capital ratios of such covered bank over the planning horizon, and an explanation of the most significant causes for the changes in regulatory capital ratios.

(c) *Information to be disclosed in the summary.* A covered bank must disclose the following information regarding the severely adverse scenario if it is not a consolidated subsidiary of a parent bank holding company or savings and loan holding company that has elected to make its disclosure under 12 CFR 325.3(d):

* * * * *

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 15, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–23036 Filed 10–23–19; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0501; Product Identifier 2019–NM–077–AD; Amendment 39–19767; AD 2019–21–01]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 29, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 29, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0501.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0501; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0090, dated April 26, 2019 (''EASA AD 2019–0090'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A300–600 series airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The NPRM published in the **Federal Register** on July 1, 2019 (84 FR 31252). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

FedEx had no objection to the NPRM.

Request To Allow the Use of Later Approved Service Information

United Parcel Service (UPS) requested that paragraph (g) of the proposed AD be revised to allow the use of later approved variations or revisions to Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 03, dated December 14, 2018. The commenter stated that the approval of later approved program variations and revisions would maintain the level of safety through expedient inclusion of the latest changes to address fatigue cracking, damage, and corrosion in principle structural elements.

The commenter noted that in the FAA's ongoing efforts to improve efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with the requirements of corresponding FAA ADs. The commenter explained that EASA ADs include the approval of the use of later approved service information for compliance with the applicable requirements. The commenter noted that EASA AD 2019–0090, which corresponds to the proposed FAA AD, includes this approval so operators can use later approved variations or revisions of Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 03, dated December 14, 2018.

The FAA agrees with the commenter's observation regarding the FAA's new ''IBR the MCAI'' process, which uses EASA ADs as the primary source of information for compliance with corresponding FAA ADs. However, the FAA currently only uses the new ''IBR the MCAI'' process with certain MCAI ADs (primarily those with service bulletins as the primary source of information). When the Airbus A300–600 Airworthiness Limitations Section is revised, and EASA issues an AD, the FAA will consider drafting the corresponding FAA AD as an ''IBR the MCAI'' AD. Thus, all provisions specified in the EASA AD would apply to the corresponding FAA AD.

Based on the information above, the FAA disagrees with the commenter's request to revise paragraph (g) of this AD to include text that would allow operators to use later approved variations or revisions of Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 03, dated December 14, 2018, for compliance with the requirements of this AD. The FAA cannot refer to any document that does not yet exist in an AD. To allow operators to use later revisions of the referenced document (issued after AD publication), the most expeditious approach would be for operators to request approval to use later revisions as an alternative method of compliance with this AD, under the provisions of paragraph (j)(1) of this AD. The alternative would be for the FAA to revise the AD to reference specific later revisions, which would take longer and consume more resources. The FAA has not revised this AD regarding this issue.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 03, dated December 14, 2018. This service information describes airworthiness limitations for certification maintenance requirements applicable to the DT–ALI. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA determined that revising the existing maintenance or inspection program takes an average of 90 workhours per operator, although we recognize that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–21–01 Airbus SAS: Amendment 39–19767; Docket No. FAA–2019–0501; Product Identifier 2019–NM–077–AD.

(a) Effective Date

This AD is effective November 29, 2019.

(b) Affected ADs

This AD affects AD 2018–01–07, Amendment 39–19148 (83 FR 2042, January 16, 2018) (''AD 2018–01–07''); and AD 2018–19–33, Amendment 39–19434 (83 FR 48932, September 28, 2018) (''AD 2018–19–33'').

(c) Applicability

This AD applies to Airbus SAS Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 03, dated December 14, 2018. The initial compliance time for doing the tasks is at the time specified in Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 03, dated December 14, 2018, or within 90 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Action for AD 2018–01–07 and AD 2018–19–33

Accomplishing the actions required by this AD terminates all requirements of AD 2018–01–07 and AD 2018–19–33.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(ii) AMOCs approved previously for AD 2018–19–33 are approved as AMOCs for the corresponding provisions of this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Union Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0090, dated April 26, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0501.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 03, dated December 14, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on October 18, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23221 Filed 10–23–19; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–10709; 34–87148; 39–2529; IC–33650]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') Filer Manual (''EDGAR Filer Manual'' or ''Filer Manual'') and related rules. The EDGAR system was upgraded on September 30, 2019.

DATES: Effective October 24, 2019. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of October 24, 2019.

FOR FURTHER INFORMATION CONTACT: For questions concerning mining property disclosure exhibit EX–96, please contact Heather Macintosh in the Division of Corporation Finance at (202) 551–8111. For questions regarding Rule of Practice 194 and the removal of Schedule C to security-based swap entity registration forms, please contact Devin Ryan in the Division of Trading and Markets at (202) 551–7654. For questions concerning EDGAR password complexity requirements or EDGAR last account login activity information, please contact EDGAR Filer Support at (202) 551–8900. For questions concerning Form ATS–N/UA and ATS–N/CA submissions with revised Market Participant Identifier numbers, please contact Tyler Raimo or Michael Broderick in the Division of Trading and Markets at (202) 551–6227 or (202) 551–5058. For questions concerning Form N–CEN submissions or submissions by deregistered investment companies during a limited time period following deregistration, please contact Heather Fernandez in the Division of Investment Management at (202) 551–6708. For questions concerning Inline XBRL validations or retired taxonomies, please contact the Division of Economic and Risk Analysis, Office of Structured Disclosure at (202) 551–5494.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volumes I and II. The Filer Manual describes the technical requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the EDGAR Online Forms website.

The revisions reflect changes in EDGAR Filer Manual, Volume I: ''General Information,'' (Version 34) and EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' (Version 52) (September 2019). The updated Filer Manual is incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filings when preparing documents for electronic submission.

The EDGAR System was updated in Release 19.3 and corresponding amendments to the Filer Manual are being made to reflect the changes described below.

In Release No. 33–10570,[3] the Commission adopted mining property disclosure rules. In accordance with this rulemaking, EDGAR Release 19.3 added exhibit EX–96 (Mining Disclosure) for submission form types S–1, S–1/A, S–3, S–3/A, S–4, S–4/A, S–4 POS, POS AM, F–1, F–1/A, F–3, F–3/A, F–4, F–4/A, F–4 POS, 10–12B, 10–12B/A, 10–12G, 10–12G/A, 10–K, 10–K/A, 20–F, 20–F/A, 20FR12B, 20FR12B/A, 20FR12G, 20FR12G/A, 1–A, 1–A/A, and 1–A POS. Filers who are required to submit a technical report summary regarding their mining property must submit EX–96 as an attachment in official HTML, ASCII or PDF format. See Chapter 5 (Constructing Attached Documents and Document Types), Chapter 8 (Preparing and Transmitting Online Submissions) and Appendix E (Automated Conformance Rules for EDGAR Data Fields) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

In Release No. 34–84858, the Commission adopted Rule of Practice 194, which, among other things, provides an exclusion for a registered security-based swap dealer or major security-based swap participant from the statutory disqualification prohibition in Section 15F(b)(6) of the Securities Exchange Act of 1934 (the ''Exchange Act'') with respect to associated persons that are not natural persons (*i.e.,* associated person entities).[4] Concurrent with the adoption of Rule of Practice 194(c), the Commission also deleted Exchange Act Rule 15Fb6–1 and Schedule C to the security-based swap entity registration forms.[5] To implement this rulemaking, EDGAR Release 19.3 removed Schedule C and any references to Schedule C in security-based swap entity registration form types SBSE, SBSE/A, SBSE–A, SBSE–A/A, SBSE–BD, and SBSE–BD/A. See Chapter 8 (Preparing and Transmitting Online Submissions) of the ''EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

To enhance the security of access to filer accounts in EDGAR, EDGAR Release 19.3 introduced enhanced password complexity requirements. Filers will be required to use twelve-character passwords instead of eight-character passwords when logging into the EDGAR Filing website and the EDGAR Online Forms Management website. See Chapter 3 (Becoming an EDGAR Filer) and Chapter 4 (Generating Access Codes) of the EDGAR Filer Manual, Volume I: ''General Information'' and Chapter 7 (Preparing and Transmitting EDGARLink Online Submissions) and Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

To faciliate filer account management and security, EDGAR Release 19.3 updated EDGAR to provide filers with information about account login activity on the EDGAR Filing website and the EDGAR Online Forms Management website. Filers will be able to access information regarding the date, time, and whether the last login attempt was successful with respect to their account for the past 30 calendar days. See Chapter 4 (Generating EDGAR Access Codes) of the EDGAR Filer Manual, Volume I: ''General Information'' and

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on June 7, 2019. See Release No. 33–10645 (June 7, 2019) [84 FR 31192].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] *See* Modernization of Property Disclosures for Mining Registrants, Release 33–10570 (October 31, 2018) [83 FR 66344] (requiring, *inter alia,* the registrant file a technical report summary as an exhibit to the relevant Commission filing when disclosing mineral reserves or mineral resources for the first time or when there is a material change).

[4] *See* Application by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or be Involved in Effecting Security-Based Swaps, Release No. 34–84858 (December 19, 2018) [84 FR 4906] (''Rule of Practice 194 Adopting Release''); *see also* Rule of Practice 194(c), 17 CFR 201.194(c).

[5] *See* Rule of Practice 194 Adopting Release at 4919–20 and 4947 (explaining that the exclusion provided in Rule of Practice 194(c) makes Rule 15Fb6–1 and the related Schedule C unnecessary).

Chapter 7 (Preparing and Transmitting EDGARLink Online Submissions) and Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.'' In addition, EDGAR Release 19.3 implemented updates that will disallow filers from entering duplicate series and class information on form types N–CEN and N–CEN/A. See Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

EDGAR Release 19.3 upgraded EDGAR to permit EDGAR acceptance of submissions by deregistered investment companies for a limited period of 400 calendar days from the date of the investment company's deregistration. During the 400 calendar-day period, EDGAR will accept mandatory filings on submission form types 24F–2NT, 24F–2NT/A, N–CR, N–CR/A, N–CSR, N–CSR/A, N–CSRS, N–CSRS/A, N–PX, N–PX/A, N–PX–FM, N–PX–FM/A, N–PX–NT, N–PX–NT/A, N–PX–VR, N–PX–VR/A, N–PX–CR, N–PX–CR/A, N–Q, N–Q/A, N–CEN, N–CEN/A, N–LIQUID, N–LIQUID/A, N–MFP2, N–MFP2/A, NPORT–EX, NPORT–EX/A, NPORT–NP, NPORT–NP/A, NPORT–P, NPORT–P/A, N–30D, N–30D/A, and N–30B–2. EDGAR will not accept submissions by deregistered investment companies following the expiration of the 400 calendar-day period.

EDGAR Release 19.3 updated submission types ATS–N/UA and ATS–N/CA to allow filers to indicate when their Market Participant Identification or MPID number has changed. See Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

EDGAR Release 19.3 updated applicable taxonomies and will no longer support the superseded IFRS–2017 and DEI–2014 taxonomies. For a complete list of supported standard taxonomies, please see *https://www.sec.gov/info/edgar/edgartaxonomies.shtml.*

In addition, EDGAR Release 19.3 implemented revised validation rules to facilitate EDGAR acceptance of documents that contain properly tagged inline XBRL cover page data that may differ from EDGAR header information.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of the current revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual is available for website viewing and printing; the address for the Filer Manual is *https://www.sec.gov/info/edgar/edmanuals.htm.* You may also obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

Because the Filer Manual and the corresponding rule and form amendments relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (''APA'').[6] It follows that the requirements of the Regulatory Flexibility Act[7] do not apply.

The effective date for the updated Filer Manuals and the related rule and form amendments is October 24, 2019. In accordance with the APA,[8] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manuals with the related system upgrades.

Statutory Basis

We are adopting the amendments to Regulation S–T under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[9] Sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Securities Exchange Act of 1934,[10] Section 319 of the Trust Indenture Act of 1939,[11] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[12]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

[6] 5 U.S.C. 553(b)(A).

[7] 5 U.S.C. 601–612.

[8] 5 U.S.C. 553(d)(3).

[9] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[10] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78o–4, 78w, and 78*ll.*

[11] 15 U.S.C. 77sss.

[12] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 34 (September 2019). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 52 (September 2019). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available for website viewing and printing; the address for the Filer Manual is *https://www.sec.gov/info/edgar/edmanuals.htm.* You can obtain paper copies of the EDGAR Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

By the Commission.

Dated: September 27, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23211 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. PL20–1–000]

Revision to Policy Statement on Consultation With Indian Tribes in Commission Proceedings

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Commission is revising its Policy Statement on Consultation with Indian Tribes in Commission Proceedings by adding a specific reference to treaty rights; a statement that the Commission addresses tribal input in its NEPA documents and orders, and consultation with Alaska Native Corporations.

DATES: Effective November 25, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Molloy, Office of the General Counsel, 888 First Street NE, Washington, DC 20426; 202–502–8771; *elizabeth.molloy@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. By this order, the Commission is amending its Policy Statement on Consultation with Indian Tribes in Commission Proceedings (policy statement) [1] by adding a specific reference to treaty rights and noting that the Commission addresses tribal input in its National Environmental Policy Act (NEPA) documents and orders. In addition, the Commission is adding consultation with Alaska Native Corporations to the policy statement consistent with Congress' requirement that all Federal agencies consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.

Background and Discussion

2. In 2003, the Commission issued its Policy Statement on Consultation with Indian Tribes in Commission Proceedings. The 2003 policy statement recognizes the unique relationship between the Federal government and Indian tribes as defined by treaties, statutes, and judicial decisions and acknowledges the Commission's trust responsibilities. It states that the Commission will endeavor to work with the tribes on a government-to-government basis and will seek to address the effects of proposed projects on tribal rights and resources through consultation pursuant to trust responsibilities, the statutes governing the Commission's authority,[2] and in the Commission's environmental and decisional documents. Noting that the Commission functions as a neutral, quasi-judicial body and as such is bound by the Administrative Procedure Act and Commission rules regarding off-the-record communications,[3] it states that the Commission will assure tribal issues and interests are considered in making decisions. For the hydroelectric program, it also states that the Commission will notify tribes before or at the time the licensee files its notice of intent, and will consider comprehensive plans prepared by tribes or intertribal organizations.

3. In March 2017, the U.S. Government Accountability Office (GAO) commenced an engagement on tribal consultation practices, in which it sought to review tribal consultation practices of 21 federal agencies involved in permitting, review, or funding of infrastructure projects.[4] The engagement was focused on federal agencies' compliance with government to government consultation and coordination responsibilities under Executive Order 13175; tribal consultation practices used by federal agencies during permitting and developmental processes; definition and consistent application of ''meaningful tribal consultations'' by federal agencies; opportunities for tribal input into contiguous, off-reservation developments that may result in pollution or other impacts on their land; and appeal options, if any, available to tribes.

4. In March 2019, GAO issued its final report entitled, ''Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects (GAO–19–22).'' [5] GAO directed one of the 22 recommendations made in the report to the Commission.[6] Specifically, the GAO recommendation stated that ''[t]he Federal Energy Regulatory Commission should document in its tribal consultation policy how agency officials are to communicate with tribes about how their input from consultation was considered in agency decisions on infrastructure projects.'' [7]

A. Communication

5. As noted above, the Commission functions as a neutral, quasi-judicial body and as such is bound by the Administrative Procedure Act and Commission rules regarding off-the-record communications. In order to comply with the requirements that decisions be on the record, it has been the Commission's practice to address tribal input and concerns in its environmental documents and decisions. However, the Commission's policy statement does not expressly include language to that effect. Therefore, the Commission is adding language stating that the Commission will set forth in its environmental documents and orders how tribe's input from consultation was considered in agency decisions on infrastructure projects.

B. Treaty Rights

6. The Commission, in its final rule on Hydroelectric Licensing under the Federal Power Act issued contemporaneously with the policy statement, stated that, ''tribal consultation pursuant to our trust responsibility encompasses more than implementation of [National Historic Preservation Act] Section 106. It includes every issue of concern to an Indian tribe related to a treaty, statute, or executive order where the Commission can, through the exercise of its authorities under the FPA, fulfill its

[1] *Policy Statement on Consultation with Indian Tribes in Commission Proceedings,* Order No. 635, 104 FERC ¶ 61,108 (2003). The policy statement is codified at 18 CFR 2.1c (2019).

[2] The policy statement notes that the statutes governing the Commission's authority primarily consist of the Federal Power Act, the Natural Gas Act, the Public Utilities Regulatory Policies Act of 1978, the Interstate Commerce Act, the Outer Continental Shelf Lands Act, National Environmental Policy Act, and Section 106 of the National Historic Preservation Act.

[3] 18 CFR 385.2201 (2019).

[4] The 21 federal agencies (which included 3 independent regulatory agencies, 3 departments, and 15 component agencies) were: The Department of Agriculture's Forest Service and Rural Development; Department of Commerce's National Oceanic and Atmospheric Administration (NMFS); Department of Defense's Army Corps of Engineers (Corps); Department of Energy (DOE); Environmental Protection Agency (EPA); Federal Communications Commission (FCC); Federal Energy Regulatory Commission (FERC or Commission); Department of Homeland Security's Coast Guard (Coast Guard) and Federal Emergency Management Agency (FEMA); Department of Housing and Urban Development (HUD); Department of the Interior's Bureau of Land Management (BLM), Bureau of Ocean Energy Management (BOEM), Bureau of Reclamation (Reclamation), Fish and Wildlife Service (FWS), and National Park Service (NPS); Nuclear Regulatory Commission (NRC); and Department of Transportation's Federal Aviation Administration (FAA), Federal Highway Administration (FHA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA).

[5] *Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects* (GAO–19–22), March 2019 (GAO Report).

[6] The report made a similar recommendation regarding 13 of the other 21 agencies: the Department of Agriculture's Rural Development; Corps; DOE; FCC; DHS; FEMA; HUD; BOEM, Reclamation, FWS and NPS; NRC; and DOT.

[7] GAO Report at 58.

trust responsibility.'' [8] The policy statement states that the ''Commission, in keeping with its trust responsibility, will assure that tribal concerns and interests are considered whenever the Commission's actions or decisions have the potential to adversely affect Indian tribes or Indian trust resources.'' [9]

7. While the Commission already considers the effect of actions on treaty rights in its NEPA and decision documents,[10] the Commission is taking this opportunity to clarify that point by adding specific mention of treaty rights in the policy statement.

C. Consultation With Alaska Native Corporations

8. The policy statement addresses consultation with federally-recognized Indian tribes (including Alaska Native tribes, villages, and communities) that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994.[11] It does not, however, address consultation with Corporations established pursuant to the Alaska Native Claims Settlement Act (ANCSA Corporations).[12]

9. After the Commission issued its policy statement, Congress directed that ''[t]he Director of the Office of Management and Budget [and all Federal agencies] shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.'' [13]

10. To be consistent with Congress' directive, the Commission is updating its policy to include ANCSA Corporations. The Commission recognizes and respects the distinct, unique, and individual cultural traditions and values of Alaska Native peoples and the statutory relationship between ANCSA Corporations and the Federal Government.

11. The Commission distinguishes the Federal relationship to ANCSA Corporations from the government-to-government relationship between the Federal Government and federally recognized Indian Tribes in Alaska and elsewhere, and the update to the policy will not diminish in any way that relationship and the consultation obligations towards federally recognized Indian Tribes.

Information Collection Statement

12. The Paperwork Reduction Act and implementing regulations of the Office of Management and Budget (OMB) require OMB to approve certain information collection requirements imposed by agency rule.[14] However, this Revised Policy Statement does not contain or modify any information collection requirements, and is therefore not subject to OMB approval.

Environmental Analysis

13. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[15] Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Assessment or Environmental Impact Statement, and this revised policy statement qualifies under the exemption for procedural, ministerial or internal administrative actions.[16]

Regulatory Flexibility Act

14. The Regulatory Flexibility Act of 1980 (RFA) [17] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Rules that are exempt from the notice and comment requirements of section 553(b) of the Administrative Procedure Act are exempt from the RFA requirements. This revised policy statement concerns matters of internal agency procedure and, therefore, an analysis under the RFA is not required.

Document Availability

15. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

16. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

17. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Effective Date and Congressional Notification

18. This revised policy statement is effective November 25, 2019 without a period for public comment. Under 5 U.S.C. 533(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure or practice, or where the agency finds that notice and comment is unnecessary. This revised policy statement concerns only matters of agency procedure, and will not significantly affect regulated entities or the general public.

19. The Revised Policy Statement will be provided to the Congress and Government Accountability Office.

List of Subjects in 18 CFR Part 2

General policy and interpretations.

By the Commission.

Issued: October 17, 2019.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission is amending part 2, chapter I, title 18, *Code of Federal Regulations,* as follows.

PART 2—GENERAL POLICY AND INTERPRETATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 4321–4370h, 7101–7352.

■ 2. In § 2.1c:

■ a. In paragraph (a), add ''and Alaska Native Claims Settlement Act (ANCSA)

[8] *Hydroelectric Licensing under the Federal Power Act, Order No. 2002,* 104 FERC ¶ 61,109, at P 279 (2003), *order on reh'g,* 106 FERC ¶ 61,037 (2004).

[9] 18 CFR 2.1c(e).

[10] *See e.g. Public Utility District No. 1 of Snohomish County, Washington,* 146 FERC ¶ 61,197, *reh'g denied,* 149 FERC ¶ 61,206 (2014); *PacifiCorp,* 133 FERC ¶ 61,232 (2010), *order on reh'g,* 135 FERC ¶ 61,064 (2011); and *Bradwood Landing LLC,* 124 FERC ¶ 61,257 (2008), *order on reh'g,* 129 FERC ¶ 61,245 (2009).

[11] 25 U.S.C. 479a.

[12] 43 U.S.C. 1601, *et seq.* An ANCSA Corporation is defined as any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act. 43 U.S.C. 1602.

[13] Consolidated Appropriations Act, 2004, Pub. L. 108–199, Div. II. Sec. 161, 118 Stat. 3, 452 (2004) as amended by Consolidated Appropriations Act, 2005, Pub. L. 108–447, Div. H., Title V. Sec. 518, 118 Stat. 2809, 3267 (2004).

[14] 5 CFR 1320.12 (2019).

[15] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).) (cross-referenced at 41 FERC ¶ 61,284).

[16] 18 CFR 380.4(a)(1) (2019).

[17] 5 U.S.C. 601–612 (2018).

Corporations'' after ''Indian tribes'' in the first sentence.

■ b. In paragraph (c), add ''and with ANCSA Corporations in a similar manner,'' after ''government-to-government basis,'' in the first sentence.

■ c. In paragraph (e), remove ''or Indian trust resources'' and add in its place ''Indian trust resources, or treaty rights''.

■ d. Add a sentence to the end of paragraph (e).

The addition reads as follows:

§ 2.1c Policy statement on consultation with Indian tribes in Commission proceedings.

* * * * *

(e) * * * The Commission will use the agency's environmental and decisional documents to communicate how tribal input has been considered.

* * * * *

[FR Doc. 2019–23099 Filed 10–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 686

[DOL Docket No. ETA–2019–0006]

RIN 1205–AB96

Procurement Roles and Responsibilities for Job Corps Contracts

AGENCY: Employment and Training Administration, Labor.

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of two significant adverse comments, the Department of Labor (Department) is withdrawing the August 29, 2019, direct final rule (DFR) that would have made two procedural changes to its Workforce Innovation and Opportunity Act (WIOA) Job Corps regulations. The changes would have enabled the Secretary of Labor to delegate procurement authority as it relates to the development and issuance of requests for proposals for the operation of Job Corps centers, outreach and admissions, career transitional services, and other operational support services. This action would have aligned regulatory provisions with the relevant WIOA statutory language to provide greater flexibility for internal operations and management of the Job Corps program.

DATES: Effective October 24, 2019, the direct final rule published at 84 FR 45403 on August 29, 2019, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Heidi M. Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210; telephone (202) 693–3700 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In the DFR, the Department stated that if a significant adverse comment was submitted by September 30, 2019, the agency would publish a timely withdrawal in the **Federal Register** informing the public that this DFR will not take effect. The Department received two significant adverse comments prior to the close of the comment period and, therefore, is withdrawing the direct final rule. The Department will address the comments in a subsequent final action based upon the proposed action also published in the **Federal Register** on August 29, 2019 (84 FR 45449).

Accordingly, effective October 24, 2019, the amendment to 20 CFR part 686 published in the **Federal Register** on August 29, 2019 (84 FR 45449) is withdrawn.

John P. Pallasch,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2019–23238 Filed 10–23–19; 8:45 am]

BILLING CODE 4510–FT–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0382; FRL–10001–45–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Correction Due to Vacatur of Revisions To Implement the Revocation of the 1997 Ozone National Ambient Air Quality Standards Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting the state implementation plan (SIP) for the Commonwealth of Virginia to remove from the Code of Federal Regulations (CFR) revisions to the Virginia SIP that were initially incorporated into the SIP in a February 22, 2018 final action that was subsequently vacated and remanded to EPA by the Court of Appeals for the Fourth Circuit. This action is exempt from notice-and-comment rulemaking because it is ministerial in nature.

DATES: This final rule is effective on October 24, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0382. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2043. Ms. Calcinore can also be reached via electronic mail at *calcinore.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Rationale for This Action

Under the Clean Air Act (CAA or the Act), EPA establishes National Ambient Air Quality Standards (NAAQS) for criteria pollutants [1] in order to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health effects, EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone NAAQS, in 1979. See 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every five years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of

[1] The ''criteria pollutants'' include ozone (O_3), particulate matter (PM), sulfur dioxide (SO_2), nitrogen dioxide (NO_2), carbon monoxide (CO), and lead (Pb).

public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. The 0.075 ppm standard is referred to as the 2008 ozone NAAQS and is more stringent than the previous 1997 ozone NAAQS. See 73 FR 16436 (March 27, 2008).[2]

On March 6, 2015, EPA issued a final rule titled ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Review Requirements,'' which addressed a range of nonattainment area SIP requirements for the 2008 ozone NAAQS. 80 FR 12264. This final rule also revoked the 1997 ozone NAAQS and established anti-backsliding requirements for areas not attaining the 1997 ozone NAAQS in 40 CFR 51.1105 that became effective once the 1997 ozone NAAQS was revoked. The final rule also removed the conformity requirements for areas designated nonattainment or maintenance under the 1997 ozone NAAQS and attainment under the 2008 ozone NAAQS (referred to as ''orphan nonattainment areas'' and ''orphan maintenance areas,'' respectively). According to EPA's March 6, 2015 final rule, the revocation of the 1997 ozone NAAQS was effective April 6, 2015.

On September 9, 2016, Virginia amended the Virginia Administrative Code (VAC) to be consistent with EPA's March 6, 2015 final rule revoking the 1997 ozone NAAQS. On February 10, 2017, Virginia, through the Virginia Department of Environmental Quality (VADEQ), formally submitted a SIP revision (Revision G16) reflecting these amendments. Virginia's February 10, 2017 SIP revision included amendments to provisions 9VAC5–20–204, 9VAC5–30–55, 9VAC5–151–20, and 9VAC5–160–30 that reflected EPA's March 6, 2015 final rule.[3]

On February 16, 2018, after EPA had signed the final rulemaking notice approving Virginia's February 10, 2017 SIP revision, but six days before it was published in the **Federal Register**, the Court of Appeals for the D.C. Circuit issued a decision partially granting consolidated petitions for judicial review of EPA's March 6, 2015 final rule and vacating portions of that rule. *South Coast Air Quality Management District* v. *EPA,* 882 F.3d 1138, 1152–53 (D.C. Cir. 2018) (referred to as ''*South Coast II*''). The vacatur applies to portions of EPA's March 6, 2015 final rule that formed the underlying basis for Virginia's February 10, 2017 SIP revision, including the removal of the transportation conformity requirements for orphan nonattainment and maintenance areas.

On February 22, 2018, EPA's final rulemaking notice approving Virginia's February 10, 2017 SIP revision was published in the **Federal Register**. 83 FR 7610. This final rule revised the Virginia SIP, effective March 26, 2018, to incorporate by reference the amendments to 9VAC5–20–204, 9VAC5–30–55, 9VAC5–151–20, and 9VAC5–160–30 contained in Virginia's February 10, 2017 SIP revision. However, as stated previously, the *South Coast II* decision vacated portions of EPA's March 6, 2015 final rule that were the basis for these amendments. On October 29, 2018, in response to a petition filed by Sierra Club seeking review of EPA's February 22, 2018 rulemaking pursuant to section 307(b)(1) of the Act, *Sierra Club* v. *EPA,* No. 18–1441 (4th Cir), EPA filed an Unopposed Motion for Voluntary Remand and Vacatur (the Motion), in the United States Court of Appeals for the Fourth Circuit (the Court). The Motion identified those provisions of the February 22, 2018 rulemaking affected by *South Coast II* and requested that the Court vacate and remand the February 22, 2018 rulemaking to EPA. In a November 14, 2018 Order, the Court granted EPA's unopposed request for a voluntary remand and vacatur (the Order) and entered a judgment that its remand would not take effect until the Court issued its mandate in accordance with Fed. R. App. P. 41 (the Judgment). The Court issued its mandate on January 7, 2019 (the Mandate), announcing that the judgment of the Court would take effect that day.[4] Therefore, on January 7, 2019, the judgment of the Court vacated and remanded EPA's February 22, 2018 final rulemaking to EPA, thereby restoring the Virginia SIP to the version that existed prior to the effective date of EPA's February 22, 2018 rulemaking. That version of the SIP contains the versions of 9VAC5–20–204, 9VAC5–30–55, 9VAC5–151–20, and 9VAC5–160–30 as they existed prior to the March 26, 2018 effective date of EPA's February 22, 2018 final action.[5]

In this action, EPA is correcting the codification of the Virginia SIP in the CFR, to reflect the vacatur of EPA's February 22, 2018 final rulemaking. This action corrects the CFR to be consistent with the Court's Judgement by removing the revisions to 9VAC5–20–204, 9VAC5–30–55, 9VAC5–151–20, and 9VAC5–160–30 that were approved in EPA's now vacated February 22, 2018 final action. By taking this final action, the CFR will correctly display the versions of 9VAC5–20–204, 9VAC5–30–55, 9VAC5–151–20, and 9VAC5–160–30 that are approved in the Virginia SIP (*i.e.* the version of the provisions that were approved into the Virginia SIP prior to the March 26, 2018 effective date of EPA's February 22, 2018 final rulemaking).

II. Final Action

EPA is correcting the codification of the Virginia SIP in the CFR to reflect the vacatur of EPA's February 22, 2018 final action. EPA is taking this action as a final rule without providing an opportunity for public comment or a public hearing because EPA finds that the Administrative Procedure Act (APA) good cause exemption applies. In general, the APA requires that general notice of proposed rulemaking shall be published in the **Federal Register**. Such notice must provide an opportunity for public participation in the rulemaking process. However, the APA also provides a way for an agency to directly issue a final rulemaking in certain specific instances. This may occur, in particular, when an agency for good cause finds (and incorporates the finding and a brief statement of reasons in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). EPA has determined that it is not necessary to provide a public hearing or an opportunity for public comment on this action because the correction of the CFR to reflect the vacatur of EPA's February 22, 2018 final action is a necessary ministerial act. The Court, through its Order referencing the Motion, specifically identified as vacated the revisions to the Virginia SIP

[2] On October 1, 2015, EPA strengthened the ground-level ozone NAAQS to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). This rulemaking addresses the 2008 ozone NAAQS and does not address the 2015 ozone NAAQS.

[3] The amendment to 9VAC5–20–204 added text stating that the list of Northern Virginia moderate nonattainment areas under the 1997 ozone NAAQS is no longer effective after April 6, 2015, the effective date of the revocation of the 1997 ozone NAAQS. The amendment to 9VAC5–30–55 added text stating that the primary and secondary ambient air quality standard of 0.08 ppm shall no longer apply after April 6, 2015. Virginia also amended the Regulation for Transportation Conformity and the Regulation for General Conformity by adding text to 9VAC5–151–20 and 9VAC5–160–30 stating that ''The provisions of this chapter shall not apply in nonattainment and maintenance areas that were designated nonattainment or maintenance under a Federal standard that has been revoked.''

[4] The Motion, the Order, the Judgment and the Mandate are included in the docket for this rulemaking action available at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2017–0382.

[5] On February 27, 2019, Virginia formally withdrew Revision G16, which formed the based of EPA's February 22, 2018 rulamking. Consequently, no portion of Revision G16 remains before EPA.

that this action removes from display in the CFR and remanded this matter to EPA. Therefore, removing the affected regulatory text simply implements the decision of the Court, and it would serve no useful purpose to provide an opportunity for public comment or a public hearing on this issue.

In addition, notice-and-comment would be contrary to the public interest because it would unnecessarily delay the correction of the Virginia SIP as displayed in the CFR. Such delay could result in confusion on the part of the regulated industry and state, local, and tribal air agencies on the actual SIP-approved provisions in the Virginia SIP.

For these reasons, EPA finds good cause to issue a final rulemaking pursuant to section 553 of the APA, 5 U.S.C. 553(b)(3)(B). Moreover, EPA finds that the problems outlined above regarding the effects of delaying issuance of the rule also provide good cause for not delaying its effective date. 5 U.S.C. 553(d)(3). Accordingly, the requirement for a delay in effective date does not apply and the rule will take effect upon publication in the **Federal Register**. 5 U.S.C. 553(d).

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Statutory and Executive Order Reviews

A. General Requirements

This action merely makes ministerial corrections to the SIP consistent with state law that EPA had previously approved as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action correcting the Virginia SIP to reflect the vacatur of EPA's February 22, 2018 final rule may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 11, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Sections 5–20–204, 5–30–55, 5–151–20, and 5–160–30 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5, Chapter 20 General Provisions				
*	*	*	*	*
Part II Air Quality Programs				
*	*	*	*	*
5–20–204	Nonattainment Areas	3/11/15	8/14/15, 80 FR 48730.	List of nonattainment areas revised to exclude Northern Virginia localities for fine particulate matter ($PM_{2.5}$).
*	*	*	*	*
9 VAC 5, Chapter 30 Ambient Air Quality Standards [Part III]				
*	*	*	*	*
5–30–55	Ozone (8-hour, 0.08 ppm)	11/21/12	6/11/13, 78 FR 34915.	The 1997 8-hour ozone NAAQS for purposes of transportation conformity is revoked.
*	*	*	*	*
9 VAC 5, Chapter 151 Transportation Conformity				
*	*	*	*	*
Part II General Provisions				
5–151–20	Applicability	12/31/08	11/20/09, 74 FR 60194.	
*	*	*	*	*
9 VAC 5, Chapter 160 General Conformity				

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Part II General Provisions				
*	*	*	*	*
5–160–30	Applicability	3/2/11	12/12/11, 76 FR 77150.	
*	*	*	*	*

* * * * *

[FR Doc. 2019–23133 Filed 10–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0082; FRL–10001–46–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Philadelphia County Reasonably Available Control Technology for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the City of Philadelphia, Department of Public Health, Air Management Services (AMS) for the purpose of satisfying the volatile organic compound (VOC) reasonably available control technology (RACT) requirements for source categories covered by control technique guidelines (CTGs) under the 2008 8-hour ozone national ambient air quality standard (NAAQS). EPA is approving these revisions addressing the VOC CTG RACT requirements set forth by the Clean Air Act (CAA) for the 2008 8-hour ozone NAAQS for Philadelphia County in accordance with the requirements of the CAA.

DATES: This final rule is effective on November 25, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0082. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gaige, Air Quality Analysis Branch (3AD40), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5676. Ms. Gaige can also be reached via electronic mail at *gaige.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 27, 2019 (84 FR 44798), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of a SIP revision addressing the VOC CTG RACT requirements set forth by the CAA for the 2008 8-hour ozone NAAQS for Philadelphia County (the 2018 VOC CTG RACT Submission for Philadelphia County). The formal SIP revision was submitted by Pennsylvania on behalf of Philadelphia County on August 13, 2018.

II. Summary of SIP Revision and EPA Analysis

On August 13, 2018, PADEP submitted a SIP revision for Philadelphia County to address the VOC CTG RACT requirements set forth by the CAA for the 2008 8-hour ozone NAAQS. Specifically, the 2018 VOC CTG RACT Submission for Philadelphia County includes: (1) A certification that for certain categories of sources, previously-adopted VOC RACT controls in the Philadelphia County portion of Pennsylvania's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; and (2) a negative declaration that certain CTG sources of VOC do not exist in Philadelphia County, PA. This SIP revision does not cover non-CTG sources in Philadelphia County. PADEP will address RACT for major sources of NO_X and for major non-CTG VOC sources for Philadelphia County in another SIP submission.

Philadelphia County's Regulations, under Philadelphia County AMR V Sections II, III, IV, V, XI, XII, XIII, XV, XVI, and 25 Pa. Code Sections 129.52, 129.52a, 129.52b, 129.52d, 129.52e, 129 .55, 129.56, 129.57, 129.58, 129.59, 129.60, 129.62, 129.63, 129.63a, 129.64, 129.67, 129.67a, 129.67b, 129.68, 129.69, 129.71, 129.73, 129.74, 129.77, 129.101–129.107, and 130.701–130.704, contain the VOC CTG RACT controls that were implemented and approved into Pennsylvania's SIP under the 1-hour and 1997 8-hour ozone NAAQS. PADEP is certifying that these regulations, all previously approved by EPA into the SIP, continue to meet the RACT requirements for the 2008 8-hour ozone NAAQS for CTG-covered sources of VOCs in Philadelphia County, PA. PADEP also submitted a negative declaration for the CTGs that have not been adopted because Philadelphia County does not contain the affected source categories. More detailed information on these provisions as well as a detailed summary of EPA's review can be found in the Technical Support Document (TSD) for this action which is available on line at *https://www.regulations.gov,* Docket number EPA–R03–OAR–2019–0082.

An explanation of the Clean Air Act requirements, a detailed analysis of the

revisions, and EPA's reasons for proposing approval were provided in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA is approving the Pennsylvania's 2018 VOC CTG RACT Submission for Philadelphia County on the basis that it demonstrates that existing regulations in the Philadelphia County portion of Pennsylvania's SIP represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all stationary sources of VOCs covered by a CTG issued prior to July 20, 2014.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the 2018 VOC CTG RACT Submission for Philadelphia County may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 11, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for the Philadelphia County, Pennsylvania 2008 8-hour Ozone National Ambient Air Quality Standard Reasonably Available Control Technology at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
2008 8-hour Ozone National Ambient Air Quality Standard Reasonably Available Control Technology Standard.	Philadelphia County	08/13/18	10/24/2019, [Insert **Federal Register** citation].	This action pertains to sources covered by CTGs issued prior to July 20, 2014.

* * * * *

[FR Doc. 2019–23130 Filed 10–23–19; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 84, No. 206

Thursday, October 24, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2018–BT–STD–0003]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Meetings for the Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps Working Group To Negotiate a Notice of Proposed Rulemaking for Test Procedures and Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of public meetings and webinars.

SUMMARY: The U.S. Department of Energy (DOE or the Department) announces public meetings and webinars for the variable refrigerant flow multi-split air conditioners and heat pumps (VRF multi-split systems) working group. The Federal Advisory Committee Act (FACA) requires that agencies publish notice of an advisory committee meeting in the **Federal Register**. This document updates the schedule of meetings announced in the **Federal Register** on August 22, 2019.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The next several rounds of public meetings will be held at multiple locations. Please see the **SUPPLEMENTARY INFORMATION** section to find the address for each date. Please see the Public Participation section of this notice for additional information on attending the public meeting, including webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Building Technologies (EE–5B), 950 L'Enfant Plaza SW, Washington, DC 20024. Telephone: (202) 287–1692. Email: *ASRAC@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 10, 2018, the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) met and passed the recommendation to form a VRF multi-split systems working group to meet and discuss and, if possible, reach a consensus on proposed Federal test procedures and energy conservation standards for VRF multi-split systems. On April 11, 2018, DOE published a notice of intent to establish a working group for VRF multi-split systems to negotiate a notice of proposed rulemaking for test procedures and energy conservations standards. The notice also solicited nominations for membership to the working group. 83 FR 15514.

On August 22, 2019, DOE published a notice announcing public meetings for the VRF working group. 84 FR 43731. This notice makes changes to the meetings announced in the August 2019 notice. These changes include the cancellation of the late October public meetings, changes to the meeting dates and times of the early November meetings, as well as the announcement of one mid-December webinar and two late December public meetings. This notice announces the updated schedule for this working group as follows.

DOE will host a public meeting and webinar on the following dates:

- Tuesday, November 5, 2019 from 9:00 a.m. to 5:00 p.m. at Federal Mediation & Conciliation Services, Room 7008, 250 E Street SW, Washington, DC 20427.
- Wednesday, November 6, 2019 from 9:00 a.m. to 3:00 p.m. at Federal Mediation & Conciliation Services, Room 7008, 250 E Street SW, Washington, DC 20427.
- Wednesday, November 20, 2019 from 9:00 a.m. to 5:00 p.m. at U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW, Washington, DC 20585–0121.
- Thursday, November 21, 2019 from 9:00 a.m. to 3:00 p.m. at U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW, Washington, DC 20585–0121.
- Wednesday, December 18, 2019 from 9:00 a.m. to 5:00 p.m. at Federal Mediation & Conciliation Services, Room 7008, 250 E Street SW, Washington, DC 20427.
- Thursday, December 19, 2019 from 9:00 a.m. to 3:00 p.m. at Federal Mediation & Conciliation Services, Room 7008, 250 E Street SW, Washington, DC 20427.

DOE will host a webinar on Thursday, December 12, 2019 from 11:00 a.m. to 1:00 p.m.

The purpose of these meetings will be to negotiate in an attempt to reach consensus on proposed Federal test procedures and energy conservation standards for VRF multi-split systems.

Public Participation

Attendance at Public Meeting

The times, dates, and locations of the public meetings are listed in this **SUPPLEMENTARY INFORMATION** section. If you plan to attend the public meeting, please notify the ASRAC staff at *asrac@ee.doe.gov.*

Please note that foreign nationals participating in the public meeting or webinar are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting or webinar, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. DHS maintains an updated website identifying the State and territory driver's licenses that currently are acceptable for entry into DOE facilities at *https://www.dhs.gov/real-id-enforcement-brief.* A driver's license from a State or territory identified as not compliant by DHS will not be accepted

for building entry, and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include: A U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.* Participants are responsible for ensuring their systems are compatible with the webinar software.

Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by postal mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

Conduct of the Public Meetings

ASRAC's Designated Federal Officer will preside at the public meetings and may also use a professional facilitator to aid discussion. The meetings will not be judicial or evidentiary-type public hearings, but DOE will conduct them in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. A transcript of each public meeting will be included on DOE's website: *https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.* In addition, any person may buy a copy of each transcript from the transcribing reporter. Public comment and statements will be allowed prior to the close of each meeting.

Docket

The docket is available for review at: *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0003,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publically available, such as information that is exempt from public disclosure.

Signed in Washington, DC, on October 18, 2019.

Alexander N. Fitzsimmons

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–23140 Filed 10–23–19; 8:45 am]

BILLING CODE 6450–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AE89

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

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is seeking comment on a proposed amendment to the margin requirements for uncleared swaps for swap dealers (''SD'') and major swap participants (''MSP'') for which there is no prudential regulator (the ''CFTC Margin Rule''). As adopted in 2016, the CFTC Margin Rule, which mandates the collection and posting of variation margin and initial margin (''IM''), takes effect under a phased compliance schedule extending from September 1, 2016 to September 1, 2020. The proposed amendment would extend the compliance schedule to September 1, 2021, for entities with smaller average daily aggregate notional amounts of swaps and certain other financial products. By extending the compliance schedule, the proposed amendment would mitigate the potential market disruption that could result from such a large number of entities coming into the scope of the IM requirements on September 1, 2020.

DATES: Comments must be received on or before December 23, 2019.

ADDRESSES: You may submit comments, identified by RIN 3038–AE89, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

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

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.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 (''FOIA''), 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]

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 *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Joshua B. Sterling, Director, 202–418–6056, *jsterling@cftc.gov*; Thomas J. Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov*; Warren Gorlick, Associate Director, 202–418–5195, *wgorlick@cftc.gov*; Carmen Moncada-Terry, Special Counsel, 202–418–5795, *cmoncada-terry@cftc.gov*; or Rafael Martinez, Senior Financial Risk Analyst, 202–418–5462, *rmartinez@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR Chapter I.

SUPPLEMENTARY INFORMATION:

I. Background

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

The Basel Committee on Banking Supervision (''BCBS'') and the Board of the International Organization of Securities Commissions (''IOSCO'') established an international framework for margin requirements for uncleared derivatives in September 2013 (the ''BCBS/IOSCO framework'').[8] After the establishment of the BCBS/IOSCO framework, on January 6, 2016, the CFTC, consistent with Section 4s(e), promulgated rules requiring CSEs to collect and post initial and variation margin for uncleared swaps,[9] adopting the implementation schedule set forth in the BCBS/IOSCO framework, including the revised implementation schedule adopted on March 18, 2015.[10]

II. Proposed Changes to the CFTC Margin Rule (''Proposal'')

Covered swap entities are required to post and collect IM with counterparties that are SDs, MSPs, or financial end users with material swap exposure (''MSE'') [11] (''covered counterparties'') in accordance with a compliance schedule set forth in Commission § 23.161.[12] The compliance schedule comprises five compliance dates, from September 1, 2016 to September 1, 2020, staggered such that CSEs and covered counterparties, starting with the largest average daily aggregate notional amounts (''AANA'') of uncleared swaps and certain other financial products, and then successively lesser AANA, come into compliance with the IM requirements in a series of five phases.

The fourth compliance date, September 1, 2019, brought within the scope of compliance CSEs and covered counterparties each exceeding $750 billion in AANA. On the fifth and last compliance date (''phase 5''), September 1, 2020, remaining CSEs and covered counterparties, including financial end user counterparties with an MSE exceeding $8 billion in AANA, will come into compliance. As a result of the large reduction in the compliance threshold from $750 billion to $8 billion at the end of the compliance schedule, a significant number of financial end user counterparties, including relatively small counterparties, will be required to comply with the IM requirements and implement related operational processes. According to the CFTC's Office of the Chief Economist (''OCE''), compared with the first through the fourth phase of compliance, which brought approximately 40 entities into scope, phase 5 would bring approximately 700 entities, along with 7,000 relationships, which represent the number of IM agreements that would have to be in place in phase 5 to carry out swap transactions.[13]

Market participants have expressed concerns regarding the onset of phase 5 given the operational complexity associated with IM calculation and third-party segregation of IM collateral.[14] As a large number of counterparties prepare to meet applicable IM deadlines, newly in-scope entities may encounter operational difficulties because a significant number of these entities will be engaging the same limited number of entities that provide IM required services, involving, among other things, the preparation of IM-related documentation, the approval and implementation of risk-based models for IM calculation, and custodial arrangements. The potential for compliance delays may lead to disruption in the markets, including the possibility that some counterparties could, for a time, be prohibited from entering into uncleared swaps and therefore be unable to use swaps to hedge their financial risk. In recognition of these difficulties, BCBS/IOSCO revised its framework to extend the schedule for compliance with the IM requirements and provide an additional phase-in period for smaller counterparties.[15]

[2] 7 U.S.C. 1 *et seq.*

[3] For the definition of swap, *see* section 1a(47) of the CEA and Commission § 1.3. 7 U.S.C. 1a(47) and 17 CFR 1.3. It includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

[4] *See* 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a Prudential Regulator must meet the margin requirements for uncleared swaps established by the applicable Prudential Regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term ''Prudential Regulator'' to mean the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The definition further specifies the entities for which these agencies act as Prudential Regulators. The Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (''Prudential Regulators' Margin Rule'').

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

[6] For the definitions of SD and MSP, *see* section 1a of the CEA and Commission § 1.3. 7 U.S.C. 1a and 17 CFR 1.3.

[7] 7 U.S.C. 6s(e)(3)(A).

[8] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (September 2013), available at *https://www.bis.org/publ/bcbs261.pdf.*

[9] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150–23.159, 23.161. In May 2016, the Commission amended the CFTC Margin Rule to add Commission § 23.160, providing rules on its cross border application. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016). 17 CFR 23.160.

[10] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (March 2015), available at *https://www.bis.org/bcbs/publ/d317.pdf.*

[11] Commission § 23.151 provides that MSE for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July or August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. A company is a ''margin affiliate'' of another company if: (i) Either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (ii) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards; or (iii) for a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied. 17 CFR 23.151.

[12] *See* 17 CFR 23.161.

[13] *See* Initial Margin Phase 5 by Richard Haynes, Madison Lau, and Bruce Tuckman, Oct. 24, 2018 available at *https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf* (''OCE Initial Margin Phase 5 Study'').

[14] *See, e.g.,* Letter from the Securities Industry and Financial Markets Association (''SIFMA''), the American Bankers Association (''ABA''), the Global Foreign Exchange Division of the Global Financial Markets Association (''GFXD''), and the Institute of International Bankers (''IIB'') (April 5, 2019); Letter from the Managed Funds Association (June 20, 2019).

[15] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (July 2019), available at *https://www.bis.org/bcbs/publ/d475.pdf* (''July 2019 BCBS/IOSCO Margin Framework'').

The CFTC believes it is appropriate to amend the CFTC Margin Rule consistent with the BCBS/IOSCO framework's revision.[16] The Commission's Proposal, which is in line with the revised framework, would extend the compliance schedule for the IM requirements, alleviating the potential market disruption. The Proposal represents the Commission's effort to undertake coordinated action with international counterparts to achieve regulatory harmonization with respect to uncleared swaps margin.

In proposing the change in the phase 5 compliance date, the Commission also considered the relatively small amount of swap activity of the financial end users that would be subject to the one year extension. The OCE estimated in 2018 that the average AANA per entity in phase 5 is $54 billion compared to an average $12.71 trillion AANA for each entity in phases 1, 2, and 3 and $1 trillion in phase 4. OCE also estimated that total AANA for entities that would be subject to the one year extension is approximately three percent of the total AANA across all the phases.[17] Given the relatively small amount of swap activity of the financial end users in the extended compliance date group, the Commission believes the proposed compliance date extension will have a muted impact on the systemic risk mitigating effects of the IM requirements during the extension period.

Accordingly, the Commission proposes to amend Commission § 23.161(a), which sets forth the schedule for compliance with the CFTC Margin Rule, to add a sixth phase of compliance for certain smaller entities that are currently subject to phase 5. The proposed amendment would require compliance by September 1, 2020, for CSEs and covered counterparties with an AANA ranging from $50 billion up to $750 billion. The compliance date for all other remaining CSEs and covered counterparties, including financial end user counterparties exceeding an MSE of $8 billion in AANA, would be extended to September 1, 2021.

In addition, the Commission is proposing non-substantive, conforming technical changes[18] to Commission § 23.161(a) to replace, where applicable, ''between an entity or a margin affiliate only one time'' with ''between the entity and a margin affiliate only one time.'' The proposed change will conform the CFTC Margin Rule to the rule text of the Prudential Regulators' Margin Rule, promoting further harmonization between both regulators.

The Commission is also proposing to replace in Commission § 23.161(a), where applicable, ''shall not count a swap or a security-based swap that is exempt pursuant to § 23.150(b)'' with ''shall not count a swap that is exempt pursuant to § 23.150(b).'' This proposed change will remove the term ''security-based swap'' from certain parts of Commission § 23.161(a). This change is necessary because, due to a transcription error, the current rule text incorrectly indicates that Commission § 23.150(b) exempts security-based swaps from the CFTC Margin Rule. Section 23.150(b) applies only to swaps. Notwithstanding this technical change that eliminates the reference to Commission § 23.150(b) with respect to security-based swaps, Commission § 23.161(a) will continue to exclude any security-based swap, for purposes of the calculation of the various thresholds set forth in Commission § 23.161(a), that is exempt pursuant to section 15F(e) of the Securities Exchange Act, of 1934, as is the case, prior to this Proposal, under the current rule text.

Request for comment. The Commission requests comment regarding the proposed amendments to Commission § 23.161. The Commission specifically requests comment on the following question:

- Is the proposed rule text relating to the one-year extension of the final implementation timeline clear in its intent and direction to market participants? Is any further Commission guidance necessary to avoid any potential confusion or market disruption? Please explain.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[19] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. This Proposal contains no requirements subject to the PRA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[20] This Proposal only affects SDs and MSPs that are subject to the CFTC Margin Rule and their covered counterparties, all of which are required to be eligible contract participants (''ECPs'').[21] The Commission has previously determined that SDs, MSPs, and ECPs are not small entities for purposes of the RFA.[22] Therefore, the Commission believes that this Proposal will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Proposal will not have a significant economic impact on a substantial number of small entities. The Commission invites comment on the impact of this Proposal on small entities.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of 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. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations. Further, the Commission reflected upon the extraterritorial reach of this Proposal and notes where this reach may be especially relevant.

This Proposal extends the compliance schedule for the CFTC Margin Rule and introduces an additional compliance date for smaller counterparties.[23] The proposed compliance schedule would require CSEs and covered counterparties, with an AANA ranging

[16] *See* July 2019 BCBS/IOSCO Margin Framework.

[17] *See* OCE Initial Margin Phase 5 Study at 4–5.

[18] For consistency, the proposed changes include revisions to text in Commission § 23.161(a) relating to compliance dates that have already passed.

[19] 44 U.S.C. 3501 *et seq.*

[20] 5 U.S.C. 601 *et seq.*

[21] Each counterparty to an uncleared swap must be an ECP, as the term is defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18) and Commission § 1.3, 17 CFR 1.3. *See* 7 U.S.C. 2(e).

[22] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs) and Opting Out of Segregation, 66 FR 20740, 20743 (April 25, 2001) (ECPs).

[23] The Commission is also proposing conforming technical changes to Commission § 23.161(a). Given the non-substantive nature of these changes, there are no costs or benefits to be considered.

from $50 billion up to $750 billion, to exchange IM in phase 5. All remaining CSEs and covered counterparties, including financial end user counterparties exceeding an MSE of $8 billion in AANA, would come into scope in the proposed additional sixth phase, beginning September 1, 2021.

As discussed above, the Commission believes that as a result of the large number of counterparties that would be required to comply with the IM requirements for the first time at the end of the current compliance schedule, market disruption may arise. The markets may be strained given counterparties' demand for resources and services to meet the September 2020 deadline and operationalize the exchange of IM, involving, among other things, counterparty onboarding, approval and implementation of risk-based models for the calculation of IM, and documentation associated with the exchange of IM.

The baseline against which the benefits and costs associated with this Proposal are compared is the uncleared swaps markets as they exist today, including the impact of the current compliance schedule and the implementation of phase 5 on September 1, 2020. With this as the baseline for this Proposal, the following are the benefits and costs of this Proposal.

1. Benefits

As described above, this Proposal will extend the compliance schedule for the IM requirements for certain smaller entities to September 1, 2021. The Proposal is intended to alleviate the potential congestion and market disruption resulting from the large number of counterparties that would come into scope under the current compliance schedule and the strain on the uncleared swaps markets resulting from the increased demand for limited resources and services to set up operations to comply with the IM requirements, including counterparty onboarding, adoption and implementation of risk-based models to calculate IM, and documentation associated with the exchange of IM.

The Proposal would prioritize applicable IM compliance deadlines in order to focus on certain financial end users, SDs, and MSPs that engage in greater swap trading activity and that may significantly contribute to systemic risk in the financial markets, while providing a 12-month delay for smaller counterparties, whose swap trading may not pose the same level of risk, to prepare for their eventual compliance with the IM requirements. The Proposal therefore would promote the smooth and orderly transition into IM compliance.

The Proposal would amend the CFTC Margin Rule consistent with the revised BCBS/IOSCO margin framework. The Proposal therefore promotes harmonization with international margin regulatory requirements, reducing the potential for regulatory arbitrage.

2. Costs

The Proposal would extend the time frame for compliance with the IM requirements for the smallest, in terms of notional amount, CSEs and covered counterparties, including SDs and MSPs and financial end users that exceed an MSE of $8 billion, by an additional 12 months. Swaps entered into during this period with the smallest CSEs have the potential to be treated as legacy swaps and thus would not be subject to the IM requirements. The contagion risk associated with these potentially uncollateralized legacy swaps is a lesser concern because these legacy swap portfolios would be entered into with counterparties that engage in lower levels of notional trading.

The Proposal would also delay the implementation of IM by smaller CSEs. There may not be as much IM posted to protect the financial system as would otherwise be the case. As such, the probability and severity of financial contagion may increase.

3. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of this Proposal pursuant to the five considerations identified in section 15(a) of the CEA as follows:

(a) Protection of Market Participants and the Public

This Proposal would protect market participants and the public against the potential disruption that may be caused by the large number of counterparties that would come into scope of the IM requirements at the end of the current compliance schedule.

Under the proposed compliance schedule, fewer counterparties would come into scope in phase 5 and many smaller counterparties would be able to defer compliance until the sixth and last compliance date on September 1, 2021. As such, the demand for resources and services to achieve operational readiness would be reduced, mitigating the potential strain on the uncleared swaps markets.

Also, the Proposal would appropriately prioritize IM compliance requirements for those counterparties and CSEs that have greater swap trading activity and potentially pose greater systemic risk, while giving more time to smaller counterparties to come into compliance with the IM requirements.

Inasmuch as this Proposal delays the implementation of IM for the smallest CSEs, there may not be as much IM posted to protect the financial system as would otherwise be the case. Consequently, the probability and severity of financial contagion may be increased, especially among the smallest CSEs.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

The Proposal would make the uncleared swaps markets more streamlined by facilitating counterparties' transition into compliance with the IM requirements. Counterparties would have additional time to document their swap relationships and set up adequate processes to operationalize the exchange of IM. As such, the Proposal would promote fairer competition among counterparties in the uncleared swaps markets, as it would remove the potential incentive of CSEs to prioritize arrangements with larger counterparties to the detriment of smaller counterparties and would help maintain the current state of market efficiency.

By preventing the market disruption that would result from the large number of counterparties that would come into scope at the end of the current compliance schedule, the Proposal promotes the financial integrity of the markets, reducing the probability of congestion resulting from the heightened demand for limited financial infrastructure resources. On the other hand, there would be less IM posted overall, making uncleared swaps markets more susceptible to financial contagion where the default of one counterparty could lead to subsequent defaults of other counterparties potentially harming market integrity.

(c) Price Discovery

This Proposal would not harm price discovery and might help preserve it. Without the Proposal, counterparties, in particular smaller counterparties, may be discouraged from entering or may even be foreclosed from entering the uncleared swaps markets because they may not be able to secure resources and services in a timely manner to operationalize the exchange of IM. These counterparties may thus be shut out from the uncleared swaps markets, potentially reducing liquidity and harming price discovery.

(d) Sound Risk Management

The Proposal would stave off the potential market disruption that could result from the large number of counterparties that would come into the scope of the IM requirements at the end of the current compliance schedule. The extended compliance schedule would alleviate the potential congestion in establishing the financial infrastructure to post IM between in scope entities and would give counterparties time to prepare for the exchange of IM and to establish operational processes tailored to their uncleared swaps and associated risks. The additional compliance time may also improve risk management practices because there might be some parties who may prefer to enter into cleared swaps rather than install otherwise required financial infrastructure in a short time frame, choosing to enter into swaps that are more standardized but that do not match their risk management needs as well.

(e) Other Public Interest Considerations

The Proposal would amend the CFTC Margin Rule consistent with the revised BCBS/IOSCO margin framework in order to promote harmonization with international margin regulatory requirements and reduce the potential for regulatory arbitrage.

4. Request for Comments on Cost-Benefit Considerations

The Commission invites public comment on its cost-benefit considerations, including the section 15(a) factors described above. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed amendments with their comment letters. In particular, the Commission seeks specific comment on the following:

(a) Has the Commission accurately identified all the benefits of this Proposal? Are there other benefits to the Commission, market participants, and/or the public that may result from the adoption of this Proposal that the Commission should consider? Please provide specific examples and explanations of any such benefits.

(b) Has the Commission accurately identified all the costs of this Proposal? Are there additional costs to the Commission, market participants, and/or the public that may result from the adoption of this Proposal that the Commission should consider? Please provide specific examples and explanations of any such costs. For example, is there a potential for increased counterparty credit risk in trades or contagion involving firms that will get the benefit of the margin deadline extension that we have proposed, *i.e.,* with respect to trades entered into by those entities during the period between September 2020 and September 2021? Is it possible to identify reliably the amount of any such increase in potential risk? Should the margin amounts that these firms are required to post by contract, rather than by our regulations, be considered as a risk mitigant during that period?

(c) Does this Proposal impact the section 15(a) factors in any way that is not described above? Please provide specific examples and explanations of any such impact.

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b) of the CEA), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.[24]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. Further, the Commission preliminarily believes that allowing parties more time to come into compliance with the CFTC Margin Rule by splitting the last compliance phase into two phases will preserve competition by encouraging more participation in the uncleared swaps markets. The Commission requests comment on whether this Proposal implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered this Proposal to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether this Proposal is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that this Proposal is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting this Proposal.

[24] 7 U.S.C. 19(b).

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major swap participants, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 23 as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

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

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

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

■ 2. Amend § 23.161 by revising paragraphs (a)(1)(iii), (a)(3)(iii), (a)(4)(iii), (a)(5)(iii), and (a)(6) and adding paragraph (a)(7) to read as follows:

§ 23.161 Compliance dates.

(a) * * *

(1) * * *

(iii) In calculating the amounts in paragraphs (a)(1)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

* * * * *

(3) * * *

(iii) In calculating the amounts in paragraphs (a)(3)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

(4) * * *

(iii) In calculating the amounts in paragraphs (a)(4)(i) and (ii) of this section, an entity shall count the

average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

(5) * * *

(iii) In calculating the amounts in paragraphs (a)(5)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

(6) September 1, 2020 for the requirements in § 23.152 for initial margin for any uncleared swaps where both—

(i) The covered swap entity combined with all its margin affiliates; and

(ii) Its counterparty combined with all its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in March, April, and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and where

(iii) In calculating the amounts in paragraphs (a)(6)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o.10(e)).

(7) September 1, 2021 for the requirements in § 23.152 for initial margin for any other covered swap entity with respect to uncleared swaps entered into with any other counterparty.

* * * * *

Issued in Washington, DC, on October 16, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

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

Appendix 2—Supporting Statement of Commissioner Brian Quintenz

I am pleased to support the Commission's proposal to extend the compliance schedule for uncleared margin to September 1, 2021 for entities with smaller average daily aggregate notional amounts of activity. As our own Office of the Chief Economist noted, phase five would have brought approximately 700 entities into our margin regime, implicating around 7,000 relationships that would have to be negotiated to manage initial margin arrangements.[1] Recognizing the operational challenges associated with phase 5 implementation, BCBS and IOSCO revised the uncleared margin framework to include an additional implementation phase. I am pleased that the agency, consistent with this revised international framework, is providing these smaller counterparties with additional time to come into compliance. I also support the recent proposal by the US banking regulators to similarly extend the compliance period for smaller firms.

However, much more needs to be done. First, it is critical that the CFTC, US banking regulators, the SEC, and our international counterparts adopt a coordinated approach with respect to uncleared margin. The derivatives market is a global market and any differences in our respective approaches will result in increased burdens and operational complexities for firms. This point was emphasized most recently at the Global Markets Advisory Committee (GMAC) meeting. Participants highlighted the numerous ways in which derivatives regulators across the globe have implemented conflicting timing, scope, calculation, and other requirements for uncleared margin implementation. I believe we must work with our regulatory counterparts to eliminate these cross-border discrepancies. This rulemaking represents a first step of many more in that international harmonization effort and I will continue to support the work of Commissioner Stump through the GMAC to further align and rationalize uncleared margin frameworks globally.

[1] *See* Initial Margin Phase 5 by Richard Haynes, Madison Lau, and Bruce Tuckman, Oct. 24, 2018 available at *https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf.*

Appendix 3—Concurring Statement of Commissioner Dan M. Berkovitz

I concur with issuing for public comment the proposed rulemaking (''Proposal'') to extend the swaps margining compliance deadline for certain financial entities that have smaller swap portfolios.

In general, I am not in favor of extending compliance deadlines when there has been a substantial lead-in period for compliance. The compliance date being extended in the Proposal was set more than four years earlier. However, in this instance, there are several factors that lead me to conclude that the Proposal will benefit hundreds of entities with smaller swap portfolios while having only a small impact on the systemic risk mitigation benefits of the initial margin requirements.

Variation and initial margin requirements for uncleared swaps reduce contagion and liquidity concerns by ensuring that collateral is available to cover swap losses if a party defaults.[1] Two types of margin are required. Variation margin covers current net exposure from day-to-day price movements for a portfolio of swaps. The Proposal does not change variation margin requirements. Initial margin covers estimated potential future exposures between the time a default occurs and when the swaps can be closed out or hedged.

A CFTC Office of the Chief Economist (''OCE'') analysis indicated that approximately 40 large financial enterprises are already required to exchange initial margin for uncleared swaps under regulations adopted by the CFTC and other regulators.[2] Under the current rule, the so called ''phase 5'' entities, entities with average daily aggregate notional amounts (''AANA'') of between $8 billion and $750 billion on a consolidated basis, are required to have various margining and custodial agreements in place by September 1, 2020. The Proposal does not change that deadline for financial end users that have an AANA greater than $50 billion. Accordingly, entities with moderately large swap portfolios would remain subject to the original compliance date. Only financial end users with relatively modest AANA levels would get an extension of the compliance deadline.

The existing implementation schedule is consistent with the original Basel Committee on Banking Supervision (''BCBS'') and the Board of the International Organization of Securities Commissions (''IOSCO'') international framework for margin requirements. In July 2019, BCBS and IOSCO revised the framework to effectively recommend an extension of the phase 5

[1] Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions ''Margin requirements for non-centrally cleared derivatives,'' (September 2013), available at *https://www.bis.org/publ/bcbs261.pdf.*

[2] *See* Initial Margin Phase 5 by Richard Haynes, Madison Lau, and Bruce Tuckman, Oct. 24, 2018 available at *https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf.*

deadline in recognition of likely compliance delays given the large number of entities that would need to execute margining agreements to comply with the new initial margin requirements.[3]

The Proposal follows the revisions recommended by BCBS and IOSCO. Other United States and foreign regulators have indicated they also intend to adopt extensions. Consistency with other regulators, particularly with requirements like swap margining, helps reduce the likelihood of regulatory arbitrage.

I am concurring with the Proposal because the impact on systemic risk mitigation resulting from the partial one year delay is muted while the potential impacts on the hundreds of financial end users with smaller swap portfolios might be significant if they are not able to have margining documentation in place by the original deadline. This is a data driven conclusion. While about 40 entities have had to comply through phase 4, the OCE analysis estimates that around 700 entities with 7,000 swap arrangements would be included in phase 5. Providing more time to hundreds of smaller users of swaps should help maintain the hedging capabilities of these market participants while they negotiate and establish the necessary margining arrangements.

The OCE analysis also provides critical data on the muted impact of the proposed change on systemic risk mitigation. The estimated average AANA for phase 5 entities is $54 billion compared to an average $12.71 trillion AANA for entities in phases 1, 2 and 3, and $1 trillion for entities in phase 4. The total estimated AANA for entities that would be subject to the one year extension is approximately three percent of the total AANA of entities subject to the margin rules. In my view, this data is critical to supporting a one year extension as it indicates that the likely affect in providing the extension on systemic risk mitigation will be quite limited.

For these reasons, I concur in the issuance of the Proposal.

[FR Doc. 2019–22954 Filed 10–23–19; 8:45 am]

BILLING CODE 6351–01–P

[3] See BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (July 2019), available at *https://www.bis.org/bcbs/publ/d475.pdf* (''July 2019 BCBS/IOSCO Margin Framework'').

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–87327; File No. S7–18–19]

Commission Statement on Market Structure Innovation for Thinly Traded Securities

AGENCY: Securities and Exchange Commission.

ACTION: Commission statement.

SUMMARY: This Securities and Exchange Commission (''Commission'') statement (''Statement'') is intended to facilitate the development of proposals that will improve secondary market trading for equity securities that trade in lower volume (''thinly traded securities''). The Commission's interest in considering proposals for improvement in this segment of the secondary market extends to proposals that could include the suspension or termination of unlisted trading privileges (''UTP'') and/or exemptive relief from Regulation NMS and other rules under the Securities Exchange Act of 1934 (''Exchange Act'').

DATES: The Commission's statement was effective October 17, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/policy.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–18–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–18–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/policy.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file. A notification of the inclusion in the comment file of any materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Cristie March, Senior Special Counsel; Deborah Flynn, Special Counsel; Christopher Chow, Special Counsel; or Liliana Burnett, Attorney-Adviser, at 202–551–5550, in the Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is issuing this Statement to facilitate the ability of market participants to develop innovative proposals for changes in equity market structure that are designed to improve trading in thinly traded securities. Although the Commission believes that the current equity market structure generally works well for securities that trade in higher volume, the Commission has concerns that the current ''one-size-fits-all'' equity market structure, as largely governed under Regulation NMS,[1] may not be optimal for thinly traded securities.

The secondary market for thinly traded securities faces liquidity challenges that can have a negative effect on both investors and issuers. In particular, thinly traded securities, which are often also smaller-capitalization securities, tend to have wider spreads and less displayed size relative to securities that trade in greater volume, often resulting in higher transaction costs for investors.[2] Potential investors in such securities also may be concerned that they could encounter difficulties finding the necessary liquidity to establish or unwind positions in the stocks.[3] A lack of readily available liquidity also may discourage potential market makers from electing to make markets in those

[1] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (adopting 17 CFR 242.600 through 242.613 (Regulation NMS)) (''NMS Release''). ''NMS'' stands for the National Market System.

[2] *See* Division of Trading and Markets Data Paper: Empirical Analysis of Liquidity Demographics and Market Quality, April 10, 2018, *available at https://www.sec.gov/files/thinly_traded_eqs_data_summary.pdf,* at 1 (summarizing the quoting and trading characteristics of NMS stocks on the lower end of the liquidity spectrum).

[3] *See, e.g.,* Transcript for Roundtable on Market Structure for Thinly-Traded Securities, April 23, 2018, *available at https://www.sec.gov/spotlight/equity-market-structure-roundtables/thinly-traded-securities-rountable-042318-transcript.txt* (''Transcript''), at 35; *see also* Thierry Foucault, Ohad Kadan & Eugene Kandel, *Liquidity Cycles and Make/Take Fees in Electronic Markets,* 68 J. Fin. 299 (2013) (discussing the externality of liquidity demand increases resulting in the increasing supply of liquidity, and an exogenous increase in the supply of liquidity resulting in an increase in the demand for liquidity).

securities.[4] For these reasons, a thinly traded security could affect a potential investor's willingness to invest in that issuer's securities, possibly resulting in even fewer trades.[5] Having a less liquid security also could negatively affect an issuer's financing (*e.g.,* the cost of capital).[6] Staff in the Division of Trading and Markets has issued a paper providing additional background on the unique trading challenges and characteristics related to thinly traded securities.[7]

The Commission recognizes there are various factors that affect the liquidity of a security and that market structure changes can address only part of the overall listing and trading environment for thinly traded securities. However, the Commission believes that there are a number of market structure changes [8] that could improve secondary market trading for thinly traded securities and is therefore issuing this Statement to encourage innovative approaches in this regard.[9]

II. Commission Position

A. Potential Market Structure Innovations for Thinly Traded Securities

The Commission believes that certain market structure innovations that may provide benefits to thinly traded securities, when applied on one given exchange, may be less likely to succeed if the securities are subject to concurrent trading on multiple exchanges with different trading models. Accordingly, to be effective, these innovations may require the suspension or termination of UTP.[10] UTP permits securities listed on any national securities exchange to be traded by other such exchanges.[11] Currently, UTP is automatically extended to a security once it begins trading on the listing exchange.[12] Similarly, some market structure innovations related to improving markets for thinly traded securities may require relief from certain Regulation NMS or other Exchange Act rules to be effective. Therefore, for thinly traded securities, the Commission is interested in considering proposals for market structure innovations in conjunction with the potential suspension or termination of UTP and/or the possibility of exemptive relief from Regulation NMS and other rules under the Exchange Act.[13]

A number of suggested market structure approaches to improve liquidity for thinly traded securities were raised at the Roundtable and elsewhere. One approach that has been suggested is that an exchange could provide market makers with incentives to assume heightened market making obligations for thinly traded securities.[14] The concern expressed is that market makers may lack adequate incentives to quote, especially with significant order interest, at or inside the displayed best bid or offer in thinly traded securities, particularly during periods of increased volatility. Increased incentives to be in—and stay in—the markets for these securities could encourage market makers to quote more frequently and in greater size, which in turn could lead to narrower spreads and increased displayed order interest. An exchange might also explore ways to incentivize market makers to provide additional liquidity not only during normal market conditions, but also during times of market stress when liquidity in these securities can become even scarcer.

Others have suggested that an exchange could implement periodic intraday auctions as a means of concentrating liquidity in thinly traded securities at times other than solely at the market open and market close.[15] To the extent that liquidity in these securities does not efficiently coalesce when traded across multiple equity exchanges in intervals of microseconds, such an approach might facilitate more efficient order interaction and price formation by concentrating liquidity at one exchange and at distinct time intervals during the trading day.[16] Doing so may help to resolve difficulties that market participants currently have in finding contra-side liquidity, particularly for larger-size orders.

Another market structure change that has been suggested to help improve liquidity is the introduction of non-automated markets for thinly traded securities.[17] Such an approach could enable an exchange to offer a negotiated market (*i.e.,* a market that would permit buyers and sellers to communicate directly to determine an agreed upon price), whether for thinly traded securities orders generally, or for larger-size orders more specifically. Such a negotiated market might address certain

[4] *See, e.g.,* Transcript, *supra* note 3, at 24.

[5] In addition, one Roundtable participant suggested that it also could affect a company's attractiveness to current and prospective employees. *See id.* at 21, 85–86.

[6] *See, e.g.,* Alexander W. Butler, Gustavo Grullon & James P. Weston, *Stock Market Liquidity and the Cost of Issuing Equity,* 40(2) J. Fin. & Quant. Anal. 331 (2005) (finding that stock liquidity is an important determinant of the cost of raising external capital and that investment bank fees are significantly lower for firms with more liquid stock); Jonathan Brogaard, Dan Li & Ying Xia, *Stock Liquidity and Default Risk,* 124(3) J. Fin. Econ. 486 (2007) (finding that stock liquidity reduces firm default risk by improving stock price informational efficiency and facilitating corporate governance by blockholders).

[7] *See* Securities and Exchange Commission, Division of Trading and Markets, Staff Background Paper on the Market Structure for Thinly Traded Securities (October 17, 2019), *available at https://www.sec.gov/rules/policy/2019/thinly-traded-securities-tm-background-paper.pdf* (''Staff Background Paper'').

[8] As discussed further below, market participants have suggested, for example, heightened market making obligations and market making incentives, periodic intraday auctions, non-automated auctions, and indicative quoting.

[9] Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated this policy statement as not a ''major rule,'' as defined by 5 U.S.C. 804(2). *See* 5 U.S.C. 801 *et seq.*

[10] The Commission understands that the suspension or termination of UTP may have effects on intermarket competition and, as noted below, welcomes comment on this matter and other matters raised in this Statement.

[11] 15 U.S.C. 78l(f).

[12] *See* Securities Exchange Act Release No. 43217, 65 FR 53560 (September 5, 2000) (eliminating the one-day waiting period for exchanges to extend UTP to listed IPOs).

[13] Exchanges may submit market structure innovation proposals as rule filings in accordance with Section 19(b) of the Exchange Act and the rules thereunder. *See* 15 U.S.C. 78s(b). An application to suspend or terminate UTP for thinly traded securities under Section 12(f) of the Exchange Act and the rules thereunder may be submitted to the Commission. *See* 15 U.S.C. 78l(f). Requests for exemptive relief from Regulation NMS or other rules under the Exchange Act for thinly traded securities may also be submitted to the Commission. *See* 15 U.S.C. 78mm(a). To the extent non-exchanges would like to recommend market structure innovations, those recommendations may be submitted to File Number S7–18–19 for this Statement.

[14] *See, e.g.,* Transcript, *supra* note 3, at 49, 150–52, 192–93. For example, in the past, human market makers such as New York Stock Exchange specialists were the exclusive market makers in a range of allocated securities (including those that were thinly traded and actively traded) and, as a result, had more comprehensive information about the trading interest in those securities that facilitated their ability to meet heightened affirmative and negative obligations and incentivized their quoting activity.

[15] *See, e.g.,* Yakov Amihud, Haim Mendelson & Beni Lauterbach, *Market Microstructure and Securities Values: Evidence from the Tel Aviv Stock Exchange,* 45 J. Fin. Econ. 365 (1997) (noting that adding additional auctions to the trading day on the Tel Aviv stock exchange was associated with an increase in liquidity and that some European stock exchanges already include an intra-day call auction where continuous trading is paused for a period while a call auction is performed). *See also* Transcript, *supra* note 3, at 137; Nasdaq Application to Permit Issuer Choice to Consolidate Liquidity by Suspending Unlisted Trading Privileges (April 25, 2018), *available at https://www.sec.gov/comments/265-31/26531-3515735-162293.pdf,* at 5.

[16] *See, e.g.,* Robert Schwartz & Reto Francioni, *Call Auction Trading, Encyclopedia of Finance* 477 (2013) (stating that ''[t]he electronic call auction is appealing for small and mid-cap stocks because order batching augments the efficiency of liquidity provision by focusing liquidity at specific points in time'' and that ''[f]or securities with little liquidity and less frequent trading, one or two calls per day may suffice.'').

[17] *See, e.g.,* Transcript, *supra* note 3, at 79, 124, 149–52. *See also id.* at 26 (discussing the lack of negotiated trading on exchanges).

liquidity challenges that fully continuous markets pose to thinly traded securities (*e.g.,* the increased risk of ''missing the market'' when displaying an order).[18] A related approach might be for an exchange to allow more informative indicative quoting [19] in thinly traded securities as opposed to requiring firm quoting (again, whether as a general matter or for larger-size orders), to facilitate trade negotiation and incentivize market maker participation.

The Commission notes that these potential market structure changes are merely a few examples of the types of innovations that exchanges and other market participants could consider developing that might facilitate improved trading in thinly traded securities. This list is not intended to be exhaustive or to limit the possibilities market participants could consider. The Commission encourages exchanges and other market participants, including issuers, to explore various types of market structure innovations to address the liquidity challenges in trading these securities.

B. Invitation for Proposals To Address the Market for Thinly Traded Securities

To better facilitate secondary market trading in thinly traded securities, one possible approach is for a national securities exchange that lists thinly traded securities to consider submitting a proposal focused on enhancing the market structure for these securities. To the extent a listing exchange would like to submit a proposal for an innovation that incorporates or depends on the suspension or termination of UTP, such an exchange could apply for the suspension or termination of UTP pursuant to Section 12(f) of the Exchange Act so that these securities that an exchange lists would no longer trade on other national securities exchanges.[20] As necessary to implement its proposed innovations, an exchange could submit requests for exemptive relief from Regulation NMS or other Exchange Act rules.[21] The Commission recognizes that market structure changes may not address all of the challenges faced by issuers whose securities are thinly traded. But to the extent that the current secondary market requirements could be tailored to better serve thinly traded securities without negatively affecting trading as a whole, the Commission is interested in evaluating proposals that listing exchanges may submit. The Commission notes that market structure changes to improve trading in thinly traded securities could have implications for the broader market structure. The Commission encourages any proposal to address these potential broader market structure effects. In addition, the Commission expects any proposal to demonstrate how it would satisfy any relevant statutory requirements including, for example, Section 6, Section 11A, and Section 12 of the Exchange Act.[22] The Commission would evaluate any proposals pursuant to such relevant statutory requirements.

To facilitate the Commission's evaluation, it would be helpful for a proposal to address certain considerations. For example, a proposal should define what ''thinly traded security'' means, whether based on average daily trading volume, number of trades, share volume, or dollar volume, potentially combined with additional factors such as market capitalization, number of shareholders, or public float. Such proposals should also include an explanation of how the thresholds were set, including any relevant data and analysis.

The proposal should address whether all securities that meet a chosen threshold test are included in the tier, or whether listed companies may opt in or out. If listed companies may opt in or out, the proposal should also address how the benefit of this mechanism justifies the potential additional operational complexity this may impose on NMS market participants.

To the extent relevant, the Commission encourages exchange proposals that involve the suspension or termination of UTP to address: (1) Steps that might be taken to enhance the technological resilience of its new trading tier in light of the greater dependence of market participants on a single exchange; and (2) business continuity plan(s) in the event of the failure of an exchange's systems that would affect trading in, and required quote and trade information dissemination regarding, the thinly traded securities.

The Commission encourages all proposals to address: (1) How and when a security would begin trading in the thinly traded security tier, and how it would transition out of the tier if that security no longer qualifies for trading in the tier; (2) how the exchange would address NMS Plan market data revenue allocation for any thinly traded securities not subject to UTP; and (3) the data the exchange would collect and make available and the data analysis it would conduct to enable an assessment of the success of the proposal.[23] A proposal also could consider the collection and sharing of data to measure the market-wide effects of: (i) Limiting trading of the affected securities to a single exchange, including any market quality benefits or costs that may result from consolidating the liquidity pool; (ii) relief from Exchange Act rules that restrict the ability of exchanges to innovate beyond the fully continuous market models that exist today; and (iii) any other innovative market structure modifications. The Commission welcomes comments on matters addressed in this Statement, including any potential effects on intermarket competition for listing and trading thinly traded securities, as well as related potential effects on market transparency and the protection of investors.

The Commission looks forward to engaging with exchanges that list and trade thinly traded securities, market participants involved in this segment of the equities market, including issuers, investors, and others to facilitate market structure innovations that can meaningfully improve secondary market trading for these securities.

By the Commission.

Dated: October 17, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–22994 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[18] This situation arises, for instance, when a displayed order is posted to a continuous market. The displayed order signals a buy or sell intention to the market, but instead of the displayed order being filled, a separate trade occurs either at or slightly better than the initially displayed price. Because the market consequently moves away from the initially displayed price, the initial posted order goes unexecuted. *See also* Staff Background Paper, *supra* note 7, at 12 (describing the Roundtable discussions of the difficulties in filling orders).

[19] *See, e.g.,* Transcript, *supra* note 3, at 80–81 (stating that indications of interest currently often are static or stale). An indicative quote is an expression of interest to transact designed to attract the contra side of the trade but that is not a firm quote.

[20] *See* 15 U.S.C. 78l(f).

[21] At this time, the Commission's initiative is focused on encouraging on-exchange innovation for thinly traded securities and is not intended to address OTC trading of these securities.

[22] *See* 15 U.S.C. 78f, 15 U.S.C. 78k–1, and 15 U.S.C. 78l, respectively.

[23] In so doing, an exchange could consider describing how it could evaluate the success of a proposal, including: (i) The data that could be collected; (ii) the testing and comparative analysis based on specified metrics that could be conducted to determine the effectiveness of the program; (iii) an explanation of the statistical approach it could employ in its testing and comparisons; and (iv) the empirical analysis it could perform.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0381; FRL–10001–25–Region 9]

Air Plan Approval; California; Placer County Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of a revision to the Placer County Air Pollution Control District (PCAPCD or ''District'') portion of the California State Implementation Plan (SIP). This revision concerns the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under the Clean Air Act (CAA or ''Act''). This action updates the PCAPCD's applicable SIP with current administrative requirements for the issuance of permits. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by November 25, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0381 at *https://www.regulations.gov,* or via email to *R9AirPermits@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, Air–3–1, 75 Hawthorne St., San Francisco, CA 94105, (415) 972–3534, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal, including the date it was adopted by the PCAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Rule No.	Rule Title	Adopted or amended	Submitted
501	General Permit Requirements	8/12/10	12/7/10

On January 13, 2011, the EPA determined that this SIP submittal met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There is no previous version of Rule 501 approved in the SIP. Rule 501 will replace the current SIP-approved rules listed in Table 2, which are applicable to specific air basins in Placer County, as noted.

TABLE 2—SIP-APPROVED RULES

Rule No.	Rule title	Air basin	SIP approval date	Federal Register Citation
2 (aka Article 2)	Application for Building Permit	Lake Tahoe	5/31/1972	37 FR 10856
403	Responsibility of Permittee	Lake Tahoe	6/14/1978	43 FR 25684
502	Permit Exemptions	Lake Tahoe	6/23/1982	47 FR 27065
503	Transfer	Lake Tahoe	6/23/1982	47 FR 27065
505	Cancellation of Authority to Construct	Lake Tahoe	6/23/1982	47 FR 27065
507	Provision of Sampling and Testing Facilities	Lake Tahoe	4/23/1982	47 FR 17486
514	Standards for Granting Applications	Lake Tahoe	6/23/1982	47 FR 27065
2 (aka Article 2)	Application for Building Permit	Mountain	5/31/1972	37 FR 10856
403	Responsibility of Permittee	Mountain	6/14/1978	43 FR 25684
501	Permit to Operate, *paragraph b*	Mountain	5/18/1981	46 FR 27115
502	Permit Exemptions	Mountain	5/18/1981	46 FR 27115
505	Cancellation of Authority to Construct	Mountain	7/12/1990	55 FR 28622
507	Provision of Sampling and Testing Facilities	Mountain	11/15/1978	43 FR 53035
507	Provision of Sampling and Testing Facilities, *paragraph d.*	Mountain	7/12/1990	55 FR 28622
2 (aka Article 2)	Application for Building Permit	Sacramento	5/31/1972	37 FR 10856
403	Responsibility of Permittee	Sacramento	6/14/1978	43 FR 25684

TABLE 2—SIP-APPROVED RULES—Continued

Rule No.	Rule title	Air basin	SIP approval date	Federal Register Citation
507	Provision of Sampling and Testing Facilities	Sacramento	11/15/1978	48 FR 53035

If the EPA finalizes the action proposed herein, these rules will be removed from the SIP.

C. What is the purpose of the submitted rule?

The submitted rule is intended to satisfy the ''general'' or ''minor'' NSR requirements of section 110(a)(2)(C) and related EPA regulations. General NSR requirements are applicable to all permits issued by the PCAPCD. Rule 501 consolidates the requirements from several existing rules and codified these requirements into a single administrative rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

The submitted rule must meet the CAA's general requirements for SIPs and SIP revisions in CAA sections 110(a), 110(l), and 193, as well as contain the applicable regulatory provisions required by 40 CFR 51.160–51.164.

Section 110(a)(2)(A) of the Act requires that regulations submitted to the EPA for SIP approval must be legally enforceable. Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act. Section 193 of the Act prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutant(s). With respect to procedures, CAA sections 110(a) and 110(l) require that a state conduct reasonable notice and hearing before adopting a SIP revision.

Section 110(a)(2)(C) of the Act requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The EPA's regulations at 40 CFR 51.160–51.164 provide general programmatic requirements to implement this statutory mandate. These requirements, commonly referred to as the ''minor NSR'' or ''general NSR'' program, apply generally to both major and non-major stationary sources and modifications and in both attainment and nonattainment areas, in contrast to the specific statutory and regulatory requirements for permitting programs under parts C and D of title I of the Act that apply to major sources in attainment and nonattainment areas, respectively.

B. Does the rule meet the evaluation criteria?

The EPA has reviewed the submitted rule in accordance with the rule evaluation criteria described above. With respect to the procedural requirements, based on our review of the public process documentation included with the submitted rule, we find that that the PCAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of this rule, in accordance with the requirements of CAA sections 110(a) and 110(l).

With respect to the substantive requirements of CAA sections 110(l) and 193, we find that our approval of this SIP submittal would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act, and that the submitted rule is not subject to section 193 of the Act because it does not contain any control requirements.

With respect to the substantive statutory and regulatory requirements for a general NSR permit program as contained in CAA section 110(a)(2)(C) and 40 CFR 51.160–51.164, we find the submitted rule satisfies these requirements, except as discussed below.

Submitted Rule 501 contains the following deficiencies. The technical support document (TSD) included in the docket for this proposed rulemaking contains a more detailed analysis.

1. Rule 501, Section 303.1 is deficient because it does not specifically require the Air Pollution Control Officer (APCO) to determine and deny a permit if a proposed project will (1) cause a violation of the SIP or (2) interfere with attainment or maintenance of a NAAQS. It is also deficient because it only requires the APCO to evaluate whether an emission unit will be operated in compliance with all applicable requirements as of the application completeness date, rather than as of the date of permit issuance. (See TSD Section 5.2.1, Item *1*.(b).)

2. The District's minor NSR program is deficient because it does not contain any public notice requirements for new or modified emission units located in the Lake Tahoe Air Basin portion of Placer County. (See TSD Section 5.2.1, Item *2*.(a).)

3. Rule 501 is deficient because it does not contain any provisions that address stack height procedures as required by 40 CFR 51.164. (See TSD Section 5.2.1, Item 5.)

4. Rule 501, Section 200—*Definitions,* is deficient because it references and relies on the definitions contained in Rule 504, ''Emission Reduction Credits,'' which is not SIP-approved. (See TSD Section 5.2.3.)

The submitted rules are otherwise consistent with criteria for the EPA's approval of regulations submitted for inclusion in the SIP, including the requirement at CAA section 110(c)(2)(A) that submitted regulations be legally enforceable.

For the reasons stated above and explained further in our TSD, we find that the submitted NSR rules generally satisfy the applicable CAA and regulatory requirements for a general NSR permit program, subject to the four deficiencies noted above.

C. Proposed Action and Public Comment

As authorized by CAA section 110(k)(3) and 301(a), we are proposing limited approval and limited disapproval of Rule 501 ''General Permit Requirements'' into the PCAPCD portion of the California SIP. If finalized, this action will incorporate the submitted rule into the SIP, including those provisions identified as deficient. The approval of Rule 501 is limited because EPA is simultaneously proposing a limited disapproval of Rule 501 under section 110(k)(3).

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220 (Identification of plan—in part).

We will accept comments from the public on this proposal until November 25, 2019.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the PCAPCD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 4, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–22917 Filed 10–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0432; FRL–10001–28–Region 9]

Air Plan Approval; California; Santa Barbara County Air Pollution Control District; Stationary Source Permits and Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Santa Barbara County Air Pollution Control District's (SBAPCD or ''the District'') portion of the California State Implementation Plan (SIP). These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under the Clean Air Act (CAA). This action updates the SBAPCD's applicable SIP with current permitting rules. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by November 25, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0432 at *https://www.regulations.gov,* or via email to *R9AirPermits@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eugene Chen, EPA Region IX, 75 Hawthorne Street (AIR 3–2), San Francisco, CA 94105, (415) 947–4304, *chen.eugene@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates they were adopted by the SBAPCD and submitted by the California Air Resources Board (CARB). These rules represent portions of the SBAPCD's current program for preconstruction review and permitting of new or modified stationary sources under its jurisdiction. The rule revisions that are the subject of this action are intended to satisfy the general preconstruction review requirements under section 110(a)(2)(C) of the Act (minor NSR) and the NSR program requirements contained in 40 CFR 51.160 through 164. The rules also include revisions to the SBAPCD's current preconstruction review and permitting program. The SBAPCD is not required to implement a nonattainment NSR program because Santa Barbara County is classified as attainment or unclassifiable for all national ambient air quality standards (NAAQS). The SBAPCD implements a SIP-approved prevention of significant deterioration (PSD) permitting program that was approved into the SIP on November 12, 2015.[1] The SBAPCD has not submitted any rule revisions in this action that affect the PSD program. Therefore, we are not evaluating whether this SIP submittal satisfies NSR program requirements at 40 CFR 51.165 (Nonattainment NSR) or 51.166 (PSD), as none of the rules or rule revisions in this submittal address these NSR program requirements.

TABLE 1—SUBMITTED RULES

Rule No.	Rule title	Adopted/amended date	Submitted date
102	Definitions	8/25/2016	10/18/2016
105	Applicability	8/25/2016	10/18/2016
202	Exemptions to Rule 201	8/25/2016	10/18/2016
204	Applications	8/25/2016	10/18/2016
205	Standards for Granting Permits	4/17/1997	3/10/1998
809	Federal Minor New Source Review	8/25/2016	10/18/2016

These submitted rules must be determined to meet the completeness criteria in 40 CFR part 51 Appendix V before commencement of formal EPA review. The EPA deemed these rules to be complete by operation of law to meet the completeness criteria on October 18, 2016 (for Rules 102, 105, 202, 204, and 809) and on March 10, 1998 (for Rule 205).

B. Are there other versions of these rules?

The EPA last approved significant revisions or updates to the SBAPCD's SIP-approved NSR program on February 9, 2016, and November 12, 2015. The existing SIP-approved NSR minor source program for new or modified stationary sources under the SBAPCD's jurisdiction generally consists of the versions of the rules identified below in Table 2.

TABLE 2—CURRENT SIP APPROVED RULES

Rule No.	Rule title	SIP approval date	**Federal Register** citation
102	Definitions	4/11/2013	78 FR 21545
105	Applicability	6/3/1999	64 FR 29790
201	Permits Required	2/9/2016	81 FR 6758
202	Exemptions to Rule 201	5/5/1982	47 FR 19330
203	Transfer	2/9/2016	81 FR 6758
204	Applications	2/9/2016	81 FR 6758
205	Standards for Granting Applications	5/5/1982	47 FR 19330
206	Conditional Approval of Authority to Construct or Permit to Operate	2/9/2016	81 FR 6758
212	Emission Statements	5/26/2004	69 FR 29880

Collectively, these regulations establish the NSR requirements currently in place for minor stationary sources under the SBAPCD's jurisdiction in California. If the EPA finalizes the action proposed herein, the submitted versions of the rules listed in Table 1 will replace their respective rule versions listed in Table 2.

C. What is the purpose of the submitted rule revisions?

As noted above and described in further detail below, the submitted rules are intended to satisfy the minor NSR requirements of section 110(a)(2)(C), as well as to implement certain other updates to the NSR program, such as reorganization and renumbering of certain rule references, revisions to certain rule text to improve clarity, and other such revisions. Minor NSR requirements are generally applicable for SIPs in all areas, regardless of attainment status, and California is required to adopt and implement these requirements as part of a SIP-approved NSR permitting program.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

The EPA has evaluated the submitted rules for compliance with applicable requirements of section 110(a)(2)(C) and associated regulations at 40 CFR 51.160–164. We have also reviewed the rules for consistency with other CAA general requirements for SIP submittals, including requirements at section 110(a)(2) regarding rule enforceability, and requirements at sections 110(l) and 193 for SIP revisions.

Section 110(a)(2)(C) of the Act requires each SIP to include a program

[1] 80 FR 69880.

to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. The EPA's regulations at 40 CFR 51.160–51.164 provide general programmatic requirements to implement this statutory mandate. These requirements, commonly referred to as the ''minor NSR'' or ''general NSR'' program, apply generally to both major and non-major stationary sources and modifications and in both attainment and nonattainment areas. There are additional statutory and regulatory requirements specifically for PSD and nonattainment NSR permitting programs at 40 CFR 51.165–166 that apply to major sources in nonattainment and attainment areas, respectively. The submitted rules are not relevant to or affect PSD or nonattainment NSR program specific requirements.

Section 110(a)(2)(A) of the Act requires that regulations submitted to the EPA for SIP approval must be clear and legally enforceable. Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutant(s). With respect to procedures, CAA sections 110(a) and 110(l) require that a state conduct reasonable notice and hearing before adopting a SIP revision.

B. Do the rules meet the evaluation criteria?

The EPA finds that the submitted rules satisfy the applicable CAA and regulatory requirements. Accordingly, we are proposing to fully approve them under CAA section 110(k)(3). Below, we discuss generally our evaluation of the submitted rules. The technical support document (TSD) included in the docket for this proposed rulemaking contains a more detailed analysis of each submitted rule.

We find that the submitted rules satisfy the minor NSR requirements. The rules clearly identify the kinds of projects subject to review under the District's program, include legally enforceable procedures to ensure that construction will not violate the state's control strategy or interfere with attainment or maintenance of the NAAQS, provide for public availability of relevant information, and meet other requirements of the minor NSR regulations at 40 CFR 51.160–164.

The submitted rules comply with the substantive and procedural requirements of CAA section 110(l). With respect to the procedural requirements, based on our review of the public process documentation included with the submitted rules, we find that the SBAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to submittal of this SIP revision and has satisfied these procedural requirements under CAA section 110(l). With respect to the substantive requirements of CAA section 110(l), we have determined that our approval of the submitted rules would either strengthen the applicable SIP, or at a minimum make it no less stringent. As a whole, we have determined that our approval of this SIP submittal would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act.

CAA section 193 includes a savings clause, pertaining to nonattainment areas, that precludes modifications to certain control requirements unless equivalent or greater emission reductions are achieved. The provisions of section 193 do not apply to this SIP revision because Santa Barbara County is currently classified attainment or unclassifiable for all NAAQS.

The submitted rules are otherwise consistent with criteria for the EPA's approval of regulations submitted for inclusion in the SIP, including the requirement at CAA section 110(a)(2)(A) that submitted regulations be clear and legally enforceable. For the reasons stated above and explained further in our TSD, we find that the submitted NSR rules satisfy the applicable CAA and regulatory requirements for minor NSR programs under CAA section 110(a)(2)(C).

C. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA may approve a plan revision in whole or in part if it meets all applicable requirements. Based on our evaluation of the submitted rules, the EPA is proposing to fully approve the SBAPCD's October 18, 2016 submittal (consisting of Rules 102, 105, 202, 204, and 809) and March 10, 1998 submittal (consisting of Rule 205).

The intended effect of our proposed approval action is to update the applicable SIP with the SBAPCD rules described above. If we finalize this action as proposed, our action would be codified through revisions to 40 CFR 52.220 (Identification of plan—in part).

We will accept comments from the public on this proposal until November 25, 2019.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SBAPCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 8, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–22910 Filed 10–23–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172 and 173

[Docket No. PHMSA–2018–0025 (HM–264)]

RIN 2137–AF40

Hazardous Materials: Liquefied Natural Gas by Rail

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA, in coordination with the Federal Railroad Administration (FRA), is proposing changes to the Hazardous Materials Regulations to allow for the bulk transport of Methane, refrigerated liquid, commonly known as liquefied natural gas (LNG), in rail tank cars. This rulemaking proposes to authorize the transportation of Methane, refrigerated liquid by rail in the DOT–113C120W specification rail tank car.

DATES: Comments must be received by December 23, 2019. To the extent possible, PHMSA will consider late-filed comments.

ADDRESSES: You may submit comments identified by the Docket Number PHMSA–2018–0025 (HM–264) via any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and Docket Number (PHMSA–2018–0025) or RIN (2137–AF40) for this rulemaking at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 105.30, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Michael Ciccarone, Office of Hazardous Materials Safety, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590–0001. Any commentary that PHMSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without change, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Michael Ciccarone, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, or Mark Maday, Federal Railroad Administration, (202) 366–2535, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

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I. Overview

PHMSA, in coordination with FRA, is issuing this NPRM to solicit public comment on potential changes to the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) that permit the bulk transport of Methane, refrigerated liquid, commonly known as liquefied natural gas (LNG), in rail tank cars. Specifically, this NPRM proposes to authorize the transportation of Methane, refrigerated liquid by rail in certain DOT specification 113 (DOT–113) rail tank cars.[1]

LNG has been transported safely by highway and vessel for over 50 years within the United States and is now a critical energy resource for the 21st century; however, the HMR do not authorize the bulk transport of LNG in rail tank cars. Historically, this limitation has not created a major impediment in the transportation of natural gas (either in gas or liquid form), but the expansion in United States energy production has led to significant challenges in the transportation system.

Between 2010 and 2018, the number of LNG facilities in the U.S. increased by 28.7 percent, and total storage and vaporization capacities increased by 21 and 23 percent, respectively.[2] Over the same period, total liquefaction capacity increased by 939 percent due to new LNG export terminals.[3] This data suggests that there may be a demand for greater flexibility in the modes of transportation available to transport LNG, which is supported by PHMSA's receipt of a petition for rulemaking (P–1697) from the Association of American Railroads (AAR) proposing amendments to the HMR to allow for the transportation of Methane, refrigerated liquid by rail in DOT–113 rail tank cars. As noted in the petition, some shippers have expressed that there is an interest in the transportation of LNG by rail (domestically and for international export), which would help address these challenges. Additionally, there is an existing request for a special permit that seeks to authorize shipments of LNG in DOT specification 113C120W tank cars subject to certain operational conditions that would be used to transport LNG to ports or the applicant's domestic customers.[4]

Federal hazardous materials law authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' 49 U.S.C. 5103(b)(1). The Secretary has delegated this authority to PHMSA in 49 CFR 1.97(b). The HMR are designed to achieve three primary goals: (1) Help ensure that hazardous materials are packaged and handled safely and securely during transportation; (2) provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and (3) minimize the consequences of an accident or incident should one occur. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying safety or security hazards and reducing the probability and consequences of a hazardous material release.

The Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.* requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule. 5 U.S.C. 553(e). In accordance with PHMSA's rulemaking procedure regulations in 49 CFR part 106, interested persons may ask PHMSA to add, amend, or repeal a regulation by filing a petition for rulemaking along with information and arguments supporting the requested action (49 CFR 106.95). PHMSA has assessed P–1697[5] in accordance with 49 CFR 106.105 and determined that the request merits consideration in a rulemaking. In addition, a comment received to a notification[6] of regulatory review issued by DOT's Office of the Secretary of Transportation (OST) in October 2017 further expressed industry support of deregulatory efforts to address the safe transportation of LNG by rail.

PHMSA and FRA share responsibility for regulating the transportation of hazardous materials by rail and take a system-wide, comprehensive approach that focuses on prevention, mitigation, and response to manage and reduce the risk posed to people and the environment. In this rulemaking, PHMSA is seeking public comment on proposed changes to address the safe transportation of LNG by rail.

II. Background

A. Properties and Use of LNG

The proper classification of any hazardous material is required prior to it being offered into transportation. In accordance with § 173.115(g), a ''cryogenic liquid'' means a refrigerated liquefied gas having a boiling point colder than −90 °C (−130 °F) at an absolute pressure of 101.3 kPa (14.7 psia). Natural gas (methane) has a boiling point of −162 °C (−260 °F), which means it must be refrigerated to be liquid—hence, liquefied natural gas. Therefore, LNG meets the definition of Division 2.1, cryogenic liquid and is described by the entry ''UN1972, Methane, refrigerated liquid (*cryogenic liquid*), 2.1'' in the Hazardous Materials Table (HMT; § 172.101).

LNG is natural gas that has been liquefied through condensation at ambient pressure—a process referred to as liquefaction. The resulting LNG takes up about 1/600th of the volume of natural gas in its vapor state. Thus, LNG can be readily and economically stored and transported in specially designed storage tanks, highway cargo tanks, or International Organization for Standardization (ISO) containers. LNG is odorless, colorless, non-corrosive, and non-toxic. It will float on water, causing the water to look like its boiling as the liquid transitions back to vapor. To be consumed, LNG must be vaporized by warming to return it to its gaseous form; this warming and vaporization process is called regasification. The vaporized natural gas is then injected back into a pipeline system, or used to fuel natural gas operated equipment.

There is an international market for LNG, whereas natural gas tends to be a

[1] This NPRM is consistent with Section 4(b) of the President's April 10, 2019, ''Executive Order on Promoting Energy Infrastructure and Economic Growth,'' which directs the Secretary of Transportation to publish an NPRM that would propose to treat LNG the same as other cryogenic liquids and permit LNG to be transported in approved rail tank cars. The Executive Order also directs that the NPRM be published within 100 days of date of the order, and that a final rule must be published within thirteen months of the date of the order. *See https://www.whitehouse.gov/presidential-actions/executive-order-promoting-energy-infrastructure-economic-growth/.*

[2] Based on PHMSA annual report data from 2010–2018.

[3] *Id.*

[4] Docket No. PHMSA 2019–0100 at *https://www.regulations.gov/docket?D=PHMSA-2019-0100.*

[5] Docket No. PHMSA–2017–0020.

[6] See Interested Parties for Hazardous Materials Transportation comment in response to DOT's Notification of Regulatory Review, 82 FR 45750 (Oct. 2, 2017), which can be found at Docket No. DOT–OST–2017–0069, *https://www.regulations.gov/docket?D=DOT-OST-2017-0069.*

domestic commodity. International trends in the LNG industry directly impact domestic LNG and natural gas trends. LNG supplies regions, both domestic and international, that lack a natural gas source or the infrastructure to receive natural gas via pipeline. LNG production and consumption trends are related to international fuel prices, mainly crude oil, diesel, and coal. The LNG market in the United States grew considerably between 2010 and 2018.[7] In that timeframe, the number of LNG facilities in the United States increased by 28.7 percent, and the total storage and vaporization capacities increased by 21 and 23 percent, respectively. Over the same period, total liquefaction capacity increased by 939 percent due to new LNG export terminals.

B. Current Requirements for LNG

The current HMR do not authorize the bulk transport of LNG in rail tank cars.[8] LNG may only be transported via rail in accordance with the conditions of a PHMSA special permit or in a portable tank pursuant to the conditions of an FRA approval.

The HMR include design, manufacturing, and maintenance standards for packaging (see parts 178–180). Additionally, the regulations specify which packaging types may be used for specific materials and provide requirements for filling and loading of packages (see part 173). Column (8C) of the HMT provides bulk packaging authorizations for LNG in accordance with § 173.318, Cryogenic liquids in cargo tanks, only, and does not include authorization of LNG for rail tank cars. Additionally, Column (7) contains portable tank instruction T75 (see § 172.102(c)(7)), which allows for the transportation of refrigerated liquefied gases in certain United Nations (UN) portable tanks, which can then be moved by rail in accordance with § 174.63. Currently, to transport LNG by rail in a method not authorized, a person must apply for a special permit from the Associate Administrator for Hazardous Materials Safety, PHMSA (see 49 CFR 107.105).

C. Petition for Rulemaking (P–1697)

The Association of American Railroads' Petition for Rulemaking

On January 17, 2017, AAR submitted a petition for rulemaking to PHMSA titled, ''Petition for Rulemaking to Allow Methane, Refrigerated Liquid to be Transported in Rail Tank Cars'' [PHMSA–2017–0020 (P–1697)] requesting revisions to § 173.319 of the HMR that would permit the transportation of LNG by rail in DOT–113 tank cars.

In its petition, AAR proposed that PHMSA amend the entry for ''UN1972, Methane, refrigerated liquid'' in the HMT (see § 172.101) to add a reference to § 173.319 in Column (8C), thereby authorizing transport of UN 1972 in rail tank cars. Additionally, AAR proposed that PHMSA amend § 173.319 to include specific requirements for DOT–113 cars used for the transportation of LNG. AAR suggested that the authorized tank car specifications be DOT–113C120W and DOT–113C140W,[9] noting that 120W cars should provide 40 days in transportation and 140W cars should provide 45 days before the tank car might begin to vent the commodity from the pressure relief device.[10] AAR further proposed amending § 173.319(d)(2) to include maximum filling densities comparable to those specified for cargo tanks containing LNG in § 173.318(f)(3).

AAR noted that the current HMR allow for transport of LNG by highway and expressed the opinion that rail transport of LNG is a safer mode of transportation by comparison. AAR stated that LNG is similar in all relevant properties to other flammable cryogenic liquids, such as ethylene, that are currently authorized for transportation by rail tank car. AAR further stated that they believe the DOT–113 tank car was not previously authorized because of a lack of demand in the market. However, AAR noted that there is commercial interest in transporting LNG by rail tank car domestically, and internationally from the United States to Mexico, and that some railroads are actively exploring LNG as a locomotive fuel, thereby requiring supply of LNG along their networks.

AAR's petition—P–1697—requests a regulatory change that has the potential to reduce regulatory burdens and enhance domestic energy production without having a negative impact on safety; therefore, PHMSA accepted it as having merit for consideration in a rulemaking. PHMSA requests public comment on all relevant aspects of this NPRM, including its potential to reduce regulatory burdens, enhance domestic energy production, and impact safety.

The Center for Biological Diversity's Response to P–1697

On May 15, 2017, the Center for Biological Diversity (the Center) submitted a response to P–1697, recommending that PHMSA deny AAR's petition for rulemaking because of potential environmental impacts of LNG. The Center commented that PHMSA should not proceed in evaluating the petition request until the Agency has conducted a National Environmental Policy Act (NEPA) evaluation, prepared an Environmental Impact Statement (EIS) or Environmental Assessment (EA), and provided opportunity for public review and comment in accordance with the Hazardous Materials Transportation Act (HMTA), as applicable.

PHMSA is issuing this NPRM in accordance with the APA and all related Executive Orders and laws, including NEPA. This NPRM provides opportunity for public notice and comment. See section ''V. J. Environmental Assessment'' of this rulemaking for further discussion of the EA.

D. Regulatory Review

On October 2, 2017, DOT published a notice [11] in the **Federal Register** expressing Department-wide plans to review existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current problems, and evaluate whether they potentially burden the development or use of domestically produced energy resources. As part of this review process, the Department invited the public to provide input on existing rules and other agency actions that have potential for repeal, replacement, suspension, or modification.

The Interested Parties for Hazardous Materials Transportation (Interested Parties) submitted a comment [12] requesting the authorization of LNG for rail tank car transport. Specifically, the Interested Parties noted in its comment that LNG shares similar properties to other flammable cryogenic materials currently authorized by rail tank car and has already been moved in the United

[7] U.S. DOE, EIA: *https://www.eia.gov/todayinenergy/detail.php?id=34032.*

[8] The HMR defines ''bulk packaging'' as having a capacity of greater than 119 gallons per 49 CFR 171.8. By way of comparison, a single DOT–113C120W tank car has a capacity of approximately 30,000 gallons.

[9] The HMR do not authorize the DOT–113C140W specification tank car for hazardous materials transportation. See section ''III. A. Tank Car Specification'' of this rulemaking for further discussion.

[10] PHMSA understands this to mean one-way transit time.

[11] *Notification of Regulatory Review,* Docket No. DOT–OST–2017–0069, 82 FR 45750 (October 2, 2017).

[12] Comment from Interested Parties for Hazardous Materials Transportation, Document No. DOT–OST–2017–00692591, *https://www.regulations.gov/searchResults?rpp=25&po=0&s=dot-ost-2017-0069-2591&fp=true&ns=true.*

States under a special permit. Additionally, they noted that Transport Canada (TC) authorizes LNG for transportation by rail in DOT–113 equivalent rail cars and that there is an increased commercial demand for rail transport within the United States and between the United States and Mexico.

PHMSA has reviewed the Interested Parties' comment and is proposing to authorize the transport of LNG by rail because it may support Department-wide safety investments and promote cost saving actions. The PHMSA proposal would amend the HMR to authorize transportation of LNG by rail in a DOT–113 specification tank car. PHMSA requests public comment on the potential regulatory impact of this proposal.

E. International Regulation

The Transport of Dangerous Goods Directorate within TC develops safety standards and regulations, provides oversight, and gives expert advice on dangerous goods incidents to promote public safety in the transportation of dangerous goods by all modes of transport in Canada. TC recently published a new standard on the bulk transport of LNG. TC authorizes LNG for transportation by rail in DOT–113 equivalent rail tank cars (TC–113C120W). PHMSA is not currently aware of LNG being transported via TC–113C120W; however, should that change, PHMSA expects incident and commodity flow data within Canada to be shared with PHMSA and FRA.

In Mexico, the Railway Transport Regulatory Agency's (Agencia Reguladora del Transporte Ferroviario), under the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes or SCT), mission is to promote, regulate, and monitor the railroad industry, and is responsible for regulating all types of cargo movement on trains. Currently, SCT does not provide explicit authorization for the bulk transportation of LNG in rail tank cars.

III. Proposed Changes

LNG's role as an energy resource continues to expand with ongoing innovation and economic development. Historically, the United States transported LNG by highway and exported LNG via ports only. As a result, there was no need for a regulation that authorized transportation via rail tank car. With a growing supply and demand,[13] rail transportation is being considered as a viable alternative to the transportation of LNG by highway. PHMSA has identified this as an area where there are opportunities to allow industry innovation and to support infrastructure development while maintaining a high level of safety. The hazards of transporting LNG are no different than that of flammable cryogenic liquids already authorized for bulk rail transport in accordance with the HMR.[14] The HMR provides the framework for the safe transportation of hazardous materials in commerce, and regardless of the future capacity for LNG rail transport, the material itself will be transported in the safe specification tank cars outlined below. Nonetheless, in this NPRM, PHMSA and FRA must consider requirements for both the packaging (*i.e.,* the rail tank car) and operational controls for a train consisting of tank cars loaded with LNG.

A. Tank Car Specification

The DOT–113 specification cryogenic liquid tank car is built to comply with specifications contained in 49 CFR part 179, subpart F and TC regulation TC14877E, Section 8.6, as well as certain requirements of the rail industry as identified in the AAR Manual of Standards and Recommended Practices, Specifications for Tank Cars (M–1002). These rail tank cars are vacuum-insulated and consist of an inner alloy (stainless) steel tank enclosed with an outer carbon steel jacket shell specifically designed for the transportation of refrigerated liquefied gases, such as liquid hydrogen, oxygen, ethylene, nitrogen, and argon. Additionally, the design and use of the DOT–113 specification tank car includes added safety features—such as protection systems for piping between the inner and outer tanks, multiple pressure relief devices (pressure relief valves and vents), thermal integrity tests, and in-transit reporting requirements—that contribute to an excellent safety record throughout its 50 years of service.

In this NPRM, PHMSA is proposing to authorize DOT–113C120W tank cars for use in the transportation of LNG by rail. The HMR currently authorize the DOT–113C120W specification tank car for another flammable cryogenic liquid which shares similar chemical and operating characteristics with LNG (*i.e.,* ethylene). The DOT–113C120W design specification is similarly suitable for the transport of Methane, refrigerated liquid (LNG). We anticipate that DOT–113 specification tank cars will need to be manufactured to satisfy the demand for transporting LNG as the current fleet of these tank cars is used for the transportation of ethylene and other cryogenic liquids.

DOT–113 specification rail tank cars are constructed in accordance with the requirements of 49 CFR, part 179, subpart F, ''Specification for Cryogenic Liquid Tank Car Tanks and Seamless Steel Tanks.'' These cars are built to a double pressure vessel design with the commodity tank (inner vessel) constructed of ASTM A 240/A 240M, Type 304 or 304L stainless steel, and the outer jacket shell (outer vessel) typically is constructed of carbon steel. This design provides an increased crashworthiness when compared to a single vessel design rail tank car. The rail tank car is manufactured with an insulated annular space holding a vacuum between the two pressure vessels. This vacuum area and the insulation significantly reduce the rate of heat leak from the atmosphere to the liquid inside the tank car thus minimizing the heating of the cryogenic (*i.e.,* refrigerated) material in the tank car while being transported. For these reasons, PHMSA has determined the DOT–113C120W specification tank car is an acceptable packaging to transport Methane, refrigerated liquid (LNG) by rail. This determination is based upon the design of the DOT cryogenic tank car specification, which includes added safety features designed to address the hazards presented by cryogenic liquids, and has a demonstrated safety record.

In addition to requesting a rule change to allow DOT–113C120W tank cars to transport LNG, AAR requested that PHMSA add a new tank car specification, the DOT–113C140W, for transportation of bulk quantities of LNG. AAR stated that the advantage to the DOT–113C140W tank car is that it is similar in design and construction to the DOT–113C120W specification, but would allow for an additional transportation timeframe of 5 days for cryogenic materials. This claim assumes that the new specification would use a thicker inner tank material that would allow for a higher inner tank test pressure (140 psig) and higher pressure relief device settings. These design changes could have the potential to increase the time in transportation by 5 days.

Currently, the HMR does not authorize the DOT–113C140W specification for cryogenic hazardous materials transportation and thus, this

[13] U.S. Energy Information Administration, ''Growth in domestic natural gas production leads to development of LNG export terminals,'' March 4, 2016, accessed at *https://www.eia.gov/todayinenergy/detail.php?id=25232.*

[14] For description of potential safety hazards of LNG, see LNG Safety Assessment Evaluation Methods, *https://prod.sandia.gov/techlib-noauth/access-control.cgi/2015/153859r.pdf.*

type of regulatory change would require considerably more time and resources to incorporate a new specification proposal into this rulemaking. PHMSA believes the addition of this tank car specification warrants an extensive engineering review and evaluation, including consideration of the risk of release in a derailment and ignition when transported at these higher pressures. PHMSA does not want to delay deregulatory action authorizing the DOT–113C120W tank car for the transport of LNG pending evaluation of the DOT–113C140W tank car. Accordingly, PHMSA is not proposing to authorize the DOT–113C140W specification at this time.

Moreover, the petitioner did not include design specifications for the DOT–113C140W tank car. PHMSA may consider it for future rulemaking after design specifications, engineering details, and data demonstrating an equivalent level of safety are submitted to PHMSA in support of this regulatory change.

PHMSA is proposing to amend the Pressure Control Valve Setting or Relief Valve Setting Table in § 173.319(d)(2) by adding a column for methane as follows:

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum start-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight)				
	Ethylene	Ethylene	Ethylene	Hydrogen	Methane
17				6.60.	
45	52.8.				
75		51.1	51.1		32.5.
Maximum pressure when offered for transportation.	10 psig	20 psig	20 psig		15 psig.
Design service temperature	Minus 260 °F	Minus 260 °F	Minus 155 °F	Minus 423 °F	Minus 260 °F.
Specification (see § 180.507(b)(3) of this subchapter).	113D60W, 113C60W.	113C120W	113D120W	113A175W, 113A60W.	113C120W.

The proposed changes to the table would authorize methane in DOT–113C120W specification tank cars with a start-to-discharge pressure valve setting of 75 psig; a design service temperature of − 260 °F; a maximum pressure when offered for transportation of 15 psig; and a filling density of 32.5 percent by weight. The maximum offering pressure of 15 psig is consistent with the 20-day transportation requirement for cryogenic materials and the estimated 3 psig per day pressure increase during transportation. The filling density is similar to the filling density requirements for cryogenic materials transported in a cargo tank motor vehicle. These requirements will provide a 15 percent vapor volume outage (at the start-to-discharge-pressure of the pressure relief valve) for the rail tank car during transportation.

B. Operational Controls

AAR's Circular OT–55 is a detailed protocol establishing recommended railroad operating practices for the transportation of hazardous materials that was developed by the rail industry through the AAR.[15] The recommended practices were originally implemented by all Class I rail carriers operating in the United States, with short-line railroads following on as signatories. As a result, Circular OT–55 is comprehensive in its reach, applying to all train movements that fit within the terms of the circular. The circular outlines operational controls for trains meeting the industry definition of a ''Key Train,'' including speed restrictions, track requirements, storage requirements, and the designation of ''Key Routes.'' [16] Circular OT–55 defines a ''Key Train'' as any train with:

- One tank car load of Poison or Toxic Inhalation Hazard (PIH or TIH) (Hazard Zone A, B, C, or D), anhydrous ammonia (UN1005), or ammonia solutions (UN3318), or;
- 20 car loads or intermodal portable tank loads of any combination of hazardous material, or;
- One or more car loads of Spent Nuclear Fuel (SNF), High Level Radioactive Waste (HLRW).

While PHMSA is not proposing to incorporate by reference Circular OT–55 or to adopt the requirements for ''Key Trains'' in the HMR in this rulemaking, the railroad industry's voluntary adoption of the circular is an important consideration for PHMSA in assessing what operational controls are necessary. In accordance with the ''Key Train'' definition and the changes being considered in this NPRM, Circular OT–55's operational controls would apply to the bulk transport of LNG by rail in a train consist that is composed of 20 car loads or intermodal portable tank loads in which LNG is present along with any combination of other hazardous materials. Therefore, bulk transport of LNG would be subject to the industry standard even if only one rail tank car of the 20-car consist contained LNG, regardless of the classes of hazardous materials contained in the remaining 19 rail cars. Due to the operational controls introduced for ''Key Trains,'' Circular OT–55 provides an additional level of safety regardless of what combination of hazardous materials the train consist is transporting. As such, PHMSA and FRA believe this industry standard helps ensure the safe transportation of all hazardous materials, including LNG.

PHMSA and FRA considered other options for operational controls such as mirroring the operational controls adopted for high-hazard flammable trains (HHFT) [17] or adopting the ''Key Train'' requirements into the HMR. Additional operational controls, while not limited to the following, might include limitations on train length, controls for train composition, speed restrictions, braking requirements, and routing requirements.

Train Length and Train Composition. PHMSA and FRA have not restricted train length in the past; however, PHMSA solicits comment on whether

[15] Circular OT–55, ''Recommended Railroad Operating Practices for Transportation of Hazardous Materials,'' *https://www.railinc.com/rportal/documents/18/260773/OT-55.pdf.*

[16] Circular OT–55 defines a ''Key Route'' as ''any track with a combination of 10,000 car loads or intermodal portable tank loads of hazardous materials, or a combination of 4,000 car loadings of PIH or TIH (Hazard zone A, B, C, or D), anhydrous ammonia, flammable gas, Class 1.1 or 1.2 explosives, environmentally sensitive chemicals, Spent Nuclear Fuel (SNF), and High Level Radioactive Waste (HLRW) over a period of one year.''

[17] As defined in § 171.8, a high-hazard flammable train means a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist.

there is a reasoned basis for limiting the length of a train transporting LNG tank cars, and what that limitation would look like. Moreover, PHMSA solicits comment on whether there is a reasoned basis for limiting the amount of LNG tank cars that can be in one consist, or where the LNG tank cars may be placed within the train. For example, the National Transportation Safety Board issued a Safety Recommendation (R–17–001) [18] to PHMSA to: (1) Evaluate the risks posed to train crews by hazardous materials transported by rail; (2) determine the adequate separation distance between hazardous materials cars and locomotives and occupied equipment that ensures the protection of train crews during normal operations and accident conditions; (3) and collaborate with FRA to revise 49 CFR 174.85 to reflect those findings. To date, PHMSA has initiated a literature review to help identify gaps and changes in factors from previous and current studies and ultimately determine the adequate separation distance of train crews from hazardous materials in a train.

Speed Restrictions and Braking Requirements. The HHFT regulations include a speed restriction of 50 miles per hour (mph) for all HHFTs with an additional speed restriction of 40 mph for those HHFTs traveling within a high-threat urban area (§ 174.310(a)(2)). The HHFT regulations also include advanced braking requirements for HHFTs, requiring all HHFTs operating in excess of 30 mph to be equipped and operated with distributed power system or a two-way end-of-train device (§ 174.310(a)(3)), which helps to propagate a quicker application of the air brake system throughout the entire train, particularly in emergency braking situations.

Routing Requirements. Section 172.820 prescribes additional planning requirements for transportation by rail, including route analysis, requiring railroads to address safety and security risks for the transportation along routes where commodity data is collected. This requirement applies to a rail carrier transporting one or more of: (1) More than 2,268 kg (5,000 lbs.) in a single carload of a Division 1.1, 1.2 or 1.3 explosive; (2) A quantity of a material poisonous by inhalation in a single bulk packaging; (3) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403; or (4) A high-hazard flammable train (HHFT) as defined in § 171.8.

PHMSA recognizes that there may be other operational controls or combinations of controls to consider and encourages comments on such controls. However, for this rulemaking, PHMSA and FRA decided not to propose additional operational controls because there is not sufficient data about the potential movements of LNG by tank car. While PHMSA expects LNG will initially move in smaller quantities (*i.e.,* a few tank cars) as part of manifest trains, it is uncertain whether LNG will continue to be transported in those quantities or if LNG by rail will shift to be transported using a unit train model of service, and if so, how quickly that shift will occur.

Finally, PHMSA notes that there is an existing special permit application to transport LNG by tank car. PHMSA is seeking comment on the draft special permit and environmental assessment, *see* 84 FR 26507 and Docket No. PHMSA–2019–0100, and will consider information provided to the special permit docket that is pertinent to the issue of operational controls in this rulemaking or potential future rulemakings. In conclusion, we invite comment on PHMSA's and FRA's reliance on existing regulations and the operational controls in Circular OT–55 (not incorporated into the HMR) and whether additional operational controls may be warranted based on an assessment of risk. We also encourage commenters to provide data on the safety or economic impacts associated with any proposed operational controls, including analysis of the safety justification or cost impact of implementing operational controls.

IV. Section-by-Section Review

The following is a section-by-section review of the amendments considered in this NPRM.

Section 172.101

Section 172.101 provides the HMT and instructions for its use. PHMSA proposes amending the entry for ''UN1972, Methane, refrigerated liquid'' in the HMT to add reference to the cryogenic liquids in (rail) tank cars packaging section—§ 173.319 in Column (8C).

Section 173.319

Section 173.319 prescribes requirements for cryogenic liquids transported in rail tank cars. Paragraph (d) provides which cryogenic liquids may be transported in a DOT–113 tank car when directed to this section by Column (8C) of the § 172.101 HMT. PHMSA proposes to amend paragraph (d)(2) to authorize the transport of Methane, refrigerated liquid (LNG). Additionally, PHMSA is proposing to amend the Pressure Control Valve Setting or Relief Valve Setting Table in § 173.319(d)(2) to specify settings for methane in DOT–113C120W tank cars, specifically, a start-to-discharge pressure valve setting of 75 psig; a design service temperature of −260 °F; a maximum pressure when offered for transportation of 15 psig; and a filling density of 32.5 percent by weight.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is published under the authority of Federal Hazardous Materials Transportation Law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*), and the Federal Railroad Safety Laws (49 U.S.C. ch. 201–213). Section 5103(b) of the Federal Hazmat Law authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' Section 20103 of the Federal Railroad Safety Laws, authorizes the Secretary to prescribe regulations and issue orders for every area of railroad safety. The Secretary's authority is delegated to PHMSA at 49 CFR 1.97. This rulemaking proposes to authorize the transportation of LNG by rail in DOT–113C120W tank cars.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is considered a significant regulatory action under section 3(f) of Executive Order 12866 (''Regulatory Planning and Review'') and was reviewed by the Office of Management and Budget (OMB). This rulemaking is also considered a significant rulemaking under the DOT Regulatory Policies and Procedures of February 26, 1979 [44 FR 11034].

Executive Order 12866 (''Regulatory Planning and Review'') [19] requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

Additionally, Executive Order 12866 requires agencies to provide a meaningful opportunity for public participation, which also reinforces requirements for notice and comment

[18] *https://ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-17-001.*

[19] See 58 FR 51735, October 4, 1993 for Executive Order 12866.

under the APA.[20] Therefore, in this NPRM, PHMSA seeks public comment on revisions to the HMR authorizing the transportation of LNG by rail tank car. PHMSA also seeks comment on the preliminary cost and cost savings analyses, as well as any information that could assist in quantifying the benefits of this rule. Overall, this rulemaking maintains the continued safe transportation of hazardous materials while producing a net cost savings. For additional discussion about the economic impacts, see the preliminary Regulatory Impact Analysis posted in the docket.[21]

C. Executive Order 13771

This proposed rule is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.[22]

D. Executive Order 13132

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This rulemaking may preempt State, local, and Tribal requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazmat law, 49 U.S.C. 5101–5128, contains an express preemption provision [49 U.S.C. 5125(b)] that preempts State, local, and Indian tribal requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject item (2) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard.

Federal preemption also may exist pursuant to section 20106 of the former Federal Railroad Safety Act of 1970 (FRSA), repealed, revised, reenacted, and recodified at 49 U.S.C. 20106. Section 20106 of the former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the section's ''essentially local safety or security hazard.''

PHMSA invites State and local governments with an interest in this rulemaking to comment on any effect that revisions to the HMR relative to LNG transportation may cause.

E. Executive Order 13175

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). PHMSA does not anticipate that this rulemaking will have substantial direct tribal implications. Therefore, the funding and consultation requirements of Executive Order 13175 are not expected to apply. However, PHMSA invites Indian tribal governments to comment on any effect that revisions to the HMR relative to LNG transportation may cause.

F. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to consider whether a rulemaking would have a ''significant economic impact on a substantial number of small entities'' to include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. This proposed rulemaking has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. The proposed changes are generally intended to provide relief by easing requirements with no anticipated reduction in safety.

Consideration of alternative proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes.

The impact of this proposed rulemaking on small businesses is not expected to be significant. The proposed changes are generally intended to provide regulatory flexibility and cost savings to industry members. However, PHMSA seeks comment on the potential impacts on small entities.

G. Paperwork Reduction Act

Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This NPRM does not impose new information collection and recordkeeping burdens.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

I. Unfunded Mandates Reform Act

This rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, adjusted for inflation, to either State, local, or Tribal governments, in the aggregate, or to the private sector and is the least burdensome alternative that achieves the objective of the rulemaking. PHMSA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal governments and the private sector.

J. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a

[20] See 5 U.S.C. 553.

[21] See Docket No. PHMSA–2018–0025 at *www.regulations.gov.*

[22] Ibid.

detailed statement on actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) implementing regulations (40 CFR part 1500) require Federal agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) probable environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process (*see* 40 CFR 1508.9(b)).

1. Need for the Action

The purpose of this NPRM is to propose amendments that authorize the transportation of Methane, refrigerated liquid, commonly known as liquefied natural gas (LNG), by rail in a DOT–113C120W tank car. This proposed rulemaking would facilitate the transportation of LNG by rail in a packaging other than a portable tank. This action would facilitate the transportation of natural gas to markets where pipeline transportation is limited or unavailable.

2. Alternatives Considered

Transportation of hazardous materials in commerce is subject to requirements in the HMR, issued under authority of Federal hazmat law, codified at 49 U.S.C. 5101 *et seq.* To facilitate the safe and efficient transportation of hazardous materials in international commerce, the HMR provide that both domestic and international shipment of hazardous materials may be offered for transportation and transported under provisions of the international regulations.

In proposing this rulemaking, PHMSA is considering the following alternatives:

Alternative 1: No Action Alternative

The No Action Alternative would not adopt the regulatory changes proposed in this NPRM. If PHMSA were to select this alternative, it would not proceed with any rulemaking on this subject and the current regulatory standards would remain in effect. If the current regulatory standards remain in effect, LNG would not be authorized for transportation by tank car. The No Action Alternative would not address AAR's petition for rulemaking or stakeholder comments to the October 2, 2017, notification of regulatory review. LNG transportation by highway and by rail—via a PHMSA special permit [23] or an FRA approval [24]—would continue and perhaps increase over time. However, these alternatives typically have limited applicability because they only apply to the parties to the PHMSA special permit or FRA approval. The No Action Alternative would also fail to comply with the April 10, 2019 Executive Order, ''Executive Order on Promoting Energy Infrastructure and Economic Growth.'' That E.O. orders the Secretary of Transportation to propose regulatory changes ''no later than 100 days after the date of this order, that would treat LNG the same as other cryogenic liquids and permit LNG to be transported in approved rail tank cars. The Secretary shall finalize such rulemaking no later than 13 months after the date of this order.''

Alternative 2: Authorize LNG in DOT–113C120W and DOT–113C140W Tank Cars

This alternative would adopt the AAR petition in its entirety, including the authorization of the DOT–113C140W specification tank car into the HMR for the transportation of LNG. As discussed earlier, in the section ''III. A. *Tank Car Specification*'' section, the intended advantage to the DOT–113C140W tank car is that it would have a similar design and construction to the DOT–113C120W specification, but would potentially allow for five days of additional transportation time because the tank car would use a thicker inner tank material that would allow for a higher inner tank test pressure (140 psig) and higher pressure relief device settings. PHMSA and FRA believe that a complete engineering review of this specification is warranted, and that more research and supporting data are needed to demonstrate that this additional transportation timeframe benefits safety or justifies the addition of a new tank car specification to the HMR. While PHMSA is not opposed to considering this request for future action, it does not want to delay action on the DOT–113C120W tank car. Accordingly, this alternative was eliminated from full consideration in this rulemaking and draft EA.

Alternative 3: Proposed Alternative

The Proposed Alternative is the current proposal as it appears in this NPRM, applying to transportation of hazardous materials by rail. The Proposed Alternative would authorize the transportation of LNG by rail in a DOT–113C120W specification tank car. See sections ''III. Changes Being Considered'' and ''IV. Section-by-Section Review'' of this rulemaking for further discussion on the proposed amendments encompassed in this alternative.

3. Environmental Impacts

Alternative 1: No Action Alternative

If PHMSA were to select the No Action Alternative, current regulations would remain in place and no new enabling provisions would be added. This alternative would not amend the HMR to allow shippers to transport bulk quantities of LNG by rail tank car. As such, the current regulatory requirements would require that LNG continue to be transported by highway, or for rail transportation, be limited to certain PHMSA special permit holders or LNG in portable tanks pursuant to the conditions of an FRA approval. This alternative would prevent the use of a tank car that was designed to address the hazards presented by cryogenic liquids, and has a demonstrated safety record. Authorizing the transport of LNG by tank car via rulemaking has the potential to allow shippers to move a greater quantity of LNG more efficiently, as highway transportation requires the use of more vehicles to move the same amount of material as rail transportation, thereby increasing air pollutants, including greenhouse gases. In 2017, U.S. railroads moved a ton of freight an average of 479 miles per gallon of fuel. On average, railroads are four times more fuel efficient than trucks. Because greenhouse gas emissions are directly related to fuel consumption, moving freight by rail instead of truck reduces greenhouse gas emissions by an average of 75 percent. In addition, emissions of particulate matter and nitrogen oxides are significantly lower for railroads than for trucks.[25]

Furthermore, highway transportation may present a greater risk of accident and release of LNG for each movement, which creates a danger for both humans and the environment. From 2005 to 2017, there were eight incidents involving Methane, refrigerated liquid

[23] On September 14, 2017, PHMSA announced it had received an application for a special permit to transport LNG by rail in DOT–113 tank cars from Energy Transport Solutions, LLC. The PHMSA-assigned application number is 20534–N. *See* 82 FR 43285. PHMSA is currently reviewing the application. Additionally, PHMSA issued a notice announcing the availability for public review and comment of the draft environmental assessment for this special permit request to transport LNG by rail tank car. *See* 84 FR 26507 and Docket No. PHMSA–2019–0100.

[24] FRA has granted approvals to Alaska Railroad and Florida East Coast Railroad allowing for the transportation of LNG by rail in ISO containers provided that the operators comply with certain operational controls.

[25] AAR ''Overview of America's Freight Railroads'' (October, 2018) *https://www.aar.org/wp-content/uploads/2018/05/AAR-Overview-Americas-Freight-Railroads.pdf.*

transported by cargo tank motor vehicle (CTMV).[26] No injuries or fatalities were reported to PHMSA. Two of the crashes were single vehicle rollovers. Furthermore, the total quantity spilled in these eight incidents was 11,296 gallons. For three of the eight incidents reported, a total of 165 people were evacuated. One of the three incidents (not a crash) involved 102 evacuations and 1,000 gallons spilled. One other incident of the three, a rollover incident, involved 50 evacuations and zero gallons spilled. The last of the three incidents involved 13 evacuations and 4,625 gallons spilled. In any of these incidents injuries or fatalities could have occurred, especially if an ignition source had been present; the gallons spilled and the number of evacuations demonstrate that the incidents presented significant risk to human life and environmental resources in the vicinity of each incident. While PHMSA understands there are limited rail shipments of Methane, refrigerated liquid, compared to highway transportation, PHMSA and FRA have no record of any reported incidents involving Methane, refrigerated liquid in portable tanks transported by rail since 2005.

Alternative 3: Proposed Alternative

PHMSA proposes to amend the HMR to allow the transportation of LNG in DOT–113C120W rail cars. PHMSA understands that authorizing the rail transportation of LNG would reduce greenhouse gas emissions by requiring fewer trips to transport the same amount of material currently being transported by highway. Furthermore, fewer trips are anticipated to result in fewer accidents and spills of LNG during transportation.

PHMSA has collected data on the safety history of the DOT–113 tank car from its own incident database and from AAR, which compiles data provided by FRA. PHMSA has analyzed data regarding DOT–113 damage history. From 1980 to 2017 (a 37-year period), there were 14 instances of damage to DOT–113 tank cars during transportation. Of the 14 instances, there were three instances where a DOT–113 tank car lost lading from breach of both the outer and inner tanks. This is the most serious type of damage. Additionally, there were three instances in which a DOT–113 tank car lost lading from damage or other failure to the valves/fittings. The vast majority of incidents causing damage to the DOT–113 tank cars did not result in a loss of hazardous materials.

The first derailment that resulted in breach of an inner tank of a DOT–113 tank car took place in May 2011 in Moran, Kansas. Three DOT–113C120 specification tank cars containing refrigerated liquid ethylene sustained damage. Two of the cars were breached in the derailment and initially caught fire. One of the fires consumed the entire contents of the DOT–113 tank car. The two remaining cars, that is, the one that had been breached in the derailment and the other that had been damaged but not breached, were mechanically breached to expedite the burning and consumption of the contents to expedite removal from the site of the derailment. The total quantity of refrigerated ethylene lost was approximately 45,000 gallons and the total damage estimate was calculated at approximately $231,000 in 2017. The other derailment that caused tank failure of a DOT–113 tank car occurred in October 2014 in Mer Rouge, Louisiana. The rail tank cars were filled with refrigerated liquid argon. One car was a DOT–113A90W specification tank car authorized by Special Permit and the other was an AAR204W tank car. The total quantity of refrigerated liquid argon spilled was 47,233 gallons and the total damage estimate is calculated at approximately $228,000 (in 2017 dollars). No injuries or fatalities were reported as a result of the release of hazardous materials from either incident. Depending on demand, the numbers of DOT–113 tank cars in operation under the proposed regulatory change could increase well beyond the numbers of DOT–113 tank cars currently in operation.

Though rare, derailments involving DOT–113 tank cars can result in large quantities of hazardous materials released, which can result from venting or breach of the inner tank shell. These releases can be considerably larger than releases from a CTMV that travels by highway. Nonetheless, considering that the DOT–113 tank car has a 50-year service history and with the understanding it is possible there are unreported incidents from years past, the safety history is noteworthy. It is difficult to estimate the failure rate of the DOT–113 tank car in derailments because railroads are not required to report incidents to PHMSA or FRA unless they meet a baseline threshold. 49 CFR 171.16 and 225.19. Incident data suggests that incidents involving rail tank cars can lead to higher consequence incidents; however, PHMSA believes that rail transportation is advantageous considering the quantity transported compared to miles traveled.

LNG Characteristics and Hazards

With regard to how LNG could respond under accident conditions, when a large amount of LNG is spilled and its vapors come into contact with an ignition source, the vapors will ignite if the vapor concentration in a vapor-air mixture is between 5 and 15 percent and cause the spill to develop into a pool fire (if ignited immediately) or flash vapor fire if the vapor cloud is ignited at some distance from the spill location. Both types of fires present a radiant heat hazard. If there is no ignition source in the immediate vicinity of the release, the spilled LNG will vaporize rapidly forming a cold gas cloud that is heavier than air, which then mixes with ambient air, spreads and is carried downwind. The dispersion of the cloud due to the wind results in its temperature increase of the vapor due to mixing with air that gets entrained into the cloud; but the cloud temperature always remains lower than that of ambient air, because of exchange of heat between the air that is mixing and the virgin cold vapor. Also, the density of the cloud decreases due to continuous mixing with air; however, the cloud density is never lower than that of the ambient air. The result is that the cloud is always heavier than air and disperses hugging the ground (with highest vapor concentrations at ground level). The only way the vapor cloud can become either neutrally buoyant or buoyant is if external heat (such as from solar heating or heating from the ground) is added to the cloud. These heat transfer mechanisms provide insufficient heat to the cloud in normal dispersion before the vapor cloud dilutes to concentration below lower flammability limit, LFL, of 5 percent by volume.

The dispersing cloud is visible as a white cloud due to the condensation of water vapor from the atmosphere and because in the initial stages the dispersing cloud is cold (starting from −260 degrees Fahrenheit). However, as the overall cloud temperature increases due to mixing with ambient air, and as the cloud temperature increases to above the ''wet bulb'' temperature corresponding to the relative humidity of the atmospheric air, the condensed water re-evaporates and the cloud becomes non-visible. The flammable region of the vapor cloud is enclosed within the visible vapor cloud if the ambient relative humidity is greater than or equal to 55 percent. For regions with relative humidity less than this value, the flammable cloud is outside

[26] See pages 11 and 12 of the Preliminary Regulatory Impact Analysis for further discussion of incidents involving cryogenic liquids.

the visible cloud. An ignition source can only ignite the vapor cloud when it is available and the vapor concentration is in the 5 to 15 percent average vapor concentration in air. Once ignited, the vapors will burn back, generally upwind, to the LNG source. The distance over which an LNG vapor cloud remains flammable is difficult to predict; local weather conditions (wind speed, atmospheric stability or turbulence), terrain, surface cover (*i.e.,* vegetation, trees, and buildings) will influence how a vapor cloud disperses, and how rapidly it dilutes.

If an LNG vapor cloud is ignited before the cloud has been dispersed or diluted to below its lower flammability limit, a flash fire will occur. Unlike other flammable liquids and gases, a LNG vapor cloud will not ignite entirely at once. If ignited, the flash fire that forms has a temperature of about 1,330 °C (2,426 °F). The resulting ignition leads to a relatively slow (subsonic) burning vapor fire which travels back to the release point producing either a pool fire or a jet fire. The radiant heat effects from such a flash fire does not extend to distances significantly larger than the width of the flammable cloud. The slow burning vapor fire will not generate damaging overpressures (*i.e.,* explosions), if unconfined. To produce an overpressure event, the LNG vapors need to be within the flammability range and ignited, and either be confined within a structure or the travelling flame in the open encounters structural obstructions (*e.g.,* houses, trees, bushes, pipe racks, etc.) that can increase the flame turbulence significantly when the flash fire reaches the source of vapor (boiling LNG), if there is still a liquid pool of LNG evaporating at that time, a pool fire will result.

Methane in vapor state can be an asphyxiant when it displaces oxygen in a confined space. When LNG is spilled on the ground, into a confined area, such as bound by a dike, the LNG will initially boil-off rapidly forming a vapor cloud, but the boil-off will slow down as the ground cools due to heat being extracted from it to provide for the evaporation of LNG. If LNG is spilled on water, LNG will float on top of the water, spread in an unconfined manner, and vaporize very rapidly. This rapid vaporization will occur even at water temperatures near freezing since freezing water is significantly warmer than the spilled LNG.

LNG is stored and transported at −260 °F (−160 °C). Due to this extremely low temperature, contact with a cryogenic liquid can cause severe injury to human skin and eyes. It will also make ordinary metals, including carbon steel, subject to embrittlement and fracture when exposed to these temperatures. Transportation of cryogenic materials require specialized double walled (tank within a tank) containers for transportation.

DOT–113 Tank Car Characteristics

The DOT–113 specification tank car is a specially designed rail tank car for the transport of cryogenic liquids. This tank car design has been in use for over 50 years. As noted above, there are only six documented derailments involving the transportation of the DOT–113 specification tank car that resulted in loss of tank contents.

DOT–113 specification rail tank cars are built to a double pressure-vessel design with the commodity tank (inner vessel) constructed to withstand a burst pressure of 300 psig and fabricated of ASTM A 240/A 240M, Type 304 or 304L stainless steel; the outer jacket shell (outer vessel) is typically constructed of carbon steel and is designed to withstand an external pressure (critical collapsing pressure) of 37.5 psig. See §§ 179.400–8(d) and 179.401–1, respectively. The inner vessel is designed with a minimum thickness of 3/16 inch and the outer shell thickness is greater than 7/16 inch. The rail tank car is manufactured with an insulated annular space holding a vacuum between the two pressure vessels. This vacuum area and the insulation on the outer wall of the inner tank significantly reduce the rate of heat transfer from the atmosphere to the liquid inside the tank car, thus minimizing the heating of the cryogenic (*i.e.,* refrigerated) liquid in the tank car while being transported. Other key safety features of the DOT–113 specification tank car include, but are not limited to, the following:

- Several inches of aluminized Mylar super-insulation surrounding the inner tank.
- A vacuum environment/annular space between the inner and outer tanks for enhanced product pressure and temperature control.
- Specifically, designed loading and unloading equipment (piping, valves, gages, etc.) for use in cryogenic service.
- Safety equipment (pressure relief valves, safety vents, safety shut off valves, and remote monitoring systems) to prevent or limit overpressure issues or non-accident releases.
- Mandated in-transit tracking (time sensitive shipment) and car handling instructions.

Regulations controlling the movement of LNG in the DOT–113C120W packaging would be the same as those that apply to the transportation of other cryogenic liquids, including ethylene. Regulatory requirements governing these operational practices appear in 49 CFR part 174 and 49 CFR 173.319, which is administered by the FRA. In addition, the AAR has issued Circular OT–55, which sets forth Recommended Railroad Operating Practices for Transportation of Hazardous Materials for key trains. Rail carriers require compliance with the standard through AAR Interchange Rules. AAR Circular OT–55 (currently designated as version Q) calls for operational controls for trains carrying certain quantities of hazardous materials, such as LNG unit trains, which are sufficient to address the risks associated with moving LNG in DOT–113 tank cars. The operational controls recommended in OT–55 for the transport of hazardous materials regulate, among other things:

- ''Key Trains'' are 20 carloads or intermodal portable tank loads of any combination of hazardous materials.
- ''Key Trains,'' including LNG-carrying unit trains, are subject to a maximum speed restriction of 50 mph;
- ''Key Routes,'' which are lengths of track on which either (i) 10,000 car loads or more of hazardous materials or (ii) 4,000 car loadings of flammable gas (such as LNG, which is refrigerated (cryogenic) liquid methane, a Division 2.1 flammable gas) will travel over a one-year period and are subject to additional inspection and equipment requirements;
- Separation distance requirements relating to the spacing of loading and operations, loaded tank cars, and other storage tanks at rail facilities; and
- Community awareness and preparations for emergency planning/incident response actions.

DOT–113 Specification Tank Car Survivability

Due to its unique design requirements, the DOT–113 specification tank car is inherently more robust than other tank cars transporting other flammable liquids or liquefied gases. In the event of a DOT–113 specification tank car derailment causing only breach of the outer shell, the breach would cause the loss of the insulating vacuum between the inner and outer tank, allowing the inner tank and material to warm and build pressure. The resulting pressure build would lead to the activation of the pressure relief systems on the car and the controlled venting of LNG vapor. While this scenario is concerning, the controlled venting of LNG vapor involves less risk than the uncontrolled release of an entire LNG lading. Additionally, it is highly unlikely that

damage to the tank car involved in a derailment would result in explosion due to a boiling liquid expanding vapor explosion (BLEVE). This event is highly unlikely due to the loading pressure requirements [27] for cryogenic materials, and due to the mandated requirements for redundant pressure relief systems (valves and safety vents) that are built into each car. This rulemaking proposes a 15 psig maximum loading pressure when LNG is offered for transportation in the DOT–113C120W tank car. This loading pressure, along with other safety requirements and operational controls reduce the potential of a BLEVE.

LNG Release Scenarios

Based on the review incident reporting and the 50 year history of transporting cryogenic liquids in DOT–113 specification tank cars, there are three (3) possible release scenarios that could occur during the transport of LNG by rail tank car. Ranked in order of probability, they are:

1. Non-accident release (NAR) from service equipment. Probability—Low; Consequence—Low
2. Outer tank damage resulting vapor release from Pressure Relief Device (PRD). Probability—Low; Consequence—Low to High (in the event that ignition of vented vapors led to failure/explosion of the tank car)
3. Inner tank damage resulting in large release. Probability—Low; Consequence—High

Although Scenario 3 has a low probability, a breached inner tank during a transportation accident could have a high consequence because of the higher probability of a fire due to the formation of a flammable gas vapor/air mixture in the immediate vicinity of the spilled LNG. This probability is based on the likelihood of ignition sources (sparks, hot surfaces, etc.) being generated by other equipment, rail cars, or vehicles involved in a transportation accident that could ignite a flammable vapor cloud.

Hazard Distances

As with any incident involving a hazardous material in transportation, the actual hazard distance created by a material that is spilled or burning will be influenced by many factors. These factors include, but are not limited to the following:

- Spill Size
- Weather (Wind, Temperature, Humidity, Precipitation)
- Terrain Contours (Hills, Valleys)
- Surface Cover (Vegetation, Structures)
- Soil (Dirt, Clay, Sand)

As stated previously, hazard distance of a vapor cloud dispersion of LNG is difficult to predict. Local weather conditions, terrain, surface cover (*i.e.,* vegetation, trees, and buildings) will influence how a vapor cloud disperses, and how rapidly it diffuses.

Similarly, the actual hazard distance that radiant heat from a pool fire of LNG would impact is dependent on the same factors that influence a vapor cloud. Additionally, the impact of radiant heat from a fire on occupied structures will be influenced by local building codes that govern building setback requirements from railroad right-of-way. Depending on the jurisdiction, setbacks for occupied structures could be within fifty (50) feet of either side of a railroad track.

Regardless of the scenario, the recommended protective action distances [28] identified in the PHMSA Emergency Response Guidebook (ERG) for LNG would be appropriate for the initial protection of the public during an incident involving LNG. However, these protective distances may encompass occupied structures along rail tracks, depending on the location of a failure and the proximity of occupied structures to a breached tank car.

Cascading Failure of Multiple DOT–113 Tank Cars

As stated previously, DOT–113 specification tank cars are inherently more robust when compared to other specification tank cars, due to their unique design, materials of construction, and their specific purpose to transport cryogenic liquids. The special design of the DOT–113 tank car reduces the probability of cascading failures of other undamaged DOT–113 specification tank cars being transported in a block or unit train configuration.

In the scenario where multiple DOT–113 specification tank cars are transported in a block or unit train configuration, fire/radiant heat exposure or cryogenic temperature exposure could potentially lead to the release of material or failure of otherwise undamaged tank cars.

Fire/Radiant Heat Exposure

In a scenario involving fire/radiant heat exposure, an undamaged DOT–113 specification tank car exposed to a radiant heat source could eventually build pressure that would trigger the activation of the tank car's PRD.

As stated previously, this scenario would result in the controlled venting of LNG vapor to the environment. Ignition of these vapors could occur if an ignition source is present, but would be contained to the proximity of the release point of the vapors from the tank car. Additionally, as stated previously, it is highly unlikely that an undamaged DOT–113 tank car involved in a derailment would result in explosion due to a BLEVE. This event is highly unlikely due to the design of the tank car, the loading pressure requirements for cryogenic materials, the mandated requirements for redundant pressure relief systems (valves and safety vents) and insulation systems that are built into each car. It is not possible to state with certainty whether a BLEVE [29] is possible in the case of a LNG tank car derailment, and what conditions need to be present for such an event to occur. However, a recent full-scale test with a double walled portable cryogenic tank filled with liquid nitrogen (and PRDs operated as designed) and exposed to a greater than 200-minute engulfing propane pool fire was neither destroyed nor did a BLEVE occur. The number of cars that could be impacted by this type of exposure would be dependent on multiple factors. Some of these include, but are not limited to: The number or LNG cars in the consist, the locations of those tank cars, type of fire, exposure distance, and defensive actions of responders. Exposure to radiant heat from an LNG pool fire or being caught within the flash vapor fire could result in fatalities, serious injuries, and property damage. These risks also exist in the transportation of LNG via highway, existing rail transportation, and pipeline. However, given the safety history of the DOT–113C120W tank cars, it is expected that the risk of tank car failure and ignition is low.

[27] 49 CFR 173.319.

[28] For a large spill, consider initial downwind evacuation for at least 800 meters. If a tank car is involved in a fire, isolate for 1600 meters in all directions; also, consider evacuation for 1600 meters in all directions.

[29] A BLEVE is not caused by a combustion explosion of a flammable material. As the name implies, it is the explosion caused by rapidly evolving vapor in relatively small space which leads to significant increase in pressure which may violently damage/destroy a container. When a container with a liquid in it is exposed to a fire and no pressure relief (or partial intermittent relief) occurs the liquid within it can be heated to superheat temperature conditions. If this is followed by a small breach of the container (due to, say, wall metal failure), the rapid depressurization that results leads to an extremely rapid boiling of the liquid, and release of a significant mass of vapor, in microseconds to milliseconds, into the container. This results in very high pressures inside the container leading to its burst, causing an ''explosion'' (an explosion is the release of energy in an extremely short duration of time). Whether such phenomena occur in a double walled tank car exposed to an external fire is uncertain.

Cryogenic Temperature Exposure

In a scenario involving cryogenic temperature exposure, the risk to an undamaged DOT–113 specification tank car is the embrittlement of the car's steel due to exposure to the extremely cold temperatures of the material. This type of exposure could lead to the failure of the tank car's outer carbon steel tank, but not the inner stainless steel tank. As stated previously, if a DOT–113 specification tank car has its outer tank compromised, the car would lose its insulating vacuum and would eventually start to build pressure within the product tank. This pressure build would eventually lead to the activation of the tank car's PRDs and the controlled venting of LNG vapors.

Air Pollution and Greenhouse Gases

The rulemaking could result in the manufacture of additional DOT–113C120W tank cars. Depending on demand, this manufacture process could result in minor increases in the emission of air pollution and increased emission of greenhouse gases (GHGs), due to the steel and insulating materials that the tank car is comprised of. Also, the transportation of rail tank cars filled with LNG would result in air pollution and GHG emissions associated with increased use of diesel-powered trains. However, transportation of LNG via rail instead of via highway would reduce the emission of air pollution and the emission of GHGs. In general, highway transportation requires proportionally more fuel and results in proportionally more emissions than rail transportation. According to AAR, moving freight by rail instead of truck lowers GHG emissions by 75%. Railroads move approximately one-third of U.S. exports and intercity freight volume in the United States. Despite the large volume of freight moved, U.S. Environmental Protection Agency data show freight railroads account for only 0.5% of total U.S. greenhouse gas emissions and just 2% of emissions from transportation-related sources.[30] Furthermore, removing barriers for the transportation of LNG could promote the use of LNG over more polluting energy sources.

The failure of one or more DOT–113C120W tank cars filled with LNG would release a large amount of either burned methane or unburned methane hydrocarbons into the atmosphere. Unburned methane hydrocarbons are a potent GHG and a pollutant. However, as described above, the likelihood of such a failure is very low, given the safety record of DOT–113C120W tank cars. Nonetheless, unburned methane enters the atmosphere in the production and transportation of methane on a more frequent basis.

While the authorization of the DOT–113 specification tank car for LNG service will facilitate the transportation of LNG, natural gas and LNG is currently transported via pipeline, vessel, highway, and rail. Increased transport of LNG by rail may result in fewer GHG emissions when compared to transport by highway or construction of new pipeline infrastructure. Also, facilitating LNG transport by rail may discourage the polluting and wasteful practice of natural gas flaring during the production of oil by allowing the natural gas to reach a viable market. This rulemaking may further decrease GHG emissions by facilitating the utilization of natural gas over more polluting sources of energy. Nonetheless, any action that facilitates the use of a fossil fuel arguably could contribute to the emission of GHGs, which are the principle cause of global climate change. As a regulator of hazardous materials packaging safety, PHMSA lacks the expertise to perform a quantitative prediction of how this rulemaking could affect GHG emissions. The selection of either the no action alternative or the proposed action alternative could both increase and decrease GHGs directly and indirectly depending on various economic variables.

4. Agencies Consulted

PHMSA has coordinated with the Federal Motor Carrier Safety Administration and FRA in the development of this proposed rulemaking. PHMSA will consider the views expressed in comments to the NPRM submitted by members of the public, State and local governments, and industry.

5. Conclusion and Proposed FONSI

PHMSA believes that the amendments proposed in this NPRM will ultimately reduce the environmental impact of the transportation of LNG. PHMSA proposes to make a finding that the proposed amendments would not result in a significant environmental impact. PHMSA welcomes any views, data, or information related to safety or environmental impacts that may result if the proposed requirements are adopted, as well as additional information on possible alternatives and their environmental impacts. PHMSA proposes to find that the proposed regulations allowing the transport of LNG via DOT–113C120W tank car will not result in a significant environmental impact.

K. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

L. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (''Promoting International Regulatory Cooperation''), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. *See* 77 FR 26413 (May 4, 2012). In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended. This

[30] *https://www.aar.org/issue/freight-rail-and-the-environment/.*

rulemaking does not negatively impact international trade.

M. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standards bodies. This rulemaking does not incorporate by reference any voluntary consensus standards; however, the development of this proposed rule is based on the applicability of the operational controls in AAR Circular OT–55 to the bulk transport of LNG by rail in a train consist that is composed of 20 car loads or intermodal portable tank loads in which LNG is present along with any combination of other hazardous materials.

N. Executive Order 13211

Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') [66 FR 28355; May 22, 2001] requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Under the executive order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, ANPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

This NPRM is a significant action under Executive Order 12866, but it is not expected to have an annual effect on the economy of at least $100 million. Further, this action is not likely to have a significant adverse effect on the supply, distribution or use of energy in the U.S. For additional discussion of the anticipated economic impact of this rulemaking, please review the preliminary RIA. PHMSA welcomes any data or information related to energy impacts that may result from this NPRM, as well as possible alternatives and their energy impacts. Please describe the impacts and the basis for the comment.

List of Subjects

49 CFR Part 172

Hazardous materials table, Hazardous materials transportation, Labeling, Markings, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Cryogenic liquids, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR chapter I as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 2. In § 172.101, in table § 172.101 HAZARDOUS MATERIALS TABLE, revise the entry for ''UN1972, Methane, refrigerated liquid'' to read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.* * *)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*		*	*	*		*	*		*		
	Methane, refrigerated liquid *(cryogenic liquid)* or Natural gas, refrigerated liquid *(cryogenic liquid), with high methane content).*	2.1	UN1972		2.1	T75, TP5	None	None	318, 319	Forbidden	Forbidden	D	40
		*		*	*	*		*	*		*		

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 4. In § 173.319, revise paragraph (d)(2) to read as follows:

§ 173.319 Cryogenic liquids in tank cars.

* * * * *

(d) * * *

(2) *Ethylene, hydrogen (minimum 95 percent parahydrogen), and methane, cryogenic liquids* must be loaded and shipped in accordance with the following table:

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum start-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight)				
	Ethylene	Ethylene	Ethylene	Hydrogen	Methane
17				6.60.	
45	52.8.				
75		51.1	51.1		32.5.
Maximum pressure when offered for transportation.	10 psig	20 psig	20 psig		15 psig.
Design service temperature	Minus 260 °F	Minus 260 °F	Minus 155 °F	Minus 423 °F	Minus 260 °F.
Specification (see § 180.507(b)(3) of this subchapter).	113D60W, 113C60W.	113C120W	113D120W	113A175W, 113A60W.	113C120W.

* * * * *

Issued in Washington, DC, on October 16, 2019, under authority delegated in 49 CFR 1.97.

Drue Pearce,

Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2019–22949 Filed 10–23–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0082; FXES11130900000–178–FF0932000]

RIN 1018–BC11

Endangered and Threatened Wildlife and Plants; Removal of the Interior Least Tern From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the inland population of the least tern (Interior least tern) (*Sterna* (now *Sternula*) *antillarum*), from the Federal List of Endangered and Threatened Wildlife. The Interior least tern is a bird that nests adjacent to major rivers of the Great Plains and Lower Mississippi Valley. This proposed action is based on a thorough review of the best available scientific and commercial data, which indicate that the Interior least tern has recovered and no longer meets the definition of an endangered or a threatened species under the Endangered Species Act of 1973, as amended (Act). Our review shows that threats identified for the species at the time of listing, *i.e.,* habitat loss, curtailment of range, predation, and inadequacy of regulatory mechanisms, have been eliminated or reduced, and the Interior least tern has increased in abundance and range. We also announce the availability of a draft post-delisting monitoring (PDM) plan for the Interior least tern. We seek information, data, and comments from the public regarding this proposed rule and the associated draft PDM plan.

DATES: We will accept comments received or postmarked on or before December 23, 2019. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 9, 2019.

ADDRESSES: *Written comments:* You may submit comments on this proposed rule and the associated draft PDM plan by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2018–0082, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2018–0082, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

Document availability: The proposed rule, draft PDM plan, and supporting documents are available at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0082.

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; telephone (601) 321–1122. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, we are required to conduct a review of all listed species at least once every 5 years (5-year review) to review their status and determine whether they should be classified differently or removed from listed status. In the Act, the term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' Therefore, we use the term ''species'' to refer to the Interior population of the least tern in this proposed rule. In our 2013 5-year review for the Interior least tern, we recommended removing the Interior least tern from the List of Endangered and Threatened Wildlife (*i.e.,* ''delisting'' the species). However, to change the status of a listed species under the Act, we must complete the formal rulemaking process. Therefore, we are publishing this proposed rule in the **Federal Register** and seeking public comments on it. Within 1 year of the publication of this proposed rule, we will make a final determination on the proposal.

What this document does. This document proposes to delist the Interior least tern (*Sterna* (now *Sternula*) *antillarum*).

The basis for our action. Under the Act, we may delist a species if the best scientific and commercial data indicate

the species is neither an endangered species nor a threatened species for one or more of the following reasons:

(1) The species is extinct;

(2) The species has recovered and is no longer endangered or threatened; or

(3) The original data used at the time the species was classified were in error. Here, we have determined that the Interior least tern may be considered for delisting based on recovery. Our review of the status of and listing factors for the Interior least tern indicated (1) a range extension; (2) an increase in abundance and number of breeding sites; (3) resiliency to existing and potential threats; (4) the implementation of beneficial management practices; and (5) changes in existing regulatory mechanisms that are more protective of migratory birds such as the Interior least tern. Accordingly, the Interior least tern no longer meets the definition of an endangered or threatened species under the Act.

Peer review. We are requesting comments from independent specialists to ensure that we base our determination on scientifically sound data, assumptions, and analyses.

Information Requested

Public Comments

We want any final rule resulting from this proposal to be as accurate and effective as possible. Therefore, we invite tribal and governmental agencies, the scientific community, industry, and other interested parties to submit data, comments, and new information concerning this proposed rule. The comments that will be most useful and likely to influence our decision are those that are supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. In particular, we are seeking comments on:

(1) Biological data regarding the Interior least tern, including the locations of any additional populations, survey data, or other relevant information;

(2) Relevant data concerning any threats (or lack thereof) to the Interior least tern;

(3) Additional information regarding the range, distribution, life history, ecology, and habitat use of the Interior least tern;

(4) Current or planned activities within the geographic range of the Interior least tern that may negatively impact or benefit the Interior least tern; and

(5) The draft PDM plan and the methods and approach detailed in it, including, but not limited to: (a) The duration of the monitoring period; (b) the survey and monitoring approach; (c) the triggers identified to detect change; and (d) the length of time to extend PDM if change is detected.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

In developing a final determination on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Public Hearing

Section 4(b)(5)(E) of the Act provides for a public hearing on this proposal, if requested. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date shown in **DATES**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the hearing.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the OMB's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will solicit the expert opinions of at least three appropriate and independent specialists regarding the science in this proposed rule and the draft PDM plan. The purpose of such review is to ensure that we base our decisions on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the Interior least tern's biology, habitat, and physical or biological factors that will inform our determination. We will send peer reviewers copies of this proposed rule and the draft PDM plan immediately following publication of this proposed rule in the **Federal Register**. We will invite them to comment, during the public comment period, on the specific assumptions and conclusions regarding this proposed delisting rule and the associated draft PDM plan. We will summarize the opinions of these reviewers in the final decision documents, and we will consider their input and any additional information we receive as part of our process of making a final decision on this proposal and draft PDM plan. Such communication may lead to a final decision that differs from this proposal.

Previous Federal Actions

On May 28, 1985, we published a final rule in the **Federal Register** (50 FR 21784) listing the Interior least tern as endangered, due to the low numbers and scattered distribution of the tern and to threats to the bird's breeding habitat. The listed population included only those least terns that breed and nest within the boundary of the continental United States on interior rivers and other water bodies. On October 19, 1990, we released a recovery plan for the Interior population of the least tern (Service 1990). In 1991, we announced in the **Federal Register** (56 FR 56882; November 6, 1991) a 5-year review of all endangered and threatened species listed before January 1, 1991, under the Act, including the Interior least tern. No change in the bird's listing classification was found appropriate as a result of that 5-year review.

We completed another 5-year review for the Interior least tern on October 24, 2013, and posted it on the Service's website. This 5-year review summarized all new information accumulated on the Interior least tern since 1991, and recommended delisting due to recovery.

This 5-year review is a supplemental document to the proposed rule and is provided at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0082 or *https://www.fws.gov/mississippiES/.*

For additional details on previous Federal actions, including recovery actions, see discussion under Recovery, below.

Species Information

A thorough review of the taxonomy, life history, ecology, and overall viability of the Interior least tern was presented in the 5-year review (Service 2013). Below, we present a summary of the biological and distributional information discussed in the 5-year review and new information published or obtained since.

Taxonomy and Genetics

Least terns within the Interior Basin of North America were described as *Sterna antillarum athalassos,* a subspecies of the eastern least tern (*S. antillarum antillarum*) (Burleigh and Lowery 1942, pp. 173–177). In 2006, the American Ornithologist's Union recognized least terns under a previously published genus (*Sternula*) based on mitochondrial DNA phylogeny (Bridge *et al.* 2005, p. 461). Interior least tern was one of three subspecies of New World (North and South America) least terns previously recognized by the American Ornithologists' Union (1957, p. 239), including the eastern least tern and the California least tern (*S. antillarum browni*). However, due to taxonomic uncertainty surrounding least tern subspecies, at the time of listing (50 FR 21784; May 28, 1985), we treated the Interior least tern as a population of eastern least tern.

Since that time, genetic analyses of North American populations of least tern found no evidence of differentiation warranting subspecies recognition (*e.g.,* Whittier 2001, p. 10; Draheim *et al.* 2010, pp. 813–815; Draheim *et al.* 2012, p. 146). Data indicate that genetic exchange between eastern least terns and Interior least terns is occurring at a rate greater than three migrants per generation between populations (Whittier *et al.* 2006, p. 179). After reviewing the best available scientific information regarding the taxonomy of the Interior least tern, we continue to conclude that it is a population of the eastern least tern (*Sternula antillarum*).

Species Description

Least terns are the smallest members of the family Laridae, measuring 21 to 23 centimeters (cm) (8 to 9 inches (in)) long with a 56-cm (22-in) wingspan (Thompson *et al.* 1997, pp. 1–2). Sexes look alike, characterized in the breeding plumage by a black crown, white forehead, grayish back and dorsal wing surfaces, snowy white undersurfaces, orange legs, and a black tipped yellow bill. Immature birds have darker plumage, a dark bill, and dark eye stripes on their white heads. Least terns are distinguished from all other North American terns by their small size. Interior least terns can only be separated from eastern and California least terns by the geographic area used for nesting.

Life Span

Interior least terns are potentially long-lived, with records of recapture more than 20 years following banding (Thompson *et al.* 1997, p. 15); however, the average life span is probably less.

Nesting Habitat and Behavior

Least terns begin breeding and nesting in their second or third year and breed annually throughout their lives (Thompson *et al.* 1997, p. 15). Prior to nesting, young birds exhibit some level of prospecting behavior (exploratory dispersal) across the landscape (*e.g.,* Boyd and Thompson 1985, p. 405; Lott 2012, p. 12; Shigeta *in litt.* 2014, entire).

Interior least terns generally nest on the ground, in open areas, and near appropriate feeding habitat (Lott and Wiley 2012, pp. 9–11). Nests are simple scrapes in the sand, and nesting sites are characterized by coarser and larger substrate materials, more debris, and shorter and less vegetation compared to surrounding areas (Smith and Renken 1993, p. 501; Stucker 2012, p. 49). Typical least tern clutch size is reported as two to three eggs (Thompson *et al.* 1997, p. 15); however, clutch size may vary by location and year (*e.g.,* Szell and Woodrey 2003, p. 37; Jones 2012, p. 3).

Natural nesting habitat features are maintained and influenced by magnitude and timing of riverine flood events (Sidle *et al.* 1992, p. 134; Renken and Smith 1995, pp. 194–195; Pavelka *in litt.* 2012). The Interior least tern prefers vegetation-free sand or gravel islands for nesting, although sand banks, point bars, salt flats or plains, and beaches may also be used. Interior least terns prefer areas remote from trees or other vegetation that may hide or support predators (Lott and Wiley 2012, pp. 9–11). Least terns also nest on anthropogenic sites (originating from human activity) (Jackson and Jackson 1985, p. 57; Lott 2006, p. 10) near water bodies that contain appropriate and abundant prey fishes. Anthropogenic sites used by the tern include industrial sites (Ciuzio *et al.* 2005, p. 102; Mills 2012, p. 2), dredge spoil (Ciuzio *et al.* 2005, p. 102), sand pits (Smith 2008, p. 2), constructed habitats (Stucker 2012, pp. 59–66), and rooftops (Boland 2008, entire; Watterson 2009, entire).

Lott and Wiley (2012, pp. 9–11) described five physical and biological conditions that are necessary for Interior least tern nest initiation and successful reproduction:

(1) Nest sites that are not inundated (flooded) during egg laying and incubation;

(2) Nesting sites that are not inundated until chicks can fly;

(3) Nesting sites with less than 30 percent ground vegetation;

(4) Nesting sites that are more than 76 meters (m) (250 feet (ft)) from large trees; and

(5) Availability of prey fishes to support chick growth until fledging.

Interior least terns are colonial nesters. Colony size may vary from a few breeding birds to more than 1,200 (Jones 2012, p. 3). Populations in some river drainages may be limited by annual availability of nesting habitat (*e.g.,* Missouri River; Stucker 2012, p. 104), while potential nesting habitat is generally abundant and underutilized in other drainages (*e.g.,* Mississippi River; U.S. Army Corps of Engineers (USACE) 2008, pp. 10–13). Nesting site conditions (*e.g.,* habitat suitability, flood cycles, prey fish abundance, predation pressure) can vary significantly from year to year in all drainages, resulting in wide fluctuations in bird numbers (Jones 2012, p. 14) and/or nesting success (Smith and Renken 1993, p. 41; Lott and Wiley 2012, p. 15). However, Interior least terns may re-nest, or relocate and re-nest, if nests or chicks are destroyed early in the season (Massey and Fancher 1989, pp. 353–354; Thompson *et al.* 1997, p 15). Interior least tern chicks leave their nests within a few days of hatching (semiprecocial), but remain near the nests and are fed by their parents until fledging (Thompson *et al.* 1997, pp. 14–15).

Food and Foraging Habitat

Interior least terns are primarily piscivores (fish-eaters), and feed opportunistically on small fish species or the young of larger fish species. Prey species include native species such as shad (*Dorosoma* spp.), carps and minnows (Cyprinidae), freshwater drum (*Aplodinotus grunniens*), largemouth bass (*Micropterus salmoides*), white bass (*Morone chrysops*), sunfishes (*Lepomis* spp.), and top minnows (*Fundulus* spp.), as well as invasive species such as silver and bighead carp (*Hypophthalmichthys* spp.) (USACE

2008, pp. 16, 26). On the Missouri River, prey species include emerald shiner (*Notropis atherinoides*), sand shiner (*Notropis stramineus*), spotfin shiner (*Cyprinella spiloptera*), and bigmouth buffalo (*Ictiobus cyprinellus*) (Stucker 2012, p. 6). Least terns will also occasionally feed on aquatic or marine invertebrates (Thompson *et al.* 1997, pp. 6–7). Riverine foraging habitats and fish abundance may be influenced by stochastic (random) hydrological conditions and events (*i.e.,* flow, and flood timing and magnitude), and channel engineering (Schramm 2004, pp. 307, 321–323).

In the Missouri River drainage, Interior least terns forage for fish in shallow water habitats and within 12 kilometers (km) (7 miles (mi)) from colony sites (Stucker 2012, p. 24). In the Lower Mississippi River, foraging terns have been observed feeding in a variety of habitats within 3 km (2 mi) of colony sites (Jones 2012, pp. 5–6).

Migration and Winter Habitat

Interior least tern fall migrations generally follow major river basins to their confluence with the Mississippi River and then south to the Gulf of Mexico; however, late summer observations of least terns more than 150 km (93 mi) from major river drainages indicate that some birds migrate over land (Thompson *et al.* 1997, p. 16). Interior least terns gather in flocks in August prior to migration. Once they reach the Gulf Coast, they cannot be distinguished from other least tern populations en route to, or within, their winter habitats (*i.e.,* Gulf of Mexico, Caribbean islands, Central and South America); therefore, the limited information on migration and winter habitat is inclusive of other populations (*i.e.,* Caribbean, Gulf Coast, East Coast). Least terns appear to migrate in small, loose groups along or near shore, feeding in shallows and resting onshore (Thompson *et al.* 1997, pp. 4–6). Very little is known of least tern winter habitats, other than that the birds are primarily observed along marine coasts, in bays and estuaries, and at the mouths of rivers (Thompson *et al.* 1997, p. 6).

Breeding/Natal Site Fidelity and Dispersal

Breeding-site fidelity for least terns varies in different populations and breeding areas. Return rates of banded adults to the sites where they were banded was 36 to 86 percent in California colonies; 42 percent on the Mississippi River; 28 percent on the central Platte River, Nebraska; and 81 percent at Quivira National Wildlife Refuge in Kansas and on the Cimarron River in Oklahoma (Thompson *et al.* 1997, p. 16). Fidelity to natal site is also variable and difficult to estimate because re-sightings or recaptures of terns banded as chicks have been limited. Estimates of natal site fidelity have varied from 5 percent on the Mississippi River, to 82 percent in Kansas and Oklahoma (Thompson *et al.* 1997, p. 16).

Site fidelity in least terns may be affected by physical habitat variables or the extent and type of predation (Atwood and Massey 1988, p. 394). As noted above, least terns are strong fliers and can relocate if conditions on natal or previous-year nesting grounds become unfavorable. A study of eastern least terns found an average 22 percent turnover rate in nesting colony sites, primarily due to changes in habitat condition or disturbance (Burger 1984, p. 66).

Lott *et al.* (2013, pp. 3617–3618) found that 50 to 90 percent of reported recaptures occurred less than 26 km (16 mi) from the original banding sites, while more than 90 percent dispersed less than 96 km (59 mi), indicating a high degree of adult site fidelity and natal site philopatry (remaining near their point of origin). However, long distance dispersal (up to 1,000 km; 621 mi) has been documented (*e.g.,* Renken and Smith 1995, pp. 196–198; Boyd and Sexson 2004, p. 88; Lott *et al.* 2013, pp. 3617–3618), and may not be uncommon (Boyd and Thompson 1985, p. 405). Least tern nesting has also been documented in Brazil (Rodrigues *et al.* 2010, entire) and Hawaii (Conant *et al.* 1991, entire; Pyle *et al.* 2001, entire). During 2014, an Interior least tern banded in the Missouri River drainage was captured in Japan, along with another unbanded tern (Shigeta *in litt.* 2014).

Predation

Interior least tern eggs, chicks, and adults are prey for a variety of mammal and bird predators. Reported predators include birds (*e.g.,* crows, herons, owls, and hawks), mammals (*e.g.,* fox, coyote, racoon, and skunk), and catfish, as well as domesticated and feral dogs and cats (Thompson *et al.* 1997, pp. 10–11). The cryptic coloration of eggs and chicks, the secretive behavior of chicks, and the mobbing behavior (attack flights on potential predators) of adults, all serve to protect eggs and chicks from predators (Thompson *et al.* 1997, p. 11).

Location and size of nesting colonies also has a significant influence on degree of predation. Interior least tern reproductive success is higher on island colonies as compared to connected sandbar colonies, and when water levels maintain isolation of islands and nesting bars from mammalian predators (Smith and Renken 1993, p. 42; Szell and Woodrey 2003, p. 41). Additionally, significantly higher rates of predation were documented in larger colonies compared to smaller colonies (Burger 1984, p. 65).

Historical Distribution and Abundance

The Service defined the historical breeding range of the Interior least tern to include the Colorado (in Texas), Red, Rio Grande, Arkansas, Missouri, Ohio, and Mississippi Rivers systems from Montana south to Texas, and from New Mexico east to Indiana (50 FR 21784; May 28, 1985). However, in order to avoid confusion with eastern least tern, the Service excluded the Mississippi River south of Baton Rouge, Louisiana, the Texas Coast, and a 50-mile zone inland from the coast of Texas from the protected range of Interior least tern (50 FR 21784, May 28, 1985, see p. 50 FR 21789).

The historical distribution and abundance of the Interior least tern within this range is poorly documented. Hardy (1957, entire) provided the first information on least tern distribution on large interior rivers, documenting records of occurrence and nesting in the Mississippi, Ohio, Missouri, Arkansas, and Red river drainages. Downing (1980, entire) published results from a rapid aerial/ground survey of a subset of these rivers, identifying additional nesting populations within the range noted above, and estimated the Interior least tern population at approximately 1,250 adult birds. Ducey (1981, pp. 10–50) doubled the number of known nesting sites, including areas between the scattered observations reported in Hardy (1957). Ducey also extended the northern distribution of the Interior least tern to include the Missouri River below Garrison Dam in North Dakota and Fort Peck Dam in Montana. These three publications (Hardy 1957; Downing 1980; Ducey 1981) provide the primary historical sources of information about the Interior least tern's geographic range, and were used to reach the estimate of 1,400 to 1,800 adults rangewide in the listing rule (50 FR 21784; May 28, 1985).

Current Distribution and Abundance

The current east to west distribution of summer nesting Interior least terns encompasses more than 18 degrees of longitude, or 1,440 km (900 mi), from the Ohio River, Indiana and Kentucky, west to the Upper Missouri River, Montana. The north to south distribution encompasses over 21 degrees of latitude (more than 2,300 km

(1,450 mi)) from Montana to southern Texas. Interior least terns currently nest along more than 4,600 km (2,858 mi) of river channels across the Great Plains and the Lower Mississippi Valley (Lott *et al.* 2013, p. 3623), with nesting colonies found in 18 States, including: Montana, North Dakota, South Dakota, Nebraska, Colorado, Iowa, Kansas, Missouri, Illinois, Indiana, Kentucky, New Mexico, Oklahoma, Arkansas, Tennessee, Texas, Louisiana, and Mississippi. As noted above, this does not include least tern colonies nesting along the coasts of Texas, Louisiana, and Mississippi.

Rangewide surveys in 2005 estimated an approximate minimum adult population size of 17,500, with nesting occurring in more than 480 colonies spread across 18 States, which is likely an underestimate given imperfect detection of adults and survey coverage of potential habitat (Lott 2006, pp. 10–21, 50). Lott (2006, pp. 13–15) also provided counts for 21 populations or population segments that were unknown at the time of listing, which collectively support more than 2,000 terns.

Population Trends

The Interior least tern has demonstrated a positive population trend, increasing by almost an order of magnitude (or 10 times what it was prior) since it was listed in 1985. After it was listed, researchers increased survey effort and the geographical extent of the area surveyed, producing sufficient Interior least tern count data to analyze population trends for several river reaches that support persistent breeding colonies. Kirsch and Sidle (1999, p. 473) reported a rangewide population increase to over 8,800 adults in 1995, and found that 29 of 31 Interior least tern locations with multi-year monitoring data were either increasing or stable. Lott (2006, p. 50) reported an increase to over 17,500 adult birds in 2005, forming 489 colonies in 68 distinct geographic sites.

Lott (2006, p. 92) conceptualized the Interior least tern functioning as a large metapopulation (a regional group of connected populations of a species), which might also include least terns on the Gulf Coast. Using available information on dispersal of least terns, Lott *et al.* (2013, pp. 3616–3617) defined 16 discrete breeding populations of Interior least tern, with 4 major geographical breeding populations (population complexes) accounting for more than 95 percent of all adult birds and nesting sites throughout the range. Portions of these four population complexes have experienced multi-year monitoring to different degrees. While some local (colony, subpopulation) declines have been documented, the Interior least tern has experienced a dramatic increase in range and numbers since listing and development of the recovery plan (*e.g.,* Kirsch and Sidle 1999, p. 473; Lott 2006, pp. 10–49). There has been no reported extirpation of any population or subpopulation since the species was listed in 1985.

Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans are not regulatory documents and are instead intended to: (1) Establish goals for long-term conservation of a listed species; (2) define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer need the protections of the Act; and (3) provide guidance to our Federal, State, and other governmental and nongovernmental partners on methods to minimize threats to listed species. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished, yet the Service may judge that, overall, the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened (*i.e.,* to ''downlist'' the species) or perhaps to delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. In short, recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The Service approved the Interior Least Tern Recovery Plan on September 19, 1990 (Service 1990, entire). The objective of the recovery plan is to meet the standard of recovery that leads to delisting the Interior least tern. Recovery plans provide a road map for the public with site-specific management actions for private, Tribal, federal, and state cooperation in conserving listed species and their ecosystems. A recovery plan provides guidance on how best to help listed species achieve recovery. Recovery criteria are the values by which it is determined that a recovery plan objective has been reached. Recovery criteria identified in the recovery plan were designed to assure the protection of essential habitat by removal of threats at that time and habitat enhancement, establish agreed-upon management plans, and attain a rangewide population of 7,000 birds at the levels listed below (for five major river drainages throughout the Interior least tern's range):

(1) Adult birds in the Missouri River system will increase to 2,100, and remain stable for 10 years.

(2) Current numbers of adult birds (2,200–2,500) on the Lower Mississippi River will remain stable for 10 years.

(3) Adult birds in the Arkansas River system will increase to 1,600, and remain stable for 10 years.

(4) Adult birds in the Red River system will increase to 300, and remain stable for 10 years.

(5) Current numbers of adult birds (500) in the Rio Grande River system will remain stable for 10 years.

Primary recovery tasks conducted to achieve the recovery objective and drainage population targets included:

(1) Determining the distribution and population trends of the Interior least tern;

(2) Determining habitat requirements and status;

(3) Protecting, enhancing, and increasing Interior least tern populations; and

(4) Preserving and enhancing the tern's habitats.

These are summarized within the 5-year review and briefly reviewed below.

Rangewide Population Criterion To Delist

The Interior least tern rangewide numerical recovery criterion (7,000 birds) has been met and has been exceeded since 1994 (see Service 2013). Using rangewide seasonal count data from 1984 (722 terns) through 1995 (8,859 terns), Kirsch and Sidle (1999, pp. 473–477) demonstrated achievement of the numerical recovery criterion and a positive population growth trend. They noted that most of the Interior least tern increase had occurred on the Lower Mississippi River, observed that population increases were not supported by fledgling success estimates available at that time, and hypothesized

that Interior least tern increases were possibly due to immigration surges from a more abundant least tern population inhabiting the Gulf Coast (Kirsch and Sidle 1999, p. 478).

Lott (2006, entire) organized, compiled, and reported a synchronized rangewide count for Interior least tern in 2005, finding tern numbers had doubled since 1995 (17,591 birds rangewide; 62 percent occurring along the Lower Mississippi River), equaling or exceeding least tern population estimates along the U.S. Gulf Coast (Lott 2006, p. 50). Since 2006, the majority of Interior least terns continue to be reported from the Lower Mississippi River (Service 2013, p. 11). As did Kirsch and Sidle (1999, p. 478), Lott (2006, p. 52) also hypothesized a wider least tern metapopulation, which included Gulf Coast and interior subpopulations, and the possibility of a shift of birds from the Gulf Coast to inland habitats due to the presence of better nesting conditions, particularly on the Lower Mississippi River. However, there are few data directly supporting the Kirsch and Sidle (1999, pp. 473–477) or the Lott (2006, p. 52) immigration hypotheses as a factor in the 20-year increase in Interior least tern counts. There has not been a complete or organized rangewide count since 2005; however, some geographic segments continue to be annually monitored, including portions of the Missouri (USACE *in litt.* 2017, entire), Platte (Keldsen and Baasch 2016, entire), Red (Stinson *in litt.* 2017, entire), Arkansas (Cope *in litt.* 2017, entire; Nupp 2016, entire), and Wabash rivers (Mills 2018, entire). These partial counts indicate that we continue to exceed the recovery goal of 7,000 birds (Service 2013, pp. 11–12).

Numerical Population Targets

In addition to the numerical population targets identified in the recovery plan for five major river drainages throughout the tern's range (see above), sub-drainage targets were also identified for the Missouri and Arkansas River drainages (Service 1990, pp. 28–29). Drainage and sub-drainage numerical targets were based upon the opinions of technical experts and State and Federal resource agencies of the potential for population increase at the time (Service 1990, p. 28). The drainage system population size targets have been exceeded in three of the five targeted drainages (Lower Mississippi (more than 25 years), Red (more than 15 years), and Arkansas rivers (more than 10 years)) (see Service 2013, pp. 22–26). As to the Rio Grande drainage, it is now recognized that the subpopulations found within the drainage represent recent exploitation of anthropogenic habitats and are not historical habitats; thus, these areas were inappropriately designated as ''essential'' segments of the tern's ecosystem in the recovery plan (Service 2013, pp. 26–27). Therefore, numerical targets originally set for the Rio Grande drainage are no longer considered necessary for this species' recovery.

As to the Missouri River drainage, the Interior least tern population size has remained relatively stable (approximately 1,600 birds) over the 29 years since recovery criteria were identified (Service 2013, p. 11), and neither the drainage population target (2,100) nor many of the targets identified for Missouri River drainage segments have been consistently met (Service 2013, pp. 14–21). However, since the tern was listed, the Missouri River system has received a significant commitment of conservation attention and resources (USACE 2019a), particularly in comparison to other drainages that have experienced increases in tern populations. Based on the lack of increase, in light of the substantial commitment of resources, we conclude that that the Missouri River drainage is likely at the carrying capacity of the available habitat (Service 2013, pp. 14–21), and the recovery goal of 2,100 birds is not achievable. Monitoring data show that periodic downward trends observed in a few Missouri drainage subpopulations have been reversed by habitat improvement following major floods (Pavelka 2012, p. 2), or offset by upward trends in other subpopulations (Pavelka 2012, pp. 7–8; Lott and Sheppard 2017a, pp. 49–53) indicating that the Missouri River drainage Interior least tern population is sustainable and recovered.

In short, some drainage population targets identified in the 1990 recovery plan have not been fully met, as the Rio Grande was inappropriately considered ''essential'' (see above) and the Missouri River drainage appears to be at carrying capacity and incapable of reaching the 2,100 target identified in the recovery plan. However, the inability to meet these drainage and sub-drainage targets have been offset by large increases in the Interior least tern populations within the Arkansas, Red, and Lower Mississippi rivers, and by the discovery of numerous subpopulation segments throughout the Interior Basin that were either unrecognized or not occupied at the time of listing and recovery plan development, increasing the number of known breeding colonies from a few dozen at listing to more than 480 (Lott 2006, p. 10; also see Service 2013, pp. 31–33).

Habitat Criteria

Recovery plan delisting criteria required the protection, enhancement, and restoration of essential Interior least tern breeding habitats (Service 1990, pp. 28–29). Beyond the identification of specific river reaches as ''essential,'' habitat parameters were not defined, nor were specific objective and measurable criteria for their protection identified. The recovery plan outlined several tasks to protect and enhance Interior least tern habitats, including managing water flows, modifying construction activities, and protecting all areas identified as ''essential'' across the species' range through acquisition, easements, or agreements (Service 1990, pp. 29–50).

Recovery tasks identified for managing water flows are primarily relevant to portions of the Missouri, Red, and Arkansas River drainages, which cumulatively encompass about 20 percent of the Interior least tern breeding population. The majority of the remainder of species' range occurs along unimpounded sections of the Mississippi river not subject to flow management. Over the past two decades, protective flow management actions have been identified and incorporated by USACE Northwest Division into their Missouri River Bank Stabilization and Navigation Project and operations of the Kansas River Reservoir System, including seasonal reservoir flow management to reduce nesting mortalities, and for sandbar augmentation and modification, vegetation management, predation control, human restriction measures, and water-level management for reservoir nesting areas (USACE 2017, pp. 139–143). In the Southern Plains, USACE Southwest Division civil works projects in the Arkansas, Canadian, and Red River systems within Arkansas, Oklahoma, and Texas use reservoir storage and operation to reduce flooding, minimize land bridging, predation, and human disturbance during Interior least tern nesting season, and to enhance nesting habitats at other times of the year (USACE 2002, pp. 3–4; 2016 pp. 18–20). These water management practices have been adopted by the respective USACE Divisions and Districts as Best Management Practices and with commitments to continue into the future regardless of the future status of the Interior least tern under the Act (USACE 2016, pp. 2, 24; 2018, pp. 4–13–4–17).

Recovery tasks for modifying construction activities within river channels have been successfully

implemented across Interior least tern habitats that are managed under USACE programs in jurisdictional waters (categories of waters defined under the Clean Water Act (33 U.S.C. 1251 *et seq.*) that include navigable waters, interstate waters, tributaries, impoundments, etc.). Construction practices critical to maintaining and protecting nesting habitats have been incorporated into USACE river management programs as standard operating procedures (SOPs) or Best Management Practices (BMPs), including construction timing and work zone buffers to avoid disturbance of nesting colonies, dike modifications to protect and maintain habitat values, and dredge material disposal methods beneficial to maintaining nesting sand bars and islands (*e.g.,* USACE 2013, pp.69–72; USACE 2016, p. 21). Other SOPs and BMPs incorporated into USACE programs promote ecosystem productivity important to tern foraging, including articulated concrete mat design, use of hardpoints in lieu of revetment, and strategic placement of woody debris within channels (*e.g.,* USACE 2013, p. 71). These existing management strategies and programs (USACE 2013, 2016, 2017) are protective of waters and habitats managed by USACE that support about 80 percent of the Interior least tern's range. All USACE programs currently provide for adaptive management into the future, independent of the federal listing status of the Interior least tern (USACE 2013, p. 71; 2016, pp. 2, 24; 2018, pp. 4–13–4–17).

New information developed over the past three decades relative to the ecology of Interior least tern and its habitats indicate that recovery tasks to protect ''essential'' habitats across the species' range through acquisition or easements are neither cost-effective nor necessary. Riverine habitat for Interior least terns is not static, and clearly experiences dramatic local or regional annual (at times, daily) variation in location, quantity, and quality. Describing and quantifying habitat quality is difficult, given the wide variety of conditions the bird is known to exploit (*e.g.,* rivers, reservoirs, rooftops).

The Interior least tern adjusts to habitat variation and change over its range through metapopulation dynamics (Hanski and Gilpin 1991, entire; Lott *et al.* 2013, p. 3620; Lott and Shepard 2017, entire). A metapopulation consists of a network of populations with similar dynamics that are buffered against extinction by abandoning areas as habitats degrade, and dispersing and exploiting suitable habitats as they become available. Therefore, the importance of specific habitat segments to the species is likely to change with time. Within large metapopulations of mobile species, small subpopulations (or colonies within subpopulations) may occur in habitats where recruitment is inconsistent or may not exceed mortality (*i.e.,* population sinks), but which are maintained by immigration from colonies where recruitment exceeds mortality (*i.e.,* population sources). While exploitation of anthropogenic habitats by Interior least terns may indicate a lack of suitable habitat in an area, it may also indicate an overall population or subpopulation expansion. Sink colonies also play important roles in large metapopulations by providing opportunities for range expansion, and/or redundancy from episodic stochastic impacts to preferred natural habitats. While some colony sites may be periodic or consistent population sinks, there is no evidence that they are detracting from the Interior least tern's rangewide survival (*e.g.,* Lott and Sheppard 2017a, p. 51), particularly in consideration of the substantial increase in the known number and size of tern colonies over the past two decades, and the expansion of the species' distribution outside of its historical range (*i.e.,* Illinois, New Mexico, Central Texas, Colorado; see Service 2013, pp. 31–33).

Based upon this understanding of Interior least tern population dynamics and habitat use, the recovery task of protecting all areas identified in 1990 as ''essential'' across the species' range through acquisition or easements is not necessary for the conservation of the species. This conclusion is supported by the increase in the species' range and abundance over the past 29 years without protections achieved through such acquisition or easements. Although some Interior least tern nesting colonies occur on protected public lands such as wildlife refuges, they represent only a small portion (less than 2 percent) of the range-wide population. Additionally, as noted above, existing management agreements, strategies, and programs within jurisdictional waters are protective of the habitats that support about 80 percent of the Interior least tern population (USACE 2013, 2016, 2017).

While the majority (80 percent) of Interior least tern nesting colonies are known from jurisdictional waters with a strong Federal connection with navigation systems or reservoirs, the remaining nesting colonies occur along rivers with a more limited Federal nexus, or on mining and industrial sites adjacent to or near rivers and reservoirs. On about 10 percent of these, Federal, State, and/or private conservation partnerships have developed and implemented conservation agreements and management programs beneficial to Interior least tern as well as other at risk or endangered species. These programs generally post or restrict access, control predators, and conduct monitoring during nesting season, as well as conduct vegetation control and public education as opportunities present.

In the Platte River drainage, the Tern and Plover Conservation Partnership was initiated in 1999, at the University of Nebraska, School of Natural Resources. This partnership consists of a group of State, industrial, Federal and other cooperators having an interest in tern and plover conservation and management on and along the Platte, Loup, and Elkhorn Rivers, with emphasis on nesting areas associated with sand and gravel mines, lake shore housing developments and dredging operations (University of Nebraska-Lincoln, 2019)). Long-term management of Interior least tern habitats in the Platte River drainage is also assured by an Adaptive Management Plan developed and implemented by a partnership of State and industrial water users in Nebraska, Colorado, and Wyoming under the Platte River Recovery Implementation Program (Platte River Recovery Implementation Program, 2019). This program, initiated in 1997, also targets management needs of endangered pallid sturgeon and whooping crane, and the threatened piping plover. Since both programs target other listed species with similar habitat requirements, and the Interior least tern is State listed as endangered, these conservation programs and efforts are expected to continue regardless of a change in the Federal status of this species.

Interior least tern management in the Wabash River drainage began with the 1986 discovery of a single nesting pair on Gibson Generating Station property, Gibson County, Indiana (Hayes and Pike 2011, entire; Mills 2018, pp. 2–5). This colonization led to site monitoring, predator control and other protective measures, as well as vegetation control, water management, and habitat management and creation, resulting in increasing numbers of terns and expansion of nesting colonies to multiple sites on public and private properties in the vicinity (Hayes and Pike 2011, entire). In 1999, management was formalized by development of a Habitat Conservation Plan, which was renewed and revised in 2004 and 2011, by Duke Energy Corporation (Hayes and Pike 2011, entire). The Indiana

Nongame and Endangered Wildlife Program continues to coordinate conservation and monitoring efforts on industrial and river sites along the Wabash River by Duke Energy, Service, and other Indiana Department of Natural Resources personnel (Mills 2018, p. 14). Since the Interior least tern is protected by the State of Indiana, management and monitoring is expected to continue regardless of a change in the Federal status of species.

To various degrees, a number of additional small, localized, and often temporary breeding colonies of Interior least tern and their habitats have been managed, protected, and monitored at industrial, municipal, and reservoir sites under the conservation (sections 6, 7(a)(1), and 10) or consultation (section 7(a)(2)) requirements of the Act. Managed sites have included coal mines (*e.g.,* Tanner and Hart 1998, entire), rooftops (*e.g.,* Boylan 2008, entire), and small reservoirs (*e.g.,* Nelson, 2010 entire). Such efforts may or may not continue should the tern be delisted; however, it is also likely that the terns will continue to exploit small areas of suitable habitats as they are available and encountered in its range. While such populations contribute some small benefit to the rangewide redundancy and representation of the tern (see discussion of metapopulaion, above), they cumulatively represent less than 2 percent of the summer nesting population and their success or failure within individual sites has little impact on the rangewide conservation status of the Interior least tern.

In summary, the expansion of the numbers and distribution of the Interior least tern, and its adaptation to, and exploitation of anthropogenic habitats over the past several decades indicate that the species is no longer conservation reliant and is recovered. Potential threats identified at the time of listing have been removed or ameliorated by conservation actions of multiple conservation partners, most principally the USACE, for more than 20 years. These actions have assisted in recovery of the species as reflected in the large number of individuals range-wide, stable to increasing drainage populations since listing, and a high number of self-sustaining colonies in 18 states. Furthermore, our partners in USACE Divisions and districts within the range of the Interior least tern have cooperatively modified their programs to provide for the long-term management of nesting and foraging habitats for about 80 percent of the rangewide population of the species (USACE (2013, 2016, 2017). Another 10 percent of the population is managed by State and private partnerships, which are expected to continue based upon State status and regulations. Regarding the remaining 10 percent of the population that nest in habitats with minimal or no management, while these areas contribute to redundancy and representation for the species, their success or failure within these sites is not essential to the continued existence of the Interior least tern. Therefore, we believe the recovery of the Interior least tern has been fully achieved.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. We may determine that a species is an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

A recovered species is one that no longer meets the Act's definition of endangered species or threatened species. Determining whether the status of a species has improved to the point that it can be delisted or downlisted requires consideration of the same five factors identified above. When the Interior least tern was listed as endangered in 1985, the identified threats (factors) influencing its status were the modification and loss of habitat and curtailment of range (Factor A), predation and disturbance of local colonies (Factor C), and the inadequacy of State or Federal mechanisms to protect its habitat at that time (Factor D). We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error. The following analysis, based on an assessment of the Interior least tern, evaluates these previously identified threats, any other threats currently facing the species, and any other threats that are reasonably likely to affect the Interior least tern in the foreseeable future following the delisting and the removal of the Act's protections.

Habitat Loss and Curtailment of Range

The primary threats identified for the Interior least tern in the May 28, 1985, listing rule (50 FR 21784) were associated with the destruction and modification of habitat due to channel engineering practices on large rivers of the Interior Basin (*i.e.,* damming, channelization, and channel stabilization) (Service 1985, pp. 21789–21790; Service 1990, pp. 22–23). Reservoirs had inundated hundreds of miles of historical or potential tern riverine habitat in many Mississippi River Basin drainages, and reduced sediment input into channels below dams had caused channel degradation, constriction, and loss of potential nesting habitats. Channelization, channel training structures (dikes), and bank stabilization in the Missouri, Mississippi, and Ohio rivers prevented natural geomorphic response to loss of sediments, resulting in deepened and narrowed channels, and loss or terrestrialization (vegetation encroachment) of potential nesting sandbars and islands. Reservoir releases for hydropower, navigation, and flood control also were found to adversely affect Interior least tern populations surviving below these same dams (Service 1990, p. 22). These trends of habitat degradation were also expected to continue throughout most of the tern's fragmented range (Smith and Stuckey 1988, entire).

New information on the species' response to the threats identified at the time of listing indicate that anthropogenic changes in some river channels supporting the Interior least tern have also benefited the Interior least tern in ways that may have compensated for historical impacts to its habitat. For example, in the Lower Mississippi River (where tern numbers have increased by an order of magnitude, and which currently supports more than 60 percent of the Interior least tern nesting population), channel engineering, including the construction of channel training dikes, resulted in higher sandbars as well as earlier and shorter spring and summer high water events in this portion of the range (Schramm 2004, pp. 306, 322; USACE 2013, p. 60). Such changes have reduced egg and chick flood-related mortality events, extended the nesting season, and increased re-nesting opportunities, all of which may explain the Interior least tern population increase in the Lower Mississippi River over the past four decades.

Anthropogenic habitats are also now known to provide significant opportunities for Interior least tern nesting and recruitment. High flows in the Platte River have historically peaked after most nesting has been initiated within the river channel, flooding nests and hatchlings, and limiting re-nesting opportunities (Farnsworth *et al.* 2017, p. 3587). Models now suggest least tern nesting success would only have occurred during 32 percent of years, an inadequate success rate to have maintained the species within the Platte River. It is now hypothesized that off-channel mining habitats were, and continue to be critical to the success of the Interior least tern in the central and lower Platte River (Farnsworth *et al.* 2017, p. 3588). Similar observations have been proposed for some reaches of the Missouri River (*e.g.,* Jorgensen 2009, entire). In Texas and Colorado, foraging and nesting habitats created by dam construction have provided for Interior least tern colonization of arid regions historically unsuitable for the species (Service 2013, pp. 26–27).

Although river channel engineering, including reservoirs, channelization, channel training structures, and bank stabilization, continues to alter the Interior least tern's habitats, as outlined above these habitat modifications have also created addition habitat opportunities for this species. The Interior least tern's known range has increased significantly: The reported numbers of nesting Interior least terns have expanded by almost an order of magnitude from fewer than 2,000 in 1985, to approximately 18,000 in 2005 (Lott 2006, p. 10), and currently more than 480 Interior least tern colonies are known to occur in four major drainages with 16 primary subpopulations (Lott *et al.* 2013, pp. 3616–3617). Most of these subpopulations have been stable or increasing over the past two decades (Lott *et al.* 2013, p. 3620; Lott and Sheppard 2017a, pp. 51–52). Thus, the negative impacts of river channel engineering on the tern appear to have been initially overestimated.

Loss of some historical Interior least tern summer nesting habitat likely occurred on a local or regional scale prior to listing; however, we have found no evidence that nesting habitat loss is currently limiting the Interior least tern on a rangewide scale. The Interior least tern continues to nest in all habitat types and drainages identified in 1985, and there is no evidence of significant regional decline or extirpation from any drainage since listing (Service 2013, p. 10). As previously noted, the Interior least tern uses a variety of anthropogenic habitats such as navigation systems, reservoirs, sand mines, and so forth, allowing the Interior least tern to not only survive, but also to thrive in some drainages, and even expand its range into areas without historical records.

While future conditions within some portion of the Interior least tern's range may deteriorate due to natural or anthropogenic changes (for example, climate change may increase the likelihood of heavy rainfall events) or human demands (*e.g.,* water extraction or removal in the western plains), the wide range of the Interior least tern and its ability to relocate to areas with better conditions reduce the magnitude of any threat (see *Effects of Climate Change* (Factor E), below). The Interior least tern is also well adapted to adjust to variability and changes in local habitat availability, quality, and quantity through metapopulation dynamics (see *Habitat Criteria,* above, for detail on metapopulation dynamics), enhanced by the species' longevity, dispersal capability, and ability to re-nest (*e.g.,* Lott *et al.* 2013, p. 3620; Lott and Sheppard 2017b, entire).

Predation

Interior least tern eggs, chicks, and adult individuals are susceptible to a wide variety of avian and terrestrial predators. During the 25-year monitoring period on the Missouri River, the greatest cause of egg loss has been predation (3 percent) (Aron *in litt.* 2012). On the Mississippi River, predation was the second highest cause of Interior least tern egg, chick, and adult mortality (Smith and Renken 1993, pp. 41–42).

Interior least terns are adapted to avoid predation because: (1) Their eggs and chicks are cryptically colored to avoid detection; (2) chicks exhibit ''freeze'' behavior when threatened; and (3) adults cooperate in alarm calls and attack flights on potential predators to the colonies (Thompson *et al.* 1997, p. 11). Terns may also abandon and relocate colonies due to predation pressure (Atwood and Massey 1988, p. 394).

The level and effect of predation can be locally high and significant in some colonies and in some years; however, the Interior least tern's adaptation to high levels of predation is demonstrated by the exponential growth of rangewide breeding numbers since listing in 1985. Interior least tern are long-lived, and current population trends indicate that sporadic local breeding failure due to predation or other causes is natural, and unlikely to be significant to the long-term stability of the rangewide population.

Effects of Climate Change

The distributions of many terrestrial organisms, including birds, are shifting in latitude or elevation in response to climate warming (Chen *et al.* 2011, pp. 1024–1025). Although population declines, apparently in response to climate change effects, have been reported for long distance migrant bird species in both Europe and North America, the negative effects of climate change at one life or migratory stage may be compensated at another stage, *e.g.,* by increased survival or reproduction on winter or breeding grounds (Knudson *et al.* 2011, p. 9).

The ability of migratory birds to cope with rapid climate change effects depends upon the rate of their adaptive response to the changes (Knudson *et al.* 2011, p. 12). Phenotypic plasticity (*i.e.,* the ability to shift dates of migration, breeding, fledgling, etc.) may allow rapid adaptation to climate change effects in some species (Charmantier *et al.* 2008, entire). While there is little information available on Interior least tern phenology (life cycle events and how they are influenced by climate variation), their adaptations to habitats controlled by stochastic events, along with high mobility and use of anthropogenic habitats, indicate that they will be resilient to predicted effects of climate changes.

Most climate change models predict increased extreme weather events (*i.e.,* floods and droughts) throughout the Interior least tern's breeding range (Lubchenco and Karl 2012, pp. 33–36). In the absence of clear knowledge of Interior least tern wintering distributions, potential effects of climate change on the bird when it is away from its breeding range are unknown. The Interior least tern is well adapted to cope with extreme hydrologic changes, and its habitat and productivity are closely tied with stochastic weather events. For example, while extreme high flow events may result in annual recruitment loss, such events are also the primary factor in creating, scouring, and maintaining high-quality sandbars where Interior least terns nest (Sidle *et al.* 1992, p. 134). On the other hand, extreme drought events that connect nesting islands to the mainland and result in increased predation of some Interior least tern colonies may be offset by higher abundance of available nesting areas, increased dispersal of reproductive efforts, and higher local recruitment rates of some colonies during low flow periods. Rooftop nesting birds are susceptible to catastrophic recruitment failure due to high summer temperatures (see

Watterson 2009, pp. 23–24; Nupp and Petrick 2010, pp. 5–7), and colonies on natural habitats may also become negatively affected by increasing summer temperatures. However, Interior least terns are dispersed along a wide latitudinal and longitudinal gradient of climate conditions and are unlikely to experience rangewide catastrophic recruitment failure due to high summer temperatures. Therefore, while Interior least tern colonies may be locally or regionally affected by changes in frequency and duration of extreme discharge events and droughts, or high temperatures, the dispersal of the Interior least tern over a wide geographical area encompassing a variety of latitudinal and longitudinal gradients, its long life, and its ability to move long distances indicate the tern's resilience to future patterns of predicted effects of climate change (Lott *et al.* 2013, p. 3623).

Habitat Loss and Fragmentation Related to Effects of Climate Change

Hof *et al.* (2011, p. 2990) noted that habitat destruction and fragmentation may reduce the likelihood of species surviving the effects of climate change, in part because smaller habitat patches sustain smaller populations. Habitat fragmentation can also impede the dispersal ability of species (Hof *et al.* 2011, pp. 2989–2990). While the Interior least tern has possibly been affected by loss of significant reaches of riverine habitat such as the lower Missouri River and lower Red River, it has also increased its longitudinal range by exploiting anthropogenic habitats such as reservoirs in central Texas, Colorado, and the Rio Grande, and industrial sites in the Wabash. Additionally, known population size has also increased by an order of magnitude since the range became fragmented, and genetic studies have demonstrated connectivity via gene flow within Interior least tern populations and between other least tern populations (Whittier *et al.* 2006, p. 179).

Invasive salt cedar and willow growth, decreases in annual rainfall, and overuse and depletion of aquifers, coupled with increased human water demands, are occurring in the Southern and Northern Plains rivers, possibly to the future detriment of Interior least tern habitat and forage availability in those drainages. However, increases in impervious surfaces (*e.g.,* artificial structures or compacted soils associated with human developments) may offset the negative effects of climate change in some watersheds, while human demands such as urban or industrial utilization, and irrigation, could either offset or exacerbate climate change effects in others (Caldwell *et al.* 2012, p. 2854). Based on current data, the wide longitudinal and latitudinal distribution of the Interior least tern will likely offset any potential localized or regional reduction in habitat quantity or quality, at least in part, by new opportunities in other portions of its range.

Decline of Fish Prey

Starvation of California least tern chicks has been reported due to the detrimental effects of El Niño on fish abundance (Massey and Fancher 1989, p. 354; Massey *et al.* 1992, p. 980). Decreased fish prey availability has been locally linked to reduced Interior least tern egg weights, clutch size, and chick weights, and may have influenced chick survival and fledgling rates (Dugger 1997, pp. 94–95). Declines in fish prey have been noted on the Missouri River (Stucker 2012, p. 21) and in some years on the Mississippi River (Dugger 1997, pp. 113–114). Fish prey abundance has also been linked to cyclic river conditions (*e.g.,* river stage during nesting season; Dugger 1997, p. 26). However, Interior least terns are strong flyers and capable of exploiting a large variety of aquatic habitats and fish species, including exotic species that may invade rivers such as Asian carp. These characteristics, coupled with the bird's long life, its ability to re-nest, and its ability to relocate to more productive areas, enable it to cope with local periodic cycles of low fish prey abundance.

Other Factors

Thompson *et al.* (1997, pp. 15–17) and others have documented the mortality of least tern eggs, chicks, and adults due to a number of additional factors, including flooding of nesting areas during heavy summer rains and high water events, exposure to pesticides and other contaminants (of coastal least tern; Jackson and Jackson 1985, p. 58), burial of eggs by sand, hailstorms, heat, cold, sand spurs (a common grass in this habitat with prickly burrs that stick to passing animals), fire ants, fireworks, airboats, off-road vehicles (ORVs), and human recreationists. Cattle trampling of Interior least tern eggs and chicks has been documented in the Red River (Hervey 2001, pp. 7–8). Nupp (2012, pp. 7–8) documented mortality of eggs and chicks from heat exposure in rooftop colonies.

Sampling for contaminants in Interior least terns has been concentrated in the Missouri River drainage, where sub-lethal amounts of arsenic, mercury, chlorinated hydrocarbon, selenium, and polychlorinated biphenyl (PCBs) have been documented in individuals (Fannin and Esmoil 1993, pp. 153–157; Ruelle 1993, pp. 162–170; Allen *et al.* 1998, pp. 358–364); however, no incidences of death or decreased fitness of Interior least terns due to contaminants have been reported to date. ORV impacts have been documented in most drainages where Interior least terns nest (Red, Mississippi, Arkansas, Ohio, and Missouri river drainages). However, ORV access to nesting areas occurs only occasionally because it is usually limited to situations where low flow conditions allow such access. While other threats (*i.e.,* sand storms, hail storms, heat, cold, sand spurs, fire ants, fireworks, airboats, etc.) may increase in frequency and severity in some portions of the Interior least tern's range, most are site-specific and sporadic, or otherwise limited in scope.

Interior least tern mortality occurs locally throughout the range due to a variety of natural or manmade factors. However, the wide distribution of the species, its current high numbers, its long life span, and its ability to relocate and re-nest make the Interior least tern resilient to occasional or periodic local sources of mortality, as well as potential effects of climate change. The increase in range and population size since 1985 indicates that sources of mortality to localized colonies are compensated by these traits of resiliency, as well as by the potential of high recruitment rates in other Interior least tern colonies or populations.

Cumulative Effects

Our analysis has identified no rangewide threats or stressors with significant effects to all breeding colonies or subpopulations. Monitoring data show some breeding colonies or subpopulation segments may decline or relocate due to localized stressors (*e.g.,* predation, disturbance), regional stressors (*e.g.,* droughts, floods), or their cumulative effects. Variations in colony locations, size, or subpopulation densities, however, are a characteristic of metapopulation dynamics, and have not been shown to threaten the rangewide status of the Interior least tern over an extended area. Additionally, the increases documented in the abundance and distribution of the Interior least tern, since it was listed in 1985, do not support a conclusion that any of these stressors cumulatively pose a threat to the Interior least tern.

Future Conditions and Species Viability

Species viability, or its ability to survive long term, is related to its ability

to withstand catastrophic population and species-level events (redundancy), to adapt to changing environmental conditions (representation), and to withstand disturbances of varying magnitude and duration (resiliency). The viability of a species is also dependent on the likelihood of new stressors or continued threats now and in the future that act to reduce a species' redundancy, representation, and resiliency.

Redundancy of populations is needed to provide a margin of safety for a species to withstand catastrophic events. Current information and observed trends since the species was listed in 1985 indicate that redundancy of the Interior least tern is currently ensured by the existence of hundreds of breeding colonies in multiple drainages across a wide latitudinal and longitudinal range (see *Current Distribution and Abundance,* above), and within a variety of natural and anthropogenic habitats (see *Nesting Habitat and Behavior,* above).

Adequate representation ensures that the species' adaptive capabilities are conserved, specifically through its representation across all historical ecological settings, and through preservation of the genetic diversity of the species. The Interior least tern was historically known from, and continues to occur in, two main natural habitat types: Large river sandbars and salt plains. While the salt plains populations were and continue to be historically localized in small portions of the Southern Plains, the sandbar populations occurred across a large latitudinal and longitudinal gradient, encompassing multiple river and stream orders, and a wide variety of climatic conditions. Little evidence of genetic structure has been found within the Interior least tern population (Draheim *et al.* 2010, p. 813), indicating high genetic connectivity between drainage subpopulations. There also appears to be high genetic connectivity between California, Interior, and eastern least terns (Draheim *et al.* 2010, p. 816). For these reasons, the Interior least tern appears to have adequate genetic and ecological representation to allow for adaptability to environmental changes.

Resiliency allows a species to recover from periodic or occasional disturbance. Resilience of individual and mated terns is demonstrated by their ability to relocate and re-nest when habitat conditions deteriorate, or when disturbance by humans or predators becomes severe. Interior least tern metapopulation dynamics allow subpopulations and colonies to respond to changing habitat conditions, including their ability to exploit a variety of anthropogenic habitats that were not historically available (Lott *et al.* 2013, p. 3623). This resilience is augmented by the long life span and strong flight abilities of Interior least terns, and by the prospecting behavior (exploratory dispersal) of young birds across the landscape (Boyd and Thompson 1985, p. 405; Lott 2012, p. 12; Shigeta *in litt.* 2014, entire).

In addition to this review of redundancy, representation, and resiliency, which indicates a high likelihood of future viability for the Interior least tern, the Service worked with multiple partners to develop a habitat-driven, rangewide population model for the tern in order to consider status and population dynamics with and without continued management at local, regional, and rangewide scales (Iglay *et al.* 2012, entire; Lott and Sheppard 2017a, b, entire). The model, known as TernPOP (Lott and Sheppard 2017a, b, entire), applied simulation analyses that were designed to explore stakeholder-defined scenarios of potential future habitat change or changes in management. Fifty-five discrete scenarios spanned the geographic range of the Interior least tern and covered the topics of (1) sandbar nesting habitat loss, (2) habitat degradation, (3) changes in predator management programs, and (4) deliberate efforts to create mid-channel nesting sandbars for the tern. All 55 scenarios were evaluated relative to a ''No Action'' scenario. Thirty replicates of the model were run for 30 years, and population growth (or decline) rates were calculated for each replicate (and then averaged across replicates) at the spatial scales of scenario area, subpopulation, drainage population, and the entire listed population of the Interior least tern. Nearly all scenarios of regional management or habitat loss, even some viewed as implausible in the foreseeable future (*e.g.,* loss of 50 percent of all sandbars on the Lower Mississippi River), had minimal effects on population growth rates calculated across the 30-year period at the spatial scales of subpopulation, population, and range (Lott and Sheppard 2017b, pp. 42–61). In most cases, severe habitat degradation in even relatively large areas was insufficient to change the baseline population increases observed during ''No Action'' scenarios to population declines, beyond very local areas. Therefore, quantitative evaluation of population model outputs are similar to and support prior qualitative observations that Interior least tern populations are resilient to many potential changes in habitat conditions across their large river network (Lott *et al.* 2013, pp. 3622–3623, Lott and Sheppard 2017b, pp. 59–62).

Based upon the analysis presented above, the Interior least tern cannot be considered to be conservation reliant because it has shown to be able to adapt to and exploit substantial habitat changes throughout its range. Although some (10 percent) local colonies and peripheral population segments of the Interior least tern may require management for long-term persistence their success or failure within individual sites is not essential to the continued existence of the Interior least tern. Viability of the Interior least tern is assured by its resilience, representation, and redundancy throughout the remainder of its range. The tern will continue to be conserved by habitat management programs over more than 80 percent of its range (see *Habitat Criteria under Recovery section, above*).

Inadequacy of Existing Regulatory Mechanisms

The Interior least tern is covered by the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703 *et seq.*). The MBTA makes it unlawful, at any time and by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof (16 U.S.C. 703(a)). 16 U.S.C. 704(a) states that the Secretary of the Interior (Secretary) is authorized and directed to determine when, to what extent, if at all, and by what means, the take of migratory birds should be allowed, such as for educational, scientific, and recreational purposes, and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that any take is compatible with the protection of the species.

When the Interior least tern was listed in 1985, the listing rule (50 FR 21784) noted that while the MBTA protected migratory birds from harm or harassment, it did not provide a mechanism to address habitat threats. It concluded, therefore, in the absence of protection under the Endangered Species Act, the MBTA and other existing regulatory mechanisms were inadequate to prevent deterioration to habitats of the Interior least tern due to channel engineering. As noted above, however, the effects of channel engineering on the species may have been more beneficial than detrimental, at least in portions of the range (*see Habitat Loss and Curtailment of Range, above*).

The protection, restoration, conservation, and management of ecological resources within the Interior least tern's range have been broadly enhanced through Executive Orders and Federal regulations since the species was listed. These include provisions emphasizing the protection and restoration of ecosystem function and quality in compliance with existing Federal environmental statutes and regulations (*e.g.,* under National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), Clean Water Act (CWA), and MBTA) and endorsing Federal efforts to advance environmental goals. Recent water resources authorizations have also enhanced opportunities for USACE and other Federal agency involvement in studies and projects to specifically address objectives related to the restoration of ecological resources (*e.g.,* section 1135 of the Water Resources Development Act of 1986, as amended, 33 U.S.C. 2201 *et seq.*).

Executive Order (E.O.) 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds; 66 FR 3853), enacted in 2001, requires all Federal agencies to use their authorities and conduct their actions to promote the conservation of migratory bird populations. Actions authorized by E.O. 13186 include: (1) Avoiding and minimizing adverse impacts to migratory birds; (2) habitat restoration and enhancement, and preventing pollution or detrimental alteration of migratory bird environments; (3) designing habitat and population conservation principles, measures, and practices into agency plans and planning processes; (4) promoting research and information exchange, including inventorying and monitoring; and (5) ensuring full consideration under NEPA of migratory birds such as the Interior least tern. These concepts have been incorporated by the USACE into its Environmental Operating Principles (USACE 2019b and 2019c), and are being implemented within the jurisdictional waters inhabited by the Interior least tern. In the absence of the Act's protections, E.O. 13186 and USACE operating principles and programs will continue to provide for protection and management of the Interior least tern and its habitats (see *Habitat Criteria,* above).

The Civil Works Ecosystem Restoration Policy of 1999 (CWERP) (USACE ER 1165–2–501) identifies ecosystem restoration as one of the primary missions of the USACE Civil Works program. This policy requires a comprehensive examination of the problems contributing to ecosystem degradation, and the development of alternative means for their solution, with the intent of partially or fully reestablishing the attributes of a naturalistic, functioning, and self-regulating system.

Implementation of actions authorized under E.O. 13186 and CWERP are discretionary, and contingent upon opportunity and annual appropriations and other budgetary constraints. However, many Federal action agencies now have an extensive history of managing and restoring Interior least tern habitats (some more than two decades) in compliance with non-discretionary requirements of section 7(a)(2) of the Act (in the Missouri, Red, Arkansas, middle Mississippi Rivers), as well as discretionary components of section 7(a)(1) of the Act, E.O. 13186, and CWERP (in the Lower Mississippi River). As a result, many conservation measures have become standard operating practices (see *Recovery,* above).

Interior least terns are listed as endangered in the following 16 of the 18 States where they occur: South Dakota, Nebraska, Colorado, Iowa, Illinois, Missouri, Kansas, Mississippi, Arkansas, Louisiana, Kentucky, Tennessee, Indiana, New Mexico, Montana, and Texas. Many of the States noted above actively manage Interior least terns, including seasonal posting to prevent disturbance of nesting areas (*e.g.,* Kentucky, Kansas); facilitating cooperative partnerships to protect and manage the bird (*e.g.,* Nebraska, Indiana); developing State management plans for the Interior least tern (*e.g.,* South Dakota; Aron 2005); conducting site-specific research (*e.g.,* Mississippi); and participating in multi-agency planning, management, and monitoring programs (*e.g.,* Missouri River Recovery Implementation Committee).

Interior least tern protection under State laws may continue following Federal delisting. This proposed rule, if made final, might prompt some to several States to follow the final federal delisting determination and remove the Interior least tern from their endangered species lists, but in other States, the tern may continue to meet the definition of State endangered. Regardless of Federal laws, most State laws protect native wildlife (including the Interior least tern) from take, and require State permits, in addition to Federal permits, to collect, harm, or harass migratory bird species such as the Interior least tern.

Activities that may adversely affect the Interior least tern and its habitats will also continue to be subject to numerous regulatory mechanisms, including the MBTA, CWA, Fish and Wildlife Coordination Act (FWCA; 16 U.S.C. 661 *et seq.*), and NEPA. Federal actions to conserve and enhance Interior least tern habitats are now authorized by Executive Orders and Federal regulations enacted since the Interior least tern was listed in 1985. Additionally, post-delisting habitat management commitments by USACE encompass about 80 percent of the Interior least tern population (see

Recovery, above). Therefore, we conclude that the existing regulatory mechanisms are adequate to protect the Interior least tern and address stressors to this species absent protections under the Act.

Proposed Determination

Since its 1985 listing under the Act, the Interior least tern has shown an ability to adapt to changing environmental conditions caused by both human and natural disturbances. The Interior least tern nesting population encompasses hundreds of colonies in 18 States throughout the Interior Basin, from Montana southward through North Dakota, South Dakota, Nebraska, Colorado, Iowa, Kansas, Missouri, Illinois, Indiana, and Kentucky to eastern New Mexico, Oklahoma, Arkansas, Tennessee, Texas, Louisiana, and Mississippi (see supplemental documents at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0082). Therefore, the Interior least tern is highly redundant and resistant to future catastrophic events. Its representation is ensured by its continued occurrence within all known historical habitats (*i.e.,* Salt Plains, multiple river and stream orders) across a large latitudinal and longitudinal gradient and a wide variety of climatic conditions. Interior least tern resilience is demonstrated by metapopulation dynamics, its ability to adapt to multiple natural and anthropogenic conditions, and by evidence of high genetic connectivity between drainage subpopulations. Because the Interior least tern has been considered to be increasing and self-sustaining since listing (34 years), and consists of a relatively large number of individuals with demonstrated high redundancy, representation, and resilience, we expect it to persist into the future.

We have carefully assessed the best scientific and commercial information available regarding the threats faced by the Interior least tern in developing this proposed rule. Our analysis found an increase in the abundance, number of breeding sites, and range of the Interior least tern, resiliency to existing and potential threats, active habitat management and the implementation of beneficial management practices, and changes in existing regulatory mechanisms that are protective of migratory bird habitats. Known threats at the time of listing—habitat loss and curtailment of range (Factor A) and predation (Factor C)—have been reduced or adequately managed, and we have analyzed possible new threats (Factor E) and determined that they are not significant threats to the Interior least tern. Existing State and Federal regulatory mechanisms (Factor D) are adequate to protect the tern from the reduced threats. The net effect of current and predictable future stressors to the species, after considering applicable conservation measures and the existing regulatory mechanisms, are not sufficient to cause the Interior least tern to meet the definition of an endangered or threatened species. We find that the Interior least tern has recovered so that it no longer meets the definition of an endangered species or a threatened species under the Act throughout its range.

Determination of Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range (SPR). Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language.

Having determined that the Interior least tern is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in an SPR. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the species' range for which there is substantial information indicating that: (1) The portion may be significant; and, (2) the species may be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. We emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the SPR prongs: (1) The portion is significant and (2) the species is, in that portion, either in danger of extinction or likely to become so in the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both SPR prongs would the species warrant listing because of its status in a significant portion of its range.

At both stages in this process—the stage of screening potential portions to identify any portions that warrant further consideration and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the ''significance'' question or the ''status'' question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

For the Interior least tern, we chose to evaluate the status question (*i.e.,* identifying portions where the Interior least tern may be in danger of extinction or likely to become so in the foreseeable future) first. To conduct this screening, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. If a species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range and the threats to the species are essentially uniform throughout its range, then the species would not have a greater level of imperilment in any portion of its range than it does throughout all of its

range and therefore no portions would qualify as an SPR.

We examined the following threats: Habitat loss, curtailment of range, predation, and inadequacy of regulatory mechanisms, including cumulative effects. We found no concentration of threats in any portion of the Interior least terns range at a biologically meaningful scale. Since we found no portions of the species' range where threats are significantly concentrated or substantially greater than in other portions of its range, we did not identify any portions where the species may be in danger of extinction or likely to become so in the foreseeable future. Therefore, no portions warrant further consideration through a more detailed analysis, and the species is not in danger of extinction or likely to become so in the foreseeable future in any significant portion of its range. Our approach to analyzing SPR in this determination is consistent with the court's holding in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018).

Our review of the best available scientific and commercial information indicates that the Interior least tern is not in danger of extinction nor likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, we find that the Interior least tern does not meet the definition of an endangered species or a threatened species under the Act.

Conclusion

We have determined that none of the existing or potential threats, either alone or in combination with others, is likely to cause the Interior least tern to be in danger of extinction throughout all or a significant portion of its range, nor is any likely to cause the species to become an endangered species within the foreseeable future throughout all or a significant portion of its range. On the basis of our evaluation, we conclude that, due to recovery, the Interior least tern is not an endangered or a threatened species. We therefore propose to remove the Interior least tern from the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11(h).

Effects of This Proposed Rule

If we adopt this rule as proposed, the prohibitions and conservation measures provided by the Act would no longer apply to the Interior least tern. Federal agencies would no longer be required to consult with us under section 7 of the Act to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the Interior least tern's continued existence. The provisions of the MBTA will remain in place. The MBTA protects the bird and its parts, nests, and eggs from taking and trade; and Federal permits are required for certain actions like scientific collecting and relocation (see *Inadequacy of Existing Regulatory Mechanisms,* above).

If adopted, this rule would not affect the Interior least tern's status as an endangered or threatened species under State laws or suspend any other legal protections provided by State law. States may have more restrictive laws protecting wildlife, and these will not be affected by this Federal action. However, this proposed rule, if made final, may prompt some States to remove protection for the Interior least tern under their State endangered species laws.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to monitor for not less than 5 years, the status of all species that are delisted due to recovery. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as endangered or threatened is not again needed. If at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. At the conclusion of the monitoring period, we will review all available information to determine if relisting, the continuation of monitoring, or the termination of monitoring is appropriate.

Section 4(g) of the Act explicitly requires that we cooperate with the States in development and implementation of PDM programs. However, we remain ultimately responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation after delisting.

We have prepared a draft PDM plan for the Interior least tern (Service 2017). The draft plan:

(1) Summarizes the Interior least tern's status at the time of delisting;

(2) Defines thresholds or triggers for potential monitoring outcomes and conclusions;

(3) Lays out frequency and duration of monitoring;

(4) Articulates monitoring methods, including sampling considerations;

(5) Outlines data compilation and reporting procedures and responsibilities; and

(6) Proposes a PDM implementation schedule, including timing and responsible parties.

The draft PDM plan is availability for public review at *http://www.regulations.gov* under Docket Number FWS–R4–ES–2018–0082. Copies can also be obtained from the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). We seek information, data, and comments from the public regarding the Interior least tern and the PDM plan.

Required Determinations

Clarity of the Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that we do not need to prepare an environmental assessment or environmental impact statement, as defined in the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are lands of 20 different tribes within the range of the listed Interior least tern that may be affected by this proposal. We intend to contact each of these Tribes during the open comment period for this proposed rule so they may fully evaluate any potential impact of this proposed rule and the draft PDM plan.

References Cited

A complete list of references cited is available on *http://www.regulations.gov* under Docket Number FWS–R4–ES–2018–0082, or upon request from the Field Supervisor, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this document is Paul Hartfield of the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Tern, least [Interior DPS]'' under ''BIRDS'' from the List of Endangered and Threatened Wildlife.

Dated: August 8, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director for the U.S. Fish and Wildlife Service.

[FR Doc. 2019–23119 Filed 10–23–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.: 191016–0065]

RIN 0648–BJ07

Fisheries of the Exclusive Economic Zone off Alaska; IFQ Program; Modify Medical and Beneficiary Transfer Provisions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to modify the medical and beneficiary transfer provisions of the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut and sablefish fisheries. This proposed rule is intended to simplify administration of the medical and beneficiary transfer provisions while promoting the long-standing objective of maintaining an owner-operated IFQ fishery. This proposed rule would also make minor technical corrections to regulations for improved accuracy and clarity. This proposed rule is intended to promote the goals and objectives of the IFQ Program, the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, and other applicable laws.

DATES: Submit comments on or before November 25, 2019.

ADDRESSES: You may submit comments, identified by docket number NOAA–NMFS–2019–0069, either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0069,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (referred to as the ''Analysis'') and the Categorical Exclusion prepared for this proposed rule are available from *http://www.regulations.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted by mail to NMFS at the above address; by email to *OIRA_Submission@omb.eop.gov;* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and under the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to

approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, currently the Department of Homeland Security.

The Halibut Act, at section 773c(c), also provides the Council with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority in the development of subsistence halibut fishery management measures, codified at 50 CFR 300.65, and the limited access program for charter operators in the charter fishery, codified at 50 CFR 300.67. The Council also developed the IFQ Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773c of the Halibut Act and section 303(b) of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

Background

The following background sections describe (1) the IFQ Program, (2) the IFQ medical transfer provision, (3) the IFQ beneficiary transfer provision, and (4) the appeals process.

The IFQ Program

The commercial halibut and sablefish fisheries in the GOA and the BSAI management areas are managed under the IFQ Program that was implemented in 1995 (58 FR 59375, November 9, 1993). The Council and NMFS developed the IFQ Program to resolve the conservation and management problems commonly associated with open access fisheries. The preamble to the proposed rule published on December 3, 1992 (57 FR 57130), describes the background issues leading to the Council's initial action recommending the adoption of the IFQ Program.

The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding quota share (QS) in specific management areas. The IFQ Program allocates QS annually, and each year that QS yields an exclusive harvest privilege, an annual IFQ permit, among participants in the fixed gear commercial fishery. An IFQ permit is expressed in pounds and is based on the amount of QS held in relation to the total QS pool. Each year, NMFS issues IFQ to each QS holder to harvest a specific percentage of either the total allowable catch (TAC) in the sablefish fishery or the annual commercial catch limit in the halibut fishery. In addition to being specific to sablefish or halibut, QS and IFQ are designated for specific geographic areas of harvest (commonly known as regulatory areas), a specific vessel operation type (catcher vessel or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut (vessel category). Section 2.2 of the Analysis (see **ADDRESSES**) provides additional information on the sablefish and halibut IFQ Program.

The Council and NMFS designed the IFQ Program to provide economic stability to the commercial halibut and sablefish fisheries and retain the character and distribution of the fishing fleets as much as possible. The IFQ Program includes several provisions, such as ownership caps and vessel use caps, to protect rural coastal community participants, part-time participants, and entry-level participants that could be adversely affected by excessive consolidation. The IFQ Program also includes other restrictions intended to slow consolidation of QS and prevent the fishery from being dominated by large vessels or by any particular vessel class.

The Council and NMFS created the provisions of the IFQ Program to support the conservation and management objectives of the Magnuson-Stevens Act and the Halibut Act while retaining the ''owner-operator'' character of the fishing fleets as much as possible. The three main exceptions to the owner-operator requirement are for initial issuees of QS to be able to use hired masters to fish the IFQ resulting from their QS; a medical transfer provision that allows QS holders with approved medical conditions to use hired masters for the IFQ derived from their QS if they are not able to harvest their own IFQ; and a beneficiary transfer provision that provides for temporary annual transfers of IFQ to a hired master for up to three years after a QS holder's death. Since implementation of the IFQ Program, the Council has recommended and NMFS has implemented many amendments to revise the IFQ Program to maintain the owner-operator character of the IFQ fishery. This proposed rule would not modify existing regulations that apply to initial issuances of QS, but would modify the medical and beneficiary transfer provisions.

Medical Transfer Provision

The IFQ Program currently includes a medical transfer provision that allows QS holders of catcher vessel QS (referred to as class B, C, and D QS shares) who are not otherwise eligible to use a hired master (*i.e.,* persons who are not initial issuees of QS) to temporarily transfer (lease) their annual IFQ to another individual if the QS holder or an immediate family member has a temporary medical condition that precludes the QS holder from fishing (72 FR 44795, August 9, 2007). This provision was intended to provide a mechanism for QS holders with a temporary medical condition, or caring for an immediate family member with a medical condition, that would preclude the QS holder from fishing during a season to transfer their annual IFQ to another qualified individual. In recommending this medical transfer provision, the Council and NMFS balanced the objective to limit long-term leasing of QS to promote an owner-onboard fishery with its recognition that a medical transfer provision would provide a mechanism for QS holders to retain their QS during bona fide medical hardships.

Prior to implementation of this provision in 2007, a QS holder with a medical condition was required to divest of his or her QS or allow his or her IFQ to go unfished during years he or she could not be on board the vessel. Medical transfers were not intended to be a mechanism for persons unable or unwilling to participate in the fishery as an owner onboard to continue to receive economic benefits from their QS holdings, but were intended to address legitimate medical conditions that precluded participation (72 FR 44795, August 9, 2007).

To limit potential for repeated, long-term, or illegitimate use of the medical transfer provision, the current provision's application is limited (1) to individuals who are not otherwise eligible to use hired masters; (2) to IFQ derived from catcher vessel QS held by the applicant; (3) to include a requirement for certification by specific types of medical providers who must describe the condition (and the care required if caring for a immediate family member); (4) to require verification of the inability of the QS holder to participate in IFQ fisheries; and (5) a use cap of 2 years in a 5-year period.

An applicant for a temporary medical transfer must document the QS holder's, or immediate family member's, medical condition by submitting an affidavit to NMFS from a licensed medical doctor, an advanced nurse practitioner, or a primary community health aide, that describes the medical condition affecting the applicant (or applicant's immediate family member) that prevents participation in the fishery for the calendar year. In the case of an immediate family member's medical emergency, the affidavit must describe the necessity for the QS holder to care for an immediate family member who suffers from the medical condition. The QS holder must resubmit the application on an annual basis if his or her medical condition, or that of an immediate family member, continues.

Beneficiary Transfer Provision

The beneficiary transfer provision allows for temporary annual transfers of catcher vessel IFQ to be approved for up to three years after the QS holder's death. In 1996, NMFS amended the IFQ Program regulations to allow for a temporary transfer of QS to surviving spouses of deceased QS holders (61 FR 41523, August 9, 1996). In 2000, a final rule (65 FR 78126, December 14, 2000) expanded the existing survivorship transfer provisions in 50 CFR 679.41(k) to include an immediate family member designated as beneficiary to whom the survivorship transfer privileges would extend in the absence of a surviving spouse. This transfer is intended to benefit the surviving spouse, or an immediate family member designated by the QS holder, for a limited period of time.

To transfer QS under this beneficiary provision, the surviving spouse, or the designated beneficiary named on the QS/IFQ Beneficiary Designation Form by the QS holder, submits an Application for Transfer of QS/IFQ. These forms are processed by NMFS Restricted Access Management (RAM) Program.

NMFS may approve an application to transfer QS to the surviving spouse or designated beneficiary, unless a contrary intent is expressed by the decedent in a will and if sufficient evidence has been provided to verify the death of the individual. Typically, NMFS requires a copy of the death certificate and the decedent's will to accompany a QS transfer. Legally, for purposes of transferring QS, a beneficiary identified in a will overrides any beneficiary designated on the form submitted to NMFS. NMFS allows the transfer of IFQ resulting from the QS transferred to the beneficiary by right of survivorship for a period of three years following the death of the QS holder. After the 3-year period expires, the spouse or designated beneficiary must either qualify to hold the QS or transfer the QS. Currently, the program allows the QS holder to designate a beneficiary that can either be the surviving spouse, or in the absence of a surviving spouse, an immediate family member.

Appeals Process

If NMFS denies a transfer under the existing medical and beneficiary transfer provisions, a QS holder may appeal this denial through the National Appeals Office (NAO). If a claim is submitted that is inconsistent with the information required in regulations or if the transfer requested is beyond the number of years allowed, the QS holder would have the burden of proving that the submitted claim is correct. NMFS would not accept claims that are inconsistent with the official record, unless they are supported by clear, written documentation.

NMFS issues an initial administrative determination (IAD) on behalf of the Regional Administrator to deny a medical or beneficiary transfer. If this happens, a QS holder may file an appeal. Prior to 2014, the procedure for appealing an IAD was to submit the appeal directly to the NMFS's Alaska Office of Administrative Appeals and was described at § 679.43. However, NMFS centralized the appeals process to be located in the National Appeals Office (NAO), which operates out of NMFS's headquarters in Silver Spring, Maryland as described at 15 CFR part 906 (79 FR 7056, February 6, 2014).

Need for This Proposed Rule

As part of the 20-year review of the IFQ Program conducted in 2016, NMFS identified several problems administering the medical and beneficiary transfer provisions discussed in Section 1.3 of the Analysis. Challenges with administering the medical transfer provision include: (1) The current definition of a ''certified medical professional'' does not include commonly used medical care providers such as chiropractors or providers located outside of the United States, and (2) difficulties enforcing the limitation on the use of the medical transfer provisions to two years of the previous five years for the same medical condition.

Section 2.4.1 of the Analysis indicates that NMFS regularly receives medical transfer applications that include attestations from health care providers such as chiropractors or from health care providers located outside of the United States. Because these persons may not meet the current definition of a ''certified medical professional'' as defined in regulation, NMFS has to review these claims and make evaluations of the credentials of the professional qualifications. This review increases administrative costs and uncertainty for medical transfer applicants.

As noted earlier in this preamble, the medical transfer provisions were intended for limited medical conditions and not to address long-term chronic conditions. Section 2.4.1 of the Analysis indicates that some QS holders have used the medical transfer provision for the majority or all of the years during which medical leasing has been allowed. The repetitive use of the provision may indicate that a select group of shareholders is using it as a means of bypassing the owner-on-board provision altogether. Furthermore, some QS holders may be using the medical lease provision for chronic conditions, from which recovery is unlikely, although the provision was intended to provide relief from fishing for IFQ participants in emergency hardship situations. Challenges with the beneficiary transfer provision include the lack of a regulatory definition of an ''immediate family member'' and the fact that an estate is not listed in regulations as a representative that is eligible to receive IFQ held by the decedent.

Section 2.5.1 of the Analysis states that NMFS has received beneficiary transfer applications from persons who do not meet a commonly used definition of an immediate family member, which generally includes a person's parents, spouse, siblings, and children. This traditional definition for making determinations regarding transfer eligibility under the designated beneficiary transfer provision is narrower than many State and Federal beneficiary definitions currently applied in a variety of government programs. Since the current surviving heir regulations were implemented, the definition of immediate family has changed in many State and Federal jurisdictions, and now includes other persons connected to a QS holder by birth, adoption, marriage, civil partnership, or cohabitation. NMFS and IFQ Program participants would benefit from clarification for this provision's administration. NMFS has received requests from QS holders and their beneficiaries to clearly define immediate family member.

Section 2.5.1 of the Analysis states that NMFS regularly receives QS transfer requests from a decedent's

estate representative. However, regulations do not currently authorize a QS holder's estate to apply to transfer the associated IFQ resulting from a decedent's QS. This can create additional challenges when attempting to resolve the distribution of assets and can limit an heir's ability to receive the benefits from a decedent's QS.

This proposed rule would clarify the administration of the medical transfer and beneficiary transfer provisions. The proposed changes would benefit both IFQ Program participants, their beneficiaries, and NMFS by providing clear standards, reducing potential inconsistencies with other definitions used for other state or Federal programs, and reducing administrative costs and burdens associated with existing regulatory provisions.

Proposed Rule

This section describes this proposed rule, its anticipated effects on fishery participants and the environment, and the proposed changes to current regulations at 50 CFR part 679. The Council recommended and NMFS proposes the following changes to the medical and beneficiary transfer provisions of the IFQ Program.

Medical Transfer Provision

This proposed rule would make several changes to the medical transfer provision that include changes to: (1) Remove the definitions for ''Advanced nurse practitioner,'' ''Licensed medical doctor,'' and ''Primary community health aide;'' and add the definition for ''Health care provider,'' and (2) modify § 679.42(d)(2) to allow medical transfers for any medical condition and to allow the transfers to be used for 3 of 7 most recent years.

The first proposed change would broaden the definition of who may attest to a medical condition of the QS holder, or his or her immediate family member, that precludes a QS holder from participating in the IFQ fisheries to include a broad range of health care providers. This would increase flexibility for a QS holder when selecting a health care provider for treatment and verifying the condition on the medical transfer application. Defining a certified medical professional is important because it sets the boundaries for who is allowed to attest that a QS holder is not physically able to fish his or her IFQ. This proposed rule would broaden the current definition while limiting the persons to those who are licensed or certified by the state or country in which they practice. The current definition prohibits commonly used licensed medical providers, such as chiropractors, from attesting to medical conditions they treat. This creates an additional administrative burden for NMFS and the person seeking the medical transfer as credentials have to be evaluated and reviewed. This proposed rule also would allow health care providers outside the United States to sign the medical transfer form. NMFS expects that any expansion of the definition over the status quo would be beneficial to QS holders, or their immediate family member, who need medical care and would lead to less rejections of applications based solely on the specialty of the health care provider.

The second proposed change would remove the administrative step for NMFS staff to differentiate medical conditions and reduce the information required to be submitted to process a medical transfer application. This provision would apply the medical transfer limits such that a QS holder could only use the medical transfer provision during 3 of the 7 most recent years. This provision would not require NMFS staff to verify the nature of a specific medical condition and whether it is materially different from other medical claims, but only to verify that a medical condition exists and to apply the transfer provisions for a specific period of time. NMFS would apply this provision to applications of medical transfers that are received after the effective date of this rule, if approved.

The Council recommended, and NMFS proposes, extending the number of years a medical transfer could be used from 2 of the 5 most recent years to 3 of the 7 most recent years, which would increase flexibility for those who need it. A year is defined as a calendar year, which is how IFQ permits are currently issued. Under the proposed revision, NMFS would begin to measure a 7-year period that would begin during the first calendar year that a medical transfer of IFQ is approved. After the third year a medical transfer is approved under the medical transfer provision, QS holders would not be able to transfer their IFQ for any medical condition for the remainder of the 7-year period that began the first calendar year the medical transfer of IFQ was approved. Section 2.4.4 of the Analysis provides additional detail on the range of years during which a medical transfer could apply and additional rationale for the provisions selected in this proposed rule.

Any time the medical transfer is used by a QS holder during a year it counts as one year of usage, regardless of the portion of the QS holdings the person transferred. NMFS would implement this provision in this manner because the intent of the medical transfer provision is to provide a benefit for a person based on that person's medical condition and is not intended to apply to specific QS units. In most cases, NMFS anticipates that a person seeking a medical transfer will seek to transfer all of the QS that they hold after a medical condition requires transfer. However, if a person does not transfer all of his or her QS during a year, NMFS would still count the first year that any medical transfer of any QS occurs as the first year of the transfer. For example, if a QS holder held QS in two regulatory areas (*e.g.,* halibut regulatory Area 2C and Area 3A) and only used the medical lease provision for the QS in one regulatory area (*e.g.,* Area 2C) it would count as one year the medical transfer was used for all QS holdings. Only medical transfers that occur after the effective date of the final rule would count towards the limit. All IFQ participants currently using the medical transfer provision would be able to use all 3 of the 7 most recent years after this final rule's effective date, if approved, regardless of how many years they have used it prior to rule implementation.

This proposed rule would remove the current regulatory requirements at § 679.42(d)(2)(iii)(F) that require that the application describe the medical condition affecting the applicant or applicant's immediate family member. This proposed change would reduce the requirement that medical information would need to be reviewed by NMFS staff because it would no longer be required to review a medical transfer. Instead, the applicant would be only required to submit a statement of the condition affecting the applicant or the applicant's immediate family member. NMFS staff would still review all applications to ensure they are filled out entirely with the correct documentation.

This proposed rule would also remove requirements at § 679.42(d)(2)(iii) that an applicant provide his or her social security number because such information is no longer required to process transfer applications.

This proposed rule would also update associated cross references at § 679.42 to ''Advanced nurse practitioner,'' ''Licensed medical doctor,'' and ''Primary community health aide;'' to ''Health care provider.''

When considering this issue, the Council recommended, and NMFS proposes, that it would be appropriate to only count transfers that are approved after the effective date of these proposed regulations. This would treat all QS

holders the same should the new regulations be implemented. Counting medical transfers that have already been approved could eliminate the ability of some QS holders to be eligible to use the provision in the near future.

Beneficiary Transfer Provision

This proposed rule would make two changes to the beneficiary transfer provision to: (1) Define ''immediate family member'' at § 679.2; and (2) modify § 679.41 to add estate representative to the list of people to receive IFQ held by the decedent for up to three years. These changes would improve and simplify the process of approving beneficiary transfers without causing undue negative impacts on a QS holder's estate planning.

This proposed rule would define ''immediate family member'' using a current definition established by the U.S. Office of Personnel Management (OPM) that includes a more current definition of the range of relationship that comprise an immediate family member and provides greater flexibility to QS holders and their beneficiaries. The OPM definition is commonly used in Federal programs that provide benefits to immediate family members and would include persons connected to the QS holder by birth, adoption, marriage, civil partnership, or cohabitation, such as grandparents, great-grandparents, grandchildren, great-grandchildren, aunts, uncles, siblings-in-law, half-siblings, cousins, adopted children, step-parents/step-children, and cohabiting partners. Section 2.5.4 of the Analysis describes the range of definitions considered by the Council and NMFS and additional information on the rationale for the specific definition proposed in this rule.

This proposed rule would also modify all references to surviving spouse and immediate family member in regulation by adding the term ''estate.'' Without this change, the QS holder's estate would not be eligible to hold QS under the beneficiary transfer provision.

This proposed rule would clarify that an estate could receive QS, and the court-appointed estate representative for the QS holder's estate would be authorized to use (if they are eligible to hold QS) or transfer the IFQ derived from the estate's QS for the benefit of the estate for a period of three years following the QS holder's death. NMFS would allow the estate representative to manage the use of the decedent's QS holdings by allowing the representative to transfer IFQ annually on behalf of the estate. If after three years the estate is not settled, the estate representative could determine whether the QS held by the estate should be sold and the proceeds retained by the estate, or the estate should continue to hold the QS; however, the estate would no longer be eligible to use the beneficiary transfer provisions to lease the annual IFQ. Including the estate representative in the list of successive beneficiaries (spouse, immediate family member) would not impact the existing order of priority. In the instance where the decedent has not explicitly appointed an estate representative in his or her will, for example, most states have an order of priority for appointment of the representative of the estate. An estate representative would be required to submit court-issued documents to demonstrate his or her eligibility to NMFS that they are legally representing the estate before they could use, permanently transfer, or temporarily transfer (lease) the IFQ. This addition would provide clear and consistent eligibility criteria for NMFS to determine if a person is eligible to transfer QS held by the estate of the deceased QS holder as well as use or lease the IFQ derived from those QS holdings. Allowing the estate to receive the QS for the purpose of this regulation supersedes the requirement that a QS holder must have designated an immediate family member with NMFS.

Adding the QS holder's estate representative to the list of current beneficiaries eligible to receive IFQ after a QS holder's death would have minimal impact on existing wills and would have a positive impact on future beneficiary transfers of IFQ and QS. The 3-year transfer period of IFQ would extend to the estate representative.

As part of this proposed rule, the Council and NMFS conducted an analysis that assessed the potential impacts on persons currently using, and who could potentially use, medical and beneficiary transfer provisions (see **ADDRESSES**). Overall, the impact on persons using existing medical transfer provisions would be limited since this proposed rule would not apply to medical transfer provisions that have been approved. This proposed rule could reduce the overall use of medical transfers in the limited cases when a person has consistently applied for and received consecutive medical transfer provisions (Section 2.4.1 of the Analysis). As noted in this preamble and in the preamble to the final rule that implemented the medical transfer provision (72 FR 44795, August 9, 2007), the medical transfer provisions were not intended to provide continuous opportunities to transfer QS. The impacts of this proposed action on communities and processors were evaluated in Sections 2.4.3.1 and 2.5.3 of Analysis and found to be negligible.

This proposed rule is unlikely to negatively impact existing or future QS holders and their beneficiaries. QS holders and their future beneficiaries could benefit from improved clarity of the regulations implementing this administrative provision. Upon implementation, NMFS would conduct outreach to QS holders to increase awareness of the beneficiary process (Section 2.5.4 of the Analysis).

Additional Regulatory Changes

In addition to modifications to the medical and beneficiary transfer provisions, this proposed rule would make several minor regulatory clarifications. First, this proposed rule would modify regulations at § 679.42 to update the NOAA website URL and make minor technical corrections to remove unnecessary information collected such as Social Security numbers, number of IFQ units, and notary requirements. This proposed rule would add an additional way to describe ''other methods of compensation'' to provide flexibility to industry who may use a percentage of the total revenue as compensation instead of price per pound when they transfer under this provision.

Second, this proposed rule would update regulations at § 679.43 to correctly cite the current process required to submit an appeal. This would accurately reflect the current process for submission of appeals to the National Appeals Office. The previous regulatory procedure for appealing an IAD to the NMFS's Alaska Office of Administrative Appeals was described at § 679.43. Since 2014, all appeals are processed in the National Appeals Office, which operates out of NMFS's headquarters in Silver Spring, MD and is described at 15 CFR part 906 (79 FR 7056, February 6, 2014). This proposed revision would not materially change the process that is currently used to submit appeals.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI and GOA FMPs, other provisions of the Magnuson-Stevens Act, the Halibut Act, and other applicable law, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North

Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters which are in addition to, and not in conflict with, IPHC regulations.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary of Commerce with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An RIR was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes these regulations based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by Section 603 of the Regulatory Flexibility Act (RFA) to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this action is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

Number and Description of Small Entities Regulated by This Proposed Rule

QS holders that fish catcher vessel QS (B, C, and D class QS) are assumed to be directly regulated by this action. Section 2.9 of the Analysis assumes that all halibut and sablefish QS operations are small for RFA purposes. The number of entities that held B, C, or D class QS in 2018 are all assumed to be small entities because this action impacts all QS holders, regardless of whether they own a vessel or not. There were 2,418 QS holders that held class B, C, or D QS in the halibut and sablefish IFQ fisheries who could be impacted by this action. All of those QS holders are considered to be small entities using the SBA small entity criteria for harvest on catcher vessels, regardless of whether they have a vessel or actively fish their QS.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

Sections 2.4 and 2.5 of the Analysis describe the estimated impacts on these entities. The medical transfer provisions would in general benefit the majority of QS holders as would the proposed changes to the designated beneficiary provision. The proposed change that NMFS anticipates to have the greatest, potential negative impact on certain QS holders is the limit on the number of medical transfers. Section 2.4.1 of the Analysis notes that only a small number of QS holders have consistently used the medical transfer provisions and NMFS expects only a limited number of persons to be impacted by this proposed rule. This proposed rule would provide additional flexibility for the majority of small entities directly regulated by this proposed rule by increasing the number of years that the medical transfer can be used from 2 of 5 years to 3 of 7 years, and broadening the scope of health care professionals that can attest to a medical condition. In addition, NMFS would apply this provision only to medical transfer applications that are received after the effective date of this proposed rule. Therefore, this proposed rule would not be expected to impact those QS holders that are currently using medical transfer provisions, and would be expected to increase the number of years that a medical transfer provision may be used for all QS holders after the effective date of this rule. The proposed revisions to the beneficiary transfer provision would improve the process to transfer IFQ to beneficiaries, which should have a benefit for small entities.

There are no significant alternatives to this proposed rule that would accomplish the objectives to modify the medical and beneficiary transfers and minimize adverse economic impacts on small entities. The Council considered several alternatives not recommended for the medical and beneficiary provisions of the IFQ Program. These additional alternatives are not included in this proposed rule because they did not meet the Council's objectives and were not recommended (See sections 2.4.2.2 and 2.5.2.2 in the Analysis for more detail).

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

Recordkeeping, Reporting, and Other Compliance Requirements

This proposed rule modifies the recordkeeping, reporting, and other compliance requirements for QS holders who use the medical transfer provision and beneficiary designation form. NMFS does not anticipate that these requirements would increase.

Currently, a QS holder who submits an application for a temporary medical transfer must submit an affidavit to NMFS from a licensed medical doctor, an advanced nurse practitioner, or a primary community health aide that describes the medical condition affecting the applicant or the applicant's immediate family member that prevents the QS holder's participation in the fishery for the calendar year. This proposed rule would not require QS holders to disclose their confidential medical condition and would improve administration of the form by eliminating some information required on the previous form.

Currently, NMFS provides QS holders an optional Beneficiary Designation form to designate a beneficiary to transfer IFQ under this provision. NMFS may approve an application to transfer QS to the surviving spouse or designated beneficiary, unless a contrary intent is expressed by the decedent in a will and if sufficient evidence has been provided to verify the

death of the individual. Typically, NMFS requires the death certificate and the will to accompany a QS transfer to a beneficiary.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under Control Number 0648–0272.

The public reporting burden per response is estimated to average 1.5 hours for the Application for Medical Transfer of IFQ and 30 minutes for the QS/IFQ Beneficiary Designation Form. The response time includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collections of information to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 17, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. Amend § 679.2 by:

■ a. Removing the definitions for ''Advanced nurse practitioner,'' ''Licensed medical doctor,'' and ''Primary community health aide;'' and

■ b. Adding the definitions in alphabetical order for ''Health care provider'' and ''Immediate family member''.

The additions read as follows:

§ 679.2 Definitions.

* * * * *

Health care provider means an individual licensed to provide health care services by the state where he or she practices and performs within the scope of his or her specialty to diagnose and treat medical conditions as defined by applicable Federal, state, or local laws and regulations. A health care provider located outside of the United States and its territories who is licensed to practice medicine by the applicable medical authorities is included in this definition.

* * * * *

Immediate family member includes an individual with any of the following relationships to the QS holder:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner and parents thereof, including domestic partners of any individual in 1 through 5 of this definition; and

(7) Any individual related by blood or affinity whose close association with the QS holder is the equivalent of a family relationship.

* * * * *

■ 3. In § 679.41, revise paragraphs (k)(1), and (3) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(k) * * *

(1) On the death of an individual who holds QS or IFQ, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (k)(2) of this section or the estate representative, receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an Application for Transfer to the surviving spouse, designated beneficiary, or estate representative when sufficient evidence has been provided to verify the death of the individual.

(2) * * *

(3) The Regional Administrator will approve an Application for Transfer of IFQ for a period of 3 calendar years following the date of death of an individual to a designated beneficiary. NMFS will allow the transfer of IFQ only resulting from the QS transferred to the surviving spouse or, in the absence of a surviving spouse, from a beneficiary from the QS holder's immediate family designated pursuant to paragraph (k)(2) of this section or from an estate representative to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (h)(2) of this section.

* * * * *

■ 4. Amend § 679.42 by:

■ a. Removing in paragraph (d)(2)(iii) introductory text, the website *http://alaskafisheries.noaa.gov* and adding in its place *https://alaskafisheries.noaa.gov/region/alaska;*

■ b. Revising paragraphs (d)(2)(iii)(A) through (D);

■ c. Revising paragraphs (d)(2)(iii)(F) and (G);

■ d. Removing paragraph (d)(2)(iii)(H); and

■ e. Revising paragraph (d)(2)(iv)(C).

The revisions read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

(A) The applicant's (transferor's) identity including his or her full name, NMFS person ID, date of birth, permanent business mailing address, business telephone and fax numbers, and email address (if any). A temporary mailing address may be provided, if appropriate;

(B) The recipient's (transferee's) identity including his or her full name, NMFS person ID, date of birth, permanent business mailing address, business telephone and fax numbers, and email address (if any). A temporary mailing address may be provided, if appropriate;

(C) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, actual number of

IFQ pounds, transferor (seller) IFQ permit number, and fishing year;

(D) The price per pound (including leases), or other method of compensation, and total amount paid for the IFQ in the requested transaction, including all fees;

(E) * * *

(F) A written declaration from a health care provider as defined in § 679.2. The declaration must include:

(*1*) The identity of the health care provider including his or her full name, business telephone, and permanent business mailing address (number and street, city and state, zip code);

(*2*) A statement of the condition affecting the applicant or the applicant's immediate family member, that the applicant is unable to participate; and

(*3*) The dated signature of the health care provider who conducted the medical examination;

(G) The signatures and printed names of the transferor and transferee, and date.

(iv) * * *

(C) NMFS will not approve a medical transfer if the applicant has received a medical transfer in any 3 of the previous 7 calendar years for any medical condition.

* * * * *

■ 4. In § 679.43, revise paragraph (c) to read as follows:

§ 679.43 Determinations and appeals.

* * * * *

(c) *Submission of Appeals.* An appeal to an initial administrative determination must be submitted under the appeals procedure set out at 15 CFR part 906.

* * * * *

[FR Doc. 2019–23028 Filed 10–23–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 84, No. 206

Thursday, October 24, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 21, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 25, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: NAHMS Swine 2020 Study.

OMB Control Number: 0579–0315.

Summary of Collection: Collection and dissemination of animal health data and information is mandated by 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, the Bureau of Animal Industry. Legal requirements for examining and reporting on animal disease control methods were further mandated by 7 U.S.C. 8308 of the Animal Health Protection Act, ''Detection, Control, and Eradication of Diseases and Pests,'' May 13, 2002. This collection of swine data is consistent with the APHIS mission of protecting and improving American agriculture's productivity and competitiveness.

Need and Use of the Information: The information collected through the Swine 2020 study will be analyzed, interpreted and disseminated to a wide variety of constituents. APHIS will use the data collected from the study to: (1) Predict or detect national and regional trends in disease emergence and movement such as the prevalence of clinical signs of Coronavirus, Seneca Valley Virus, respiratory, and enteric disease in pigs, (2) Provide factual information on housing, marketing and movements for smaller swine operations, (3) Update national and regional production measures for the producer, veterinary, and industry reference, (4) Provide factual information on antimicrobial resistance among isolates obtained from feces, and (5) Provide assistance to researchers and the industry in evaluating the utility and accuracy of newer pathogen collection methods such as ropes to test saliva. Without this current study, APHIS would be unable to continue the trends analysis that began with the Swine 2007 and 2012 studies that various parts of the industry as well as many federal and state partners have come to rely on.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 9,965.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 11,165.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–23195 Filed 10–23–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0102]

Privacy Act of 1974; System of Records

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget Circular No. A–108, the U.S. Department of Agriculture (USDA) gives notice that a component agency, the Animal and Plant Health Inspection Service (APHIS), proposes to modify an existing system of records notice titled Veterinary Services—Animal Welfare, USDA/APHIS–8. Among other changes, the system will be renamed Animal Welfare Act and Horse Protection Act, USDA/APHIS–8.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable upon publication, subject to a 30-day notice and comment period in which to comment on the routine uses described below. Please submit any comments by November 25, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to: *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0102.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0102, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0102* or in our reading room, which is located in Room 1141 of the USDA South

Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Mr. Tola Liv, Information Systems Security Manager, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851–3741. For Privacy Act questions concerning this system of records notice, please contact Ms. Tonya Woods, Director, Freedom of Information Act/Privacy Act, 4700 River Road Unit 50, Riverdale, MD 20737; (301) 851–4076. For USDA Privacy Act questions, please contact the USDA Chief Privacy Officer, Information Security Center, Office of Chief Information Officer, USDA, Jamie L. Whitten Building, 1400 Independence Ave. SW, Washington, DC 20250; email: *USDAPrivacy@ocio.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. The Privacy Act

The Privacy Act of 1974, as amended (5 U.S.C. 552a), embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, including the routine uses for each system, to inform individuals how and why Privacy Act information may be disclosed outside of the agency.

II. Discussion

The U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) is modifying an existing system of records notice for Veterinary Services-Animal Welfare, USDA/APHIS–8, which was last published on February 27, 1987, in its entirety in the **Federal Register** (52 FR 6031, Docket No. 86–408). APHIS is modifying the system of records notice to rename the system as ''Animal Welfare Act and Horse Protection Act, USDA/APHIS–8.'' APHIS is also expanding the system to include records of activities conducted by regulated entities and the agency pursuant to the Animal Welfare Act (AWA, 7 U.S.C. 2131–2159) and the Horse Protection Act (HPA, 15 U.S.C. 1821–1831), and the regulations issued thereunder.

APHIS is making the following changes to the system of records notice:

- Updating the system location and system manager;
- Expanding the categories of individuals to include additional individuals who participate in activities related to the AWA as well as individuals who participate in activities related to the HPA or who are otherwise identified in HPA or AWA related records;
- Expanding the categories of records to include additional records relating to the AWA and HPA;
- Revising the record source categories to reflect records relating to the HPA;
- Updating the policies and practices for storage, retrievability, and retention and disposal of records in the system;
- Updating the system safeguards;
- Updating the notification, record access, and contesting record procedures;
- Revising, deleting, redesignating, and establishing routine uses as follows:
  - Deleting current routine use 1, which will be clarified and replaced by newly established routine uses;
  - Revising current routine use 2 and redesignating it as routine use 12. The changes are editorial and intended to more accurately describe the referral of records to appropriate law enforcement agencies, entities and persons;
  - Revising current routine use 3 and redesignating it as routine use 13. The changes are editorial and conforming changes;
  - Revising current routine use 4 and redesignating it as routine use 14. The changes are editorial and intended to more accurately describe the disclosure of records to a court or adjudicative body;
  - Revising current routine use 5 and redesignating it as routine use 19. The changes are editorial and conforming changes;
  - Establishing new routine use 1 for disclosure of licensee and registrant information to the public pursuant to 9 CFR 2.38(c) and 9 CFR 2.127;
  - Establishing new routine use 2 for disclosure of annual report information to the public pursuant to 9 CFR 2.7 and 9 CFR 2.36;
  - Establishing new routine use 3 for disclosure of information from inspection reports and regulatory correspondence to attending veterinarians in order to carry out duties under the AWA pursuant to 9 CFR 2.33 and 9 CFR 2.40;
  - Establishing new routine use 4 for disclosure of information to other public authority agencies or officials to carry out duties under the AWA or under laws on the same subject pursuant to 7 U.S.C. 2145(b);
  - Establishing new routine use 5 for disclosure of inspection reports and permit status to entities such as pet stores to the extent required to comply with a State, local, Tribal or other public authority's requirement to verify compliance with the AWA;
  - Establishing new routine use 6 for disclosure of information to a research institution to complete research or compile a report in furtherance of USDA's mission;
  - Establishing new routine use 7 for disclosure of final adjudicatory decisions and orders to any person;
  - Establishing new routine use 8 for disclosure to any person of information identifying Designated Qualified Persons and Horse Industry Organizations (HIOs) or associations;
  - Establishing new routine use 9 for disclosure of HPA inspection findings and correspondence to any regulated horse owner, HIO, and other entities responsible for licensure or required to verify compliance with the HPA;
  - Establishing new routine use 10 for disclosure to any person of information identifying a person or entity who has been disqualified, suspended, and/or otherwise prohibited from participating in certain activities under the HPA;
  - Establishing new routine use 11 for disclosure to any person of information identifying any regulated entity or individual whose AWA license or permit has been suspended, revoked, expired, terminated, or denied;
  - Establishing new routine use 15 for disclosure to appropriate agencies, entities and persons of information necessary to respond to a suspected or confirmed breach of the system of records in accordance with Office of Management and Budget (OMB) Memorandum M–17–12, Preparing for and Responding to a Breach of Personally Identifiable Information (January 3, 2017);
  - Establishing new routine use 16 for disclosure to another Federal agency or entity of information reasonably necessary to assist in responding to a suspected or confirmed breach or to prevent, minimize, or remedy harm, in

accordance with OMB Memorandum M–17–12;

○ Establishing new routine use 17 for disclosure to USDA contractors and other parties assisting in administering the program, analyzing data, information management systems, Freedom of Information Act requests, and audits;

○ Establishing new routine use 18 for disclosure to USDA contractors and others employed to identify fraud, waste, or abuse;

○ Establishing new routine use 20 for disclosure to the National Archives and Records Administration or to the General Services Administration for records management activities; and

○ Establishing new routine use 21 for disclosure to the Treasury Department to carry out any and all functions within their jurisdiction, including but not limited to, processing payments, fees, collections, penalties, and offsets.

A report on the modified system of records, required by 5 U.S.C. 552a(r), as implemented by Office of Management and Budget Circular A–108 was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairman, Committee on Oversight and Reform, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Done in Washington, DC, this 18th day of October 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

SYSTEM NAME AND NUMBER:

Animal Welfare Act and Horse Protection Act, USDA/APHIS–8

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Paper-based records are located in the APHIS offices at 4700 River Rd, Riverdale, MD; 920 Main Campus Drive Suite 200, Raleigh, NC; and 2150 Centre Avenue, Building B, Mailstop 3W11, Fort Collins, CO. The server for the electronic database is currently located in the United States Department of Agriculture's (USDA or Department) National Information Technology Center (NITC), 8930 Ward Parkway, Kansas City, MO 64114, but may be relocated to a similarly secure location, as needed. A backup site for the electronic data is located in the NITC Disaster Recovery, 4300 Goodfellow Blvd., St. Louis, MO 63120, but may be relocated to a similarly secure location, as needed.

SYSTEM MANAGER:

Deputy Administrator, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Animal Welfare Act (AWA), 7 U.S.C. 2131 *et seq.,* and the regulations issued thereunder, 9 CFR parts 1 through 4; and the Horse Protection Act (HPA), 15 U.S.C. 1821 *et seq.,* and the regulations issued thereunder, 9 CFR parts 11 and 12.

PURPOSES OF THE SYSTEM:

This system supports APHIS' administrative activities and enforcement of the AWA and HPA.

The AWA seeks to ensure the humane handling, care, treatment, and transportation of animals intended for use by dealers, exhibitors, carriers, research facilities, operators of auction sales, and intermediate handlers. The entities using certain animals for research purposes, exhibition, and transportation in commerce, or for resale use as a pet are required to obtain a license or registration from the USDA. In addition, entities importing dogs into the United States for resale purposes are required to obtain a permit. APHIS partners with Federal agencies, States, local and Tribal governments and non-governmental organizations to ensure the safety, health and well-being of vulnerable animals.

The HPA prohibits the showing, sale, auction, exhibition, and transportation of horses that have been subject to the practice of soring, which is a cruel and inhumane practice designed to enhance a horse's competitive advantage in shows and exhibitions. The HPA also holds the management of any horse show or other regulated event responsible for identifying sore horses and preventing their participation in the event. To be shielded from liability for the participation of a sore horse, management may appoint and retain persons qualified to detect and diagnose a horse that is sore or otherwise inspect horses for purposes of enforcing the HPA. After notice and an opportunity for a hearing in accordance with the applicable rules of practice, alleged violators of the HPA may be subject to penalties and sanctions for violations. APHIS partners with Federal agencies, States, local and Tribal governments and non-governmental organizations to ensure that horses are not subjected to the practice of soring.

This system provides a standard approach to collecting, recording, analyzing, maintaining, and reporting information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include persons operating or intending to operate as dealers, exhibitors, operators of auction sales, research facilities, intermediate handlers, and carriers under the AWA; individuals who import dogs into the United States for resale purposes; individuals associated with the management of Department-certified Horse Industry Organizations and Associations (HIOs); persons who are qualified to detect and diagnose a horse that is sore or otherwise inspect horses for purposes of enforcing the HPA; management of horse shows, exhibitions, sales, and auctions regulated under the HPA; alleged violators and adjudicated violators of the AWA and HPA and regulations issued thereunder; and other individuals who participate in inspection and enforcement activities relating to AWA and HPA, such as APHIS inspectors, APHIS Investigative and Enforcement Services investigators, licensee employees/representatives, attorneys, witnesses, complainants, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Animal Welfare Act Records:

The system includes paper and electronic records that include:

Licensing and registration records, including, but not limited to, name and business or home address, telephone number, and other contact information; tax identification number, customer number, license or registration certificate number; licensee and research facility annual reports related to persons who seek or hold an AWA license or registration, persons responsible to ensure humane care of the animals (*e.g.,* attending veterinarians) located at AWA regulated facilities; payment details such as name, last four digits of credit card and expiration date, or check numbers and amount for those who have applied for a license or renewal of a license requiring a payment; and other records required for regulatory purposes under the AWA.

Compliance records, including, but not limited to, inspection reports, itineraries, enforcement actions, and other compliance records required to be maintained by the facility and supporting documents, compliance- and enforcement-related activities, and other records required for regulatory purposes under the AWA.

Regulatory correspondence, including, but not limited to, information related to the denial or termination of a license or permit, and notices or advisories regarding alleged

violations or noncompliance with the AWA, records related to administrative and court litigation, correspondence between APHIS and a licensee/registrant/permitee or applicant, and other records required for regulatory purposes under the AWA.

Complaint records, including, but not limited to, witness or person who has submitted information, and statements of alleged violations and violations by persons who are subject to the AWA.

Permit records, including, but not limited to, name, address, and other contact information for the permittee, permit application, health certificate, rabies vaccination certificate, etc.; and other records required for regulatory purposes under the AWA.

Horse Protection Act Records:

The system includes paper and electronic records that include:

Management records, including, but not limited to, name, business and/or home address, other contact information for managers or other management representatives, sponsoring organizations, persons designated to maintain management records, show judges, etc.; details of events and locations, including, but not limited to, dates and addresses; and other records required for regulatory purposes under the HPA.

Transporter records, including, but not limited to, name, address, and other contact information of the horse owner and the shipper, the trainer, the carrier transporting the horse, the driver of the means of conveyance used; the origin of the shipment and date thereof and the destination of shipment; and other records required for regulatory purposes under the HPA.

HIO records, including, but not limited to, the name, address, and other contact information of each certified HIO, and officers or persons charged with the management of the HIO; the HIO's formal request for certification and detailed outline for such program submitted for Departmental approval, rulebooks and industry-implemented disciplinary procedures, and associated correspondence; the name and address of any person qualified to detect and diagnose a horse that is sore or to otherwise inspect horses for purposes of enforcing the HPA or the management of any horse show, exhibition, sale, or auction; identity of all horses at each event that management disqualified or excused for any reason, including the registered name of each horse and the name and address of the owner, trainer, rider, exhibitor, or other person having custody of or responsibility for the care of each such horse; the exhibitor's number and class number, or the sale or auction tag number of the horse, the name and any applicable registered name and number (if the horse is registered), age, sex, color, and markings of the horse; disciplinary actions taken by the HIO against any exhibitor; photographs and videos depicting inspections conducted by HIO-licensed designated qualified persons; HIO performance evaluations and statistics; and other records required for regulatory purposes under the HPA.

Designated qualified persons records (persons qualified to detect and diagnose a horse that is sore or to otherwise inspect horses for purposes of enforcing the HPA) including, but not limited to, the name, address, other contact information, and license number of each person who applies and/or is licensed to inspect horses in accordance with the HPA and regulations, information related to the disqualification of a person from holding a license to detect soreness in horses, and correspondence, including notice of performance concerns or license cancellation; details of inspections and identity of all horses at each event that the person recommended to management be disqualified or excused for any reason, including the registered name of each horse and the name and address of the owner, trainer, rider, exhibitor, or other person having custody of or responsibility for the care of each such horse; the exhibitor's number and class number, or the sale or auction tag number of the horse, the name and any applicable registered name and number (if the horse is registered), age, sex, color, and markings of the horse; photographs and videos depicting inspections conducted by designated qualified persons; performance evaluations and statistics; and other records required for regulatory purposes under the HPA.

Compliance and regulatory correspondence records, including, but not limited to, inspection findings, compliance, regulatory and other correspondence, investigations, and enforcements under the HPA, as well as records related to administrative, civil, and criminal litigation; and other records required for regulatory purposes under the HPA.

Complaint records, including, but not limited to, the name and address of a witness or person who has submitted a complaint concerning potential alleged violations and violations by persons who are subject to the HPA and the nature of their complaint.

RECORD SOURCE CATEGORIES:

The AWA information is received from the applicant for a license, registration, or permit; the licensee, registrant, or permittee; the attending veterinarian; observations by APHIS inspectors; APHIS Investigative and Enforcement Services officials; or other person responsible for or who has information about the humane care of the animals. The HPA information is received from the HIO and other entities that issue licenses; the HIO records submitted to APHIS; the management of the horse show, exhibition, auction, or sale; the horse event management records submitted to APHIS; records submitted to APHIS by persons qualified to detect and diagnose a horse that is sore or otherwise inspect horses for purposes of enforcing the HPA; and the horse owner, trainer, custodian, rider, shipper, carrier, and transporter. Information may also be received from the witness or person who has submitted a complaint concerning potential alleged violations and violations by persons who are subject to the AWA or HPA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, records maintained in the system may be disclosed outside USDA as follows:

(1) APHIS may disclose the name, city, State, license or registration type and/or status, or change of a license or registrant to any person pursuant to 9 CFR 2.38(c) and 2.127;

(2) APHIS may disclose annual reports submitted to APHIS by licensees and research facilities to any person pursuant to 9 CFR 2.7 and 2.36;

(3) APHIS may disclose inspection reports and other regulatory correspondence issued to licensees and registrants [from the agency] to any attending veterinarian in order to carry out duties under the AWA pursuant to 9 CFR 2.33 and 2.40;

(4) APHIS may disclose the name, telephone number and other contact information, location, inspection reports, and regulatory and other correspondence of licensees, registrants, permitees, and applicants for the same, to appropriate Federal, foreign, State, local, Tribal, or other public authority agencies or officials, in order to carry out duties under the AWA or State, local, Tribal or other public authority on the same subject pursuant to 7 U.S.C. 2145(b);

(5) APHIS may disclose inspection reports of licensees and registrants, and

permit status, to any pet store or other entity that is required under State, local, Tribal, or other public authority to verify a licensee, registrant, or permitee's compliance with the AWA;

(6) APHIS may disclose information to the National Academies of Sciences, Engineering, and Medicine, and any other research institution engaged or approved by the Department, to the extent APHIS deems the disclosure necessary to complete research and/or compile a report in furtherance of the Department's mission;

(7) APHIS may disclose final adjudicatory AWA and HPA decisions or orders by an appropriate authority to any person;

(8) APHIS may disclose to any person the name, city, and State or other information to the extent necessary for proper identification of persons (referred to as ''Designated Qualified Persons'' or ''DQPs'') that are or have been qualified to detect and diagnose a horse that is sore or otherwise inspect horses for purposes of enforcing the HPA and of horse industry organizations or associations (referred to as ''HIOs'') that have currently or have had in the past DQP programs certified by the USDA;

(9) APHIS may disclose to any regulated horse owner, HIO, and other entities responsible for licensure or required to verify compliance with the HPA, HPA inspection findings and regulatory and other correspondence issued to persons or entities regulated under the HPA;

(10) APHIS may disclose to any person the name, city, and State or other information to the extent necessary for proper identification of any person or entity who has been disqualified, suspended, and/or otherwise prohibited from showing or exhibiting any horse, or judging or managing any horse show, horse exhibition, horse sale, or horse auction under the HPA and the terms of such action;

(11) APHIS may disclose to any person the name, city, and State or other information to the extent necessary for proper identification of any regulated individual or entity whose license or permit has been suspended, revoked, expired, terminated, or denied under the AWA and the terms of such action;

(12) APHIS may disclose to appropriate law enforcement agencies, entities, and persons, whether Federal, foreign, State, local, or Tribal, or other public authority responsible for enforcing, investigating, or prosecuting an alleged violation or a violation of law or charged with enforcing, implementing, or complying with a statute, rule, regulation, or order issued pursuant thereto, when a record in this system on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or court order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity;

(13) APHIS may disclose to the Department of Justice when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, in litigation, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(14) APHIS may disclose information in this system of records to a court or adjudicative body in administrative, civil, or criminal proceedings when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are to be for a purpose that is compatible with the purpose for which the agency collected the records;

(15) APHIS may disclose information from this system of records to appropriate agencies, entities, and persons when: (a) USDA suspects or has confirmed that there has been a breach of the system of records; (b) USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(16) APHIS may disclose information from this system of records to another Federal agency or Federal entity, when the USDA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;

(17) APHIS may disclose information in this system of records to USDA contractors and other parties engaged to assist in administering the program, analyzing data, developing information management systems, processing Freedom of Information Act requests, and conducting audits. Such contractors and other parties will be bound by the nondisclosure provisions of the Privacy Act;

(18) APHIS may disclose information in this system of records to USDA contractors, partner agency employees or contractors, or private industry employed to identify patterns, trends, or anomalies indicative of fraud, waste, or abuse;

(19) APHIS may disclose information in this system of records to a Congressional office from the record of an individual in response to any inquiry from that Congressional office made at the written request of the individual to whom the record pertains;

(20) APHIS may disclose information in this system of records to the National Archives and Records Administration or to the General Services Administration for records management activities conducted under 44 U.S.C. 2904 and 2906; and

(21) APHIS may disclose information in this system of records to the Treasury Department as necessary to carry out any and all functions within their jurisdiction, including but not limited to, processing payments, fees, collections, penalties, and offsets.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper-based records are maintained in USDA offices and buildings that are locked during non-business hours and that require presentation of employee

identification for admittance and access at all times. Electronic records are maintained in an electronic database on a server in a secure data center or on the APHIS web server and website that is maintained by APHIS' Marketing and Regulatory Programs Information Technology staff. Information Technology personnel maintain backup media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system maintained pursuant to the AWA and regulations may be retrieved by legal name; certificate/license/permit number, or customer identification number, and the complaint number; and the name of the witness or person who has submitted a complaint concerning potential alleged violations and violations by persons who are subject to the AWA.

Records maintained pursuant to the HPA and regulations may be retrieved by the name of the alleged violator or violator (owner, trainer, rider, custodian, exhibitor, transporter, horse carrier, shipper); the name of the judge, farrier, or the HIO; the name of the person qualified to detect and diagnose a horse that is sore or otherwise inspect horses for purposes of enforcing the HPA; the name and date of the horse show, exhibition, sale, or auction, address, horse name, the name of the stable; date and type of alleged violation or violation; HIO ticket or other similar number; and date and type of HIO disciplinary action; and the name of the witness or person who has submitted a complaint concerning potential alleged violations and violations by persons who are subject to the HPA.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Paper and electronic records will be retained in accordance with an established records retention schedule. Some records considered as permanent will be maintained in accordance with NARA requirements.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to the restricted portions of the database system requires certain levels of authorization through USDA eAuthentication, which is a system that enables individuals to obtain user-identification accounts with password-protected access to certain USDA Web-based applications and services through the internet. APHIS personnel who input data must have a high-level eAuthentication account. Persons who apply for a license, registration, or permit or are licensed, registered or permitted pursuant to the AWA have a lower level eAuthentication account and will only have access to their own records to input certain information. These individuals can also apply for, pay, or check the status of their applications, and their license, registration, or permit status. HIOs and persons qualified to detect and diagnose a horse that is sore or otherwise inspect horses for purposes of enforcing the HPA will only have access to input certain information in their own records, such as but not limited to information entered in the system by HIOs regarding disciplinary actions taken and information on sore horses that were disqualified or prohibited by management from participating in shows, exhibitions, sales, or auctions. The general public will have read-only access to system generated reports through APHIS' website and will require eAuthentication.

RECORD ACCESS PROCEDURES:

An individual who is the subject of a record in this system may seek access to those records that are not exempt from the access provisions. Exemptions apply only to the extent that the information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2), if applicable. A determination whether a record may be accessed will be made at the time a request is received. All inquiries should be addressed under ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information maintained in the system should direct their requests to the address indicated in the ''Notification procedures'' section, below. Some information may be exempt from the amendment provisions, as described in the section entitled ''Exemptions promulgated for the system.'' An individual who is the subject of a record in this system may seek amendment of those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

NOTIFICATION PROCEDURES:

Individuals seeking notification of and access to any non-exempt general information contained in this system of records, or seeking to contest its content, may submit a request in writing to the APHIS Freedom of Information Act (FOIA) Officer, whose contact information can be found at *https://www.aphis.usda.gov/aphis/resources/foia.* If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 7 CFR part 1, subpart G. In addition you should provide the following:

An explanation of why you believe the Department would have information on you;

- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which USDA component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his or her agreement for you to access his or her records.

Without this bulleted information the component(s) will not be able to conduct an effective search, and our request may be denied due to lack of specificity or lack of compliance with applicable regulations.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

On February 27, 1987 (52 FR 6031), USDA/APHIS–8, ''Veterinary Services—Animal Welfare'' was published as a new system of records and effective on April 28, 1987.

[FR Doc. 2019–23210 Filed 10–23–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

[Docket ID FSA–2019–0013]

Information Collection Request; Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commodity Credit Corporation (CCC)

and the Farm Service Agency (FSA) are requesting comments from all interested individuals and organizations on a revision and an extension of a currently approved information collection. CCC and FSA use the information to determine whether representatives or survivors of a producer are entitled to receive payments earned by a producer who dies, disappears, or is declared incompetent before receiving payments or other disbursements.

DATES: We will consider comments that we receive by December 23, 2019.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://regulations.gov.* Go to *http://www.regulations.gov* and search for Docket ID FSA–2019–0013. Follow the online instructions for submitting comments.
- *Mail:* Joe Lewis Jr., Agricultural Program Specialist, USDA, FSA STOP 0572, 1400 Independence Avenue SW, Washington, DC 20250–0572.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Joe Lewis Jr. at the above address.

FOR FURTHER INFORMATION CONTACT: Joe Lewis Jr, (202) 720–0795.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

OMB Number: 0560–0226.

OMB Expiration Date of Approval: 02/29/2020.

Type of Request: Extension.

Abstract: Persons desiring to claim payments earned, but not yet paid to a person who has died, disappeared, or has been declared incompetent must complete form FSA–325, Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent. This information required by form FSA–325 is used by FSA county office employees to document the relationship of heirs, beneficiaries, or others who claim that a payment was earned, but not yet paid to the person who died, disappeared, or who has been declared incompetent, and to determine the share and order of precedence for disbursing payments to such persons.

Information is obtained only when a person claims that they are due a payment that was earned, but not paid to a producer that has died, disappeared, or has been declared incompetent, and documentation is needed to determine if any individuals are entitled to receive such payments or disbursements.

The burden hours decreased by 2,000 hours since the last OMB approval. The reason for the decrease is due to the removal of travel times from the request. The respondents may submit applications by mail and many respondents go to the county offices to do regular and customary business with FSA for other FSA programs and can complete and submit the form FSA–325 during this time; this means no travel time is required specifically for the information collection and therefore, it is no longer included in the burden hour reporting.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses multiplied by the estimated total annual responses.

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average 0.50 hours per response.

Type of Respondents: Producers.

Estimated Number of Respondents: 2,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual of Responses: 2,000.

Estimated Average Time per Responses: 0.50 hours.

Estimated Total Annual Burden on Respondents: 1,000.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice, including names and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Richard Fordyce,

Administrator, Farm Service Agency.

[FR Doc. 2019–23144 Filed 10–23–19; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–094]

Refillable Stainless Steel Kegs From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of refillable stainless steel kegs (kegs) from the People's Republic of China (China). For information on the estimated subsidy rates, *see* the ''Final Determination'' section of this notice.

DATES: Applicable October 24, 2019.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone (202) 482–1395.

Background

Commerce published the *Preliminary Determination* on April 5, 2019.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision

[1] *See Refillable Stainless Steel Kegs From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 84 FR 13634 (April 5, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Refillable

Continued

Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic version are identical in content.

Period of Investigation

The period of investigation is January 1, 2017 through December 31, 2017.

Scope of the Investigation

The products covered by this investigation are kegs from China. For a full description of the scope of the investigation, *see* Appendix I.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in April 2019, Commerce verified the subsidy information reported by Ningbo Master International Trade Co., Ltd. (Ningbo Master). We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Ningbo Master.

Use of Adverse Facts Available

In making this final determination, Commerce relied, in part, on facts available and, because the Government of China (GOC) and a respondent company did not act to the best of their abilities in responding to Commerce's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available, pursuant to section 776(a) and (b) of the Act. For further information, *see* the section ''Use of Facts Otherwise Available and Adverse Inferences'' in the accompanying Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of our findings at verification and the comments received, we have made certain changes to the subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Affirmative Determination of Critical Circumstances, in Part

Commerce preliminarily determined that critical circumstances existed with respect to imports of kegs from China for the 19 companies to which we are applying Adverse Facts Available (AFA) because they did not act to the best of their ability to respond to Commerce's requests for information, but that critical circumstances did not exist for Ningbo Master or from all other producers/exporters of subject merchandise.[3] We invited parties to provide comments on this determination. However, no parties submitted comments regarding our preliminary critical circumstances finding. Therefore, for this final determination, we continue to find that critical circumstances exist with respect to subject merchandise produced or exported by the 19 AFA companies but not with respect to Ningbo Master or to all other producers/exporters.

All-Others Rate

In accordance with section 705(c)(5)(A)(i) of the Act, for companies not individually examined, we apply an all-others rate, which is normally calculated by weighting the subsidy rates of the mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates or any rates based entirely on facts otherwise available pursuant to section 776 of the Act.

In this investigation, Commerce is assigning rates based entirely on AFA for the second mandatory respondent Penglai Jinfu Stainless Steel Products (Penglai Jinfu) and 18 companies that failed to respond to our quantity and value (Q&V) questionnaire.[4] Commerce calculated an individual estimated countervailable subsidy rate for Ningbo Master International Trade Co., Ltd. (Ningbo Master) and its cross-owned affiliates Tomorrow Industrial Limited (Tomorrow Industrial), Ningbo Major Draft Beer Equipment Co., Ltd. (Ningbo Major), and Zhejiang Major Technology Co., Ltd. (Major Technology). Because the only individually calculated rate is not zero, *de minimis,* or based entirely on facts otherwise available, we are assigning the rate calculated for Ningbo Master to all other producers and exporters.

Final Determination

We determine the countervailable subsidy rates to be:

Company	Net subsidy rate (percent)
Equipmentines (Dalian) E-Commerce Co., Ltd	145.23
Jinan HaoLu Machinery Equipment Co., Ltd	145.23
NDL Keg Qingdao Inc	145.23
Ningbo Direct Import & Export Co., Ltd	145.23
Ningbo Hefeng Container Manufacture Co., Ltd	145.23
Ningbo Hefeng Kitchen Utensils Manufacture Co., Ltd	145.23
Ningbo HGM Food Machinery Co., Ltd	145.23
Ningbo Jiangbei Bei Fu Industry and Trade Co., Ltd	145.23

Stainless Steel Kegs from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Refillable Stainless Steel Kegs From the People's Republic of China: Preliminary Affirmative Determination, in Part, of Critical Circumstances in the Countervailing Duty Investigation,* 84 FR 25748 (June 4, 2019) (*Critical Circumstances Preliminary Determination*).

[4] Commerce issued Q&V questionnaires to 20 companies. The 18 companies that did not respond to our Q&V questionnaire are: Equipmentines (Dalian) E-Commerce Co., Ltd.; Jinan HaoLu Machinery Equipment Co., Ltd.; NDL Keg Qingdao Inc.; Ningbo Direct Import & Export Co., Ltd.; Ningbo Hefeng Container Manufacture Co., Ltd.; Ningbo Hefeng Kitchen Utensils Manufacture Co., Ltd.; Ningbo HGM Food Machinery Co., Ltd.; Ningbo Jiangbei Bei Fu Industry and Trade Co., Ltd.; Ningbo Sanfino Import & Export Co., Ltd.; Ningbo Shimaotong International Co., Ltd.; Ningbo Sunburst International Trading Co., Ltd.; Orient Equipment (Taizhou) Co., Ltd.; Qingdao Henka Precision Technology Co., Ltd.; Shandong Tiantai Beer Equipment; Sino Dragon Trading International; Wenzhou Deli Machinery Equipment Co.; Wuxi Taihu Lamps and Lanterns Co., Ltd.; and Yantai Trano New Material Co., Ltd.

Company	Net subsidy rate (percent)
Ningbo Master International Trade Co., Ltd	16.21
Ningbo Sanfino Import & Export Co., Ltd	145.23
Ningbo Shimaotong International Co., Ltd	145.23
Ningbo Sunburst International Trading Co., Ltd	145.23
Orient Equipment (Taizhou) Co., Ltd	145.23
Penglai Jinfu Stainless Steel Products	145.23
Qingdao Henka Precision Technology Co., Ltd	145.23
Shandong Tiantai Beer Equipment	145.23
Sino Dragon Trading International	145.23
Wenzhou Deli Machinery Equipment Co	145.23
Wuxi Taihu Lamps and Lanterns Co., Ltd	145.23
Yantai Trano New Material Co., Ltd	145.23
All Others	16.21

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the final determination or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of kegs from China, that were entered, or withdrawn from warehouse, for consumption on or after April 5, 2019, the date of the publication of the *Preliminary Determination* in the **Federal Register**. Further, as a result of our *Critical Circumstances Preliminary Determination,* we instructed CBP to suspend liquidation of all entries of kegs from China, that were entered, or withdrawn from warehouse, for consumption on or after January 5, 2019 through April 4, 2019 (90 days prior to the date of the publication of the *Preliminary Determination* in the **Federal Register** through the day prior to the date of the publication of the *Preliminary Determination*) from the 19 AFA companies. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after August 3, 2019. If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final affirmative CVD determination. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise from China no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice will serve as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: October 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation are kegs, vessels, or containers with bodies that are approximately cylindrical in shape, made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight, with or without other elements), and that are compatible with a ''D Sankey'' extractor (refillable stainless steel kegs) with a nominal liquid volume capacity of 10 liters or more, regardless of the type of finish, gauge, thickness, or grade of stainless steel, and whether or not covered by or encased in other materials. Refillable stainless steel kegs may be imported assembled or unassembled, with or without all components (including spears, couplers or taps, necks, collars, and valves), and be filled or unfilled.

''Unassembled'' or ''unfinished'' refillable stainless steel kegs include drawn stainless steel cylinders that have been welded to form the body of the keg and attached to an upper (top) chime and/or lower (bottom) chime. Unassembled refillable stainless steel kegs may or may not be welded to a neck, may or may not have a valve assembly attached, and may be otherwise complete except for testing, certification, and/or marking.

Subject merchandise also includes refillable stainless steel kegs that have been further processed in a third country, including but not limited to, attachment of necks, collars, spears or valves, heat treatment, pickling, passivation, painting, testing, certification or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of

manufacture of the in-scope refillable stainless steel keg.

Specifically excluded are the following:

(1) Vessels or containers that are not approximately cylindrical in nature (*e.g.,* box, ''hopper'' or ''cone'' shaped vessels);

(2) stainless steel kegs, vessels, or containers that have either a ''ball lock'' valve system or a ''pin lock'' valve system (commonly known as ''Cornelius,'' ''corny'' or ''ball lock'' kegs);

(3) necks, spears, couplers or taps, collars, and valves that are not imported with the subject merchandise; and

(4) stainless steel kegs that are filled with beer, wine, or other liquid and that are designated by the Commissioner of Customs as Instruments of International Traffic within the meaning of section 332(a) of the *Tariff Act of 1930,* as amended.

The merchandise covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7310.10.0010, 7310.10.0050, 7310.29.0025, and 7310.29.0050.

These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Final Determination of Critical Circumstances
V. Scope of the Investigation
VI. Use of Facts Otherwise Available and Adverse Inferences
VII. Subsidies Valuation
VIII. Analysis of Programs
IX. Analysis of Comments
- Comment 1: Whether to Apply AFA to Find Producers of Stainless Steel Coil to be ''Authorities''
- Comment 2: Whether to Apply AFA to Find the Provision of Stainless Steel Coil to be Specific
- Comment 3: Whether to Apply AFA to Find the Chinese Stainless Steel Coil Market Distorted
- Comment 4: Whether to Use Data from the American Metal Market for Calculating Stainless Steel Coil Benchmarks
- Comment 5: Whether to Include Import Duties in Calculating the Stainless Steel Coil Benchmark
- Comment 6: Whether Commerce Should Use Coaster Freight Rates from Metal Expert
- Comment 7: Whether to Apply AFA to the Provision of Electricity for LTAR
- Comment 8: Whether Commerce Should Include Electricity Purchase from a Private Enterprise in the Benefit Calculation for the Provision of Electricity for LTAR Program
- Comment 9: Whether Commerce Errored in the Benefit Calculation for the Provision of Electricity for LTAR Program
- Comment 10: Whether Commerce Properly Determined that the Provision of Policy Loans is Specific

X. Recommendation

[FR Doc. 2019–23214 Filed 10–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–846]

Refillable Stainless Steel Kegs From Germany: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that refillable stainless steel kegs (kegs) from the Federal Republic of Germany (Germany) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2017 through June 30, 2018. The final estimated dumping margins of sales at LTFV are shown in the ''Final Determination'' section of this notice.

DATES: Applicable October 24, 2019.

FOR FURTHER INFORMATION CONTACT: Micahel Romani, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0198.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2019, Commerce published the *Preliminary Determination* of this LTFV investigation in which Commerce found that kegs from Germany were sold at LTFV.[1] A complete summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B–8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Scope of the Investigation

The products covered by this investigation are refillable stainless steel kegs from Germany. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On March 29, 2019, we issued a Preliminary Scope Decision Memorandum.[3] The scope case briefs were due on May 6, 2019, 30 days after the publication of *Kegs from China Preliminary CVD Determination.*[4] We did not receive scope briefs from interested parties. Therefore, Commerce has made no changes to the scope of this investigation since the *Preliminary Determination.*

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce verified the sales and cost data reported by Blefa GmbH (Blefa) for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested

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[1] *See Refillable Stainless Steel Kegs from Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Postponement of Final Determination,* 84 FR 25736 (June 4, 2019) (*Preliminary Determination*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Refillable Stainless Steel Kegs from the Federal Republic of Germany,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Refillable Stainless Steel Kegs from the People's Republic of China, Germany, and Mexico: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated March 29, 2019 (Preliminary Scope Decision Memorandum).

[4] The scope case briefs were due 30 days after the publication of *Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 84 FR 13634 (April 5, 2019) (*Kegs from China Preliminary CVD Determination*). *See* the Preliminary Scope Decision Memorandum at 5. Because the deadline fell on Sunday, May 5, 2019, the actual deadline for the scope case briefs was Monday, May 6, 2019. *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.''). The deadline for scope rebuttal briefs was Monday, May 13, 2019.

parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached at Appendix II.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for Blefa since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all-other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero or *de minimis* or any margins determined entirely under section 776 of the Act. Blefa is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, for purposes of determining the all-others rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for Blefa, as referenced in the ''Final Determination'' section below.

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist for the period July 1, 2017 through June 30, 2018:

Producer/exporter	Weighted-average dumping margin (percent)
Blefa GmbH	7.47
All Others	7.47

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of all appropriate entries of kegs from Germany, as described in Appendix I to this notice, which were entered, or withdrawn from warehouse, for consumption on or after June 4, 2019, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register.**

Pursuant to section 735(c)(l) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require cash deposits equal to the weighted-average dumping margins indicated in the table above as follows: (1) The cash deposit rate for Blefa will be equal to the estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be 7.47 percent, the all-others estimated weighted-average dumping margin. These suspension of liquidation and cash deposit instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of public announcement of this notice in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the International Trade Commission (ITC) of its final determination. Because the final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of kegs from Germany no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 352.210(c).

Dated: October 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation are kegs, vessels, or containers with bodies that are approximately cylindrical in shape, made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight, with or without other elements), and that are compatible with a ''D Sankey'' extractor (refillable stainless steel kegs) with a nominal liquid volume capacity of 10 liters or more, regardless of the type of finish, gauge, thickness, or grade of stainless steel, and whether or not covered by or encased in other materials. Refillable stainless steel kegs may be imported assembled or unassembled, with or without all components (including spears, couplers or taps, necks, collars, and valves), and be filled or unfilled.

''Unassembled'' or ''unfinished'' refillable stainless steel kegs include drawn stainless steel cylinders that have been welded to form the body of the keg and attached to an upper (top) chime and/or lower (bottom) chime. Unassembled refillable stainless steel kegs may or may not be welded to a neck, may or may not have a valve assembly attached, and may be otherwise complete except for testing, certification, and/or marking.

Subject merchandise also includes refillable stainless steel kegs that have been further processed in a third country, including but not limited to, attachment of necks, collars, spears or valves, heat treatment, pickling, passivation, painting, testing, certification or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope refillable stainless steel keg.

Specifically excluded are the following:

(1) vessels or containers that are not approximately cylindrical in nature (*e.g.,* box, ''hopper'' or ''cone'' shaped vessels);

(2) stainless steel kegs, vessels, or containers that have either a ''ball lock'' valve system or a ''pin lock'' valve system (commonly known as ''Cornelius,'' ''corny'' or ''ball lock'' kegs);

(3) necks, spears, couplers or taps, collars, and valves that are not imported with the subject merchandise; and

(4) stainless steel kegs that are filled with beer, wine, or other liquid and that are designated by the Commissioner of Customs as Instruments of International Traffic within the meaning of section 332(a) of the *Tariff Act of 1930,* as amended.

The merchandise covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7310.10.0010, 7310.10.0050, 7310.29.0025, and 7310.29.0050.

These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Changes Since the Preliminary Determination
V. Comparisons to Fair Value
VI. Discussion of the Issues
Comment 1: Differential Pricing Methodology
Comment 2: Price Patterns that Differ Regionally
Comment 3: Customization Physical Characteristic
Comment 4: Linking Home-Market Sales Data with Cost of Production Data
Comment 5: Level of Trade and Constructed Export Price Offset
Comment 6: Licensing Fees
Comment 7: Blefa US' Other Income
Comment 8: Double-Counted Packing Materials
Comment 9: Blefa US' General and Administrative Expense Ratio for Non-Manufactured Sales
VII. Recommendation

[FR Doc. 2019–23216 Filed 10–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–093]

Refillable Stainless Steel Kegs From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of refillable stainless steel kegs (kegs) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). In addition, Commerce determines that critical circumstances exist with respect to certain imports of the subject merchandise. The period of investigation (POI) is January 1, 2018 through June 30, 2018. The final estimated weighted-average dumping margins are listed below in the ''Final Determination'' section of this notice.

DATES: Applicable October 24, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Aimee Phelan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–0697, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Determination* in the LTFV investigation of kegs from China on June 4, 2019.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2]

Period of Investigation

The period of investigation is January 1, 2018 through June 30, 2018.

Scope of the Investigation

The product covered by this investigation is kegs from China. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of issues raised is attached to this notice at Appendix II. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in Commerce's Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.*

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified the U.S. sales and factors of production information submitted by Ningbo Master International Trade Co., Ltd. (Ningbo Master) in July 2019.[3] We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Ningbo Master.

China-Wide Entity and Use of Adverse Facts Available

We continue to find that the use of facts available is warranted in determining the rate for the China-wide entity pursuant to sections 776(a)(1) and (a)(2)(A)–(C) of the Act.[4] Further, we found that the China-wide entity did not cooperate to the best of its ability to comply with our requests for information and, accordingly, we determined it appropriate to apply adverse inferences in selecting from the facts available, pursuant to section 776(b) of the Act and 19 CFR 351.308(c).

Changes From the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to our dumping margin calculation for Ningbo Master and revised the margins for non-selected respondents and the China-wide entity to reflect the revised margins for Ningbo Master.[5]

Combination Rates

Consistent with the *Preliminary Determination*[6] and Policy Bulletin 05.1,[7] Commerce determined combination rates for the respondents

[1] *See Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures,* 84 FR 25745 (June 4, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Refillable Stainless Steel Kegs from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Verification of the Questionnaire Responses of Ningbo Master International Trade Co., Ltd. in the Antidumping Investigation of Refillable Stainless Steel Kegs from the People's Republic of China,'' dated July 25, 2019.

[4] *See Preliminary Determination* PDM at 16–18.

[5] *See* Issues and Decision Memorandum for a discussion of these changes.

[6] *See Preliminary Determination,* 84 FR at 25745–46.

[7] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' dated April 5, 2005 (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

that are eligible for a separate rate in this investigation.

Final Affirmative Determination of Critical Circumstances, in Part

In the *Preliminary Determination,* Commerce preliminarily determined that critical circumstances exist with respect to imports of kegs from China for the China-wide entity, but do not exist for Ningbo Master or for the separate rate applicants, Ningbo Haishu Direct Import And Export Trade Co., Ltd. (Haishu), Guangzhou Jingye Machinery Co., Ltd. (Jingye), and Guangzhou Ulix Industrial & Trading Co., Ltd. (Ulix).[8] However, in this final determination, in accordance with section 735(a)(3) and 19 CFR 351.206, we find that critical circumstances exist with respect to subject merchandise produced or exported by the China-wide entity,[9] but do not exist with respect to Ningbo Master, Jingye, or Ulix. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

Final Determination

Commerce determines that the following weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent *ad valorem*)	Cash deposit rate (adjusted for subsidy offsets) (percent *ad valorem*)
Ningbo Master International Trade Co., Ltd	Ningbo Major Draft Beer Equipment Co., Ltd	* 0.00	0.00
Guangzhou Jingye Machinery Co., Ltd	Guangzhou Jingye Machinery Co., Ltd	0.00	0.0
Guangzhou Ulix Industrial & Trading Co., Ltd	Guangzhou Jingye Machinery Co., Ltd	0.00	0.0
China-Wide Entity [10]		77.13	63.60

* (*de minimis*).

Consistent with section 733(b)(3) of the Act, Commerce determines that Ningbo Master, the individually examined respondent with a *de minimis* margin, has not made sales of subject merchandise at LTFV. Therefore, we will exclude Ningbo Master from the antidumping duty order in the event an order is instituted.

With respect to Jingye and Ulix, consistent with the decision of the Court of Appeals for the Federal Circuit in *Changzhou Hawd Flooring CAFC,* we are assigning to the separate-rate-eligible non-selected respondents the rate we calculated for Ningbo Master, *i.e.,* zero percent.

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the final determination or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of kegs from China, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after June 4, 2019, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**, with the exception of entries of subject merchandise that were produced by Ningbo Major Draft Beer Equipment Co., Ltd., and exported by Ningbo Master International Trade Co., Ltd.; with regard to such entries, because we have determined the weighted-average dumping margin to be zero, we will exclude Ningbo Master from the antidumping duty order, in the event an order is instituted, and we will discontinue the suspension of liquidation and will refund all cash deposits already collected for this producer/exporter combination. Such exclusion will not be applicable to merchandise exported to the United States by any other producer/exporter combinations or by third-country exporters that sourced from the excluded producer/exporter combination(s). Moreover, consistent with the decision of the Court of International Trade in *Changzhou Hawd Flooring CIT,* we will not exclude from the antidumping duty order, in the event an order is instituted, the separate-rate-eligible non-selected respondents.[11]

Because we find that critical circumstances exist for subject merchandise produced for the China-wide entity, we will instruct CBP to suspend liquidation of all entries of kegs from China which were entered, or withdrawn from warehouse, for consumption on or after March 6, 2019, which is 90 days prior to the date of publication of the *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act, upon the publication of this notice, Commerce will instruct CBP to require a cash deposit [12] equal to the weighted-average amount by which the normal value exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of Chinese exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination

[8] *See Preliminary Determination* PDM at 31–34.

[9] Although we preliminarily found that Haishu was eligible for a separate rate, we have found that it is not eligible for a separate rate for this final determination. *See* Issues and Decision Memorandum at ''Separate Rates'' section.

[10] We preliminarily determined that subject merchandise produced by Ningbo Haishu Xiangsheng Metal Products Plant and exported by Ningbo Haishu Direct Import and Export Trade Co., Ltd., was eligible for a separate rate. *See Preliminary Determination* PDM at 14–15. For this final determination, we determine that such subject merchandise is not eligible for a separate rate. *See* Issues and Decision Memorandum at Comment 9.

[11] *See Changzhou Hawd Flooring Co.* v. *United States,* 324 F. Supp. 3d 1317 (*Changzhou Hawd Flooring CIT*).

[12] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise from China no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice will serve as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: October 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation are kegs, vessels, or containers with bodies that are approximately cylindrical in shape, made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight, with or without other elements), and that are compatible with a ''D Sankey'' extractor (refillable stainless steel kegs) with a nominal liquid volume capacity of 10 liters or more, regardless of the type of finish, gauge, thickness, or grade of stainless steel, and whether or not covered by or encased in other materials. Refillable stainless steel kegs may be imported assembled or unassembled, with or without all components (including spears, couplers or taps, necks, collars, and valves), and be filled or unfilled.

''Unassembled'' or ''unfinished'' refillable stainless steel kegs include drawn stainless steel cylinders that have been welded to form the body of the keg and attached to an upper (top) chime and/or lower (bottom) chime. Unassembled refillable stainless steel kegs may or may not be welded to a neck, may or may not have a valve assembly attached, and may be otherwise complete except for testing, certification, and/or marking.

Subject merchandise also includes refillable stainless steel kegs that have been further processed in a third country, including but not limited to, attachment of necks, collars, spears or valves, heat treatment, pickling, passivation, painting, testing, certification or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope refillable stainless steel keg.

Specifically excluded are the following:

(1) Vessels or containers that are not approximately cylindrical in nature (*e.g.,* box, ''hopper'' or ''cone'' shaped vessels);

(2) stainless steel kegs, vessels, or containers that have either a ''ball lock'' valve system or a ''pin lock'' valve system (commonly known as ''Cornelius,'' ''corny'' or ''ball lock'' kegs);

(3) necks, spears, couplers or taps, collars, and valves that are not imported with the subject merchandise; and

(4) stainless steel kegs that are filled with beer, wine, or other liquid and that are designated by the Commissioner of Customs as Instruments of International Traffic within the meaning of section 332(a) of the *Tariff Act of 1930,* as amended.

The merchandise covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7310.10.0010, 7310.10.0050, 7310.29.0025, and 7310.29.0050.

These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Surrogate Country
V. Separate Rates
VI. China-Wide Rate
VII. Affirmative Determination of Critical Circumstances
VIII. Changes Since the Preliminary Determination
IX. Adjustments to Cash Deposit Rates for Export Subsidies and Double Remedies
X. Discussion of the Issues
a. Ningbo Master International Trade Co., Ltd.
Comment 1: Labor Surrogate Value
Comment 2: Surrogate Financial Ratio Calculations
Comment 3: Value-Added-Tax (VAT) Adjustment
Comment 4: Minor Corrections
Comment 5: Alleged Pre-POI Sale
Comment 6: Proprietary Adjustment
Comment 7: Spear Surrogate Value
Comment 8: Neck Surrogate Value
b. Separate Rate Eligibility
Comment 9: Ningbo Haishu Direct Import and Export Trade Co., Ltd.
Comment 10: Guangzhou Jingye Machinery Company, Ltd.
Comment 11: Guangzhou Ulix Industrial & Trading Company, Ltd.
XI. Recommendation

[FR Doc. 2019–23215 Filed 10–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–039]

Certain Amorphous Silica Fabric From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on certain amorphous silica fabric (silica fabric) from the People's Republic of China (China) for the period January 1, 2018, through December 31, 2018, based on timely withdrawal of the request for review.

DATES: Applicable October 24, 2019.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1121.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2019, Commerce published a notice of opportunity to request an administrative review of the CVD order on silica fabric from China for the period January 1, 2018, through

December 31, 2018 [1] On April 1, 2019, Commerce received a timely request, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), from Auburn Manufacturing, Inc. (the petitioner), to conduct an administrative review of this CVD order with respect to 81 companies.[2] Based upon this request, on May 29, 2019, in accordance with section 751(a) of the Act, Commerce published in the **Federal Register** a notice of initiation of administrative review for this CVD order.[3] On June 3, 2019, the petitioner submitted a letter correcting the spelling of certain companies in its review request.[4] Based upon this clarification, on July 15, 2019, Commerce published in the **Federal Register** a notice of initiation of administrative review including the corrected names of the affected companies.[5] On July 8, 2019 the petitioner timely withdrew its request for an administrative review for each of the 81 companies.[6]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioner timely withdrew its request for review by the 90-day deadline. No other party requested an administrative review. Accordingly, we are rescinding the administrative review of the CVD order on silica fabric from China covering the period January 1, 2018, to December 31, 2018, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess CVDs on all appropriate entries at a rate equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2018, to December 31, 2018, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of the countervailing duties occurred and the subsequent assessment of doubled countervailing duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751 of the Act and 19 CFR 351.213(d)(4).

Dated: October 17, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–23213 Filed 10–23–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review; Opportunity To Request Administrative Review,* 84 FR 7877 (March 5, 2019).

[2] *See* Letter from the petitioner re: ''Certain Amorphous Silica Fabric from the People's Republic of China,'' dated April 1, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 24743 (May 29, 2019) (*Initiation Notice*).

[4] *See* Letter from the petitioner re: ''Certain Amorphous Silica Fabric from the People's Republic of China—Errata to April 1, 2019 Request for Administrative Review,'' dated June 3, 2019.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739, 33753 and n.8 (July 15, 2019) (*Initiation Correction Notice*).

[6] *See* Letter from the petitioner re: ''Certain Amorphous Silica Fabric from the People's Republic of China: Withdrawal of Petitioners' Request for Administrative Review of the Countervailing Duty Order,'' dated July 8, 2019.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR042

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Port of Kalama Expansion Project on the Lower Columbia River

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; reissuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the Port of Kalama (POK) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates that are one year later (October 19, 2019—October 18, 2020). The initial IHA authorized take of three species of marine mammals, by Level A and Level B harassment, incidental to construction activities associated with an expansion project at the POK on the Lower Columbia River, Washington. The project has been delayed and none of the work covered in the initial IHA (effective October 18, 2018—October 18, 2019) has been conducted. The scope of the activities and anticipated effects remain the same, authorized take numbers would not change, and the required mitigation, monitoring, and reporting would remain the same as authorized in the 2018 IHA referenced above. NMFS is, therefore, issuing a second IHA to cover the identical incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from October 19, 2019 through October 18, 2020.

ADDRESSES: An electronic copy of the final 2018 IHA previously issued to POK, POK's application, and the **Federal Register** notices proposing and issuing the 2018 IHA may be obtained by visiting *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a

proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On September 28, 2015, we received a request from the POK for authorization of the taking, by Level B harassment only, of marine mammals incidental to the construction associated with the Port of Kalama Expansion Project, which involved construction of the Kalama Marine Manufacturing and Export Facility including a new marine terminal for the export of methanol, and installation of engineered log jams, restoration of riparian wetlands, and the removal of existing wood piles in a side channel as mitigation activities. The specified activity is expected to result in the take of three species of marine mammals (harbor seals, California sea lions, and Steller sea lions). A final version of the application, which we deemed adequate and complete, was submitted on December 10, 2015. We published a notice of a proposed IHA and request for comments on March 21, 2016 (81 FR 715064). After the public comment period and before we issued the final IHA, POK requested that we issue the IHA for 2017 instead of the 2016 work season. We subsequently published the final notice of our issuance of the IHA on December 12, 2016 (81 FR 89436), effective from September 1, 2017–August 31, 2018. In-water work associated with the project was expected to be completed within the one-year timeframe of the IHA.

On June 21, 2018, POK informed NMFS that work relevant to the specified activity considered in the MMPA analysis for the 2017–2018 IHA was postponed and would not be completed. POK requested that the IHA be issued to be effective for the period from 2018–2019. In support of that request, POK submitted an application addendum affirming that no change in the proposed activities is anticipated and that no new information regarding the abundance of marine mammals is available that would change the previous analysis and findings. A notice for the proposed incidental take authorization was published on July 25, 2018 (83 FR 35220), and a corrected notice was published on August 14, 2018 (83 FR 40257). On November 13, 2018, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Port of Kalama Expansion Project (83 FR 56304). The effective dates of that IHA were October 18, 2018 through October 18, 2019.

On August 21, 2019, POK informed NMFS that the project was being delayed by one year. None of the work identified in the IHA (*i.e.* pile driving and removal) has occurred and no take of any marine mammals has occurred since the effective date of the initial IHA. POK submitted a formal request for a new identical IHA that would be effective from October 19, 2019 through October 18, 2020, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, an IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

Planned activities include construction of a marine terminal and dock/pier for the export of methanol, and associated compensatory mitigation activities for the purposes of offsetting habitat effects from the action. Specifically, the location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the 2018 IHA. The mitigation and monitoring are also identical to the 2018 IHA and will include implementing shutdown procedures if any marine mammal approaches or enters the Level A harassment zone(s), limiting construction to daylight hours only, using bubble curtains during impact driving of steel piles, using soft-start during impact pile driving, and monitoring and reporting of qualified protected species observers (PSOs).

Species that are expected to be taken by the planned activity include harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and Steller sea lion (*Eumetopias jubatus*). The takes authorized in the 2018 IHA are presented in Table 1.

TABLE 1—AUTHORIZED TAKE AMOUNT BY SPECIES

Species	Level A	Level B	Total take
Harbor seal	10	1,530	1953
California sea lion	0	372	372
Steller sea lion	0	372	372

A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The methods of estimating take are identical to those used in the previous IHA, as is the density of marine mammals. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the original IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of

the issuance of the 2018–2019 IHA for the POK's Port of Kalama Expansion Project (83 FR 56304; November 13, 2018), the **Federal Register** notice of proposed IHA for the 2018–2019 IHA (83 FR 35220; July 25, 2018), the corrected **Federal Register** notice of proposed IHA for the 2018–2019 IHA (83 FR 40257; August 14, 2018), the **Federal Register** notice of the issuance of the 2017–2018 IHA (81 FR 89436, December 12, 2016), the **Federal Register** notice of the proposed IHA (81 FR 15064, March 21, 2016), POK's application (and 2018 application addendum), and all associated references and documents.

Determinations

POK will conduct activities identical to those analyzed in the previous 2018 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the 2018 IHA and no new information has emerged that would change those findings. The re-issued 2019 IHA includes identical required mitigation, monitoring, and reporting measures as the 2018 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) POK's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species. No incidental take of ESA-listed marine mammal species is expected to result from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to POK for in-water construction activities associated with the POK Expansion Project from October 19, 2019 through October 18, 2020. All previously described mitigation, monitoring, and reporting requirements from the 2018 IHA are incorporated.

Dated: October 18, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–23184 Filed 10–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW010

Scoping Meeting for Protective Regulations for Killer Whales in the Inland Waters of Washington State

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting, request for comments.

SUMMARY: This notice informs the public of an upcoming scoping process, including a scoping meeting, to solicit public comments on whether, based on best available information, existing National Marine Fisheries Service (NMFS) regulations and other measures adequately protect killer whales from the impacts of vessels and noise in the inland waters of Washington State and, if not, what actions NMFS should take. To inform comments, information on existing regulations and other protective measures are available at: *https://archive.fisheries.noaa.gov/wcr/protected_species/marine_mammals/killer_whale/vessel_regulations.html.*

DATES: Written or electronic scoping comments must be received by December 23, 2019.

ADDRESSES: You may submit comments on this document by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments by sending an email to *OrcaRecovery.WCR@noaa.gov* using the subject line ''Comments on Protective Regulations for Killer Whales Scoping.''
- *Mail:* Submit written comments to Seattle Branch Chief, Protected Resources Division, West Coast Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Building 1, Seattle, WA 98115, Attn: SRKW Vessel Regulation Revision.

Comments can also be provided in person during the scoping meeting, listed below.

FOR FURTHER INFORMATION CONTACT: Grace Ferrara, West Coast Region, National Marine Fisheries Service. Telephone: 206–526–6172. Email: *grace.ferrara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Dates, Times, and Locations

The date, time, and location of the scoping meeting is scheduled as follows:

Tuesday, November 12th, 2019—Friday Harbor, WA, 5 p.m. to 8 p.m., Brickworks Event Center, 150 Nichols St., Friday Harbor, WA 98250.

Background

NMFS listed the Southern Resident killer whale distinct population segment as endangered under the Endangered Species Act (ESA) in 2005 (70 FR 69903; November 18, 2005). During the listing of Southern Residents and the development of the 2008 Recovery Plan, vessel impacts were identified as one of the three main threats to recovery (NMFS, 2008). While in the inland waters of Washington State, this population is the target of an active transboundary commercial whale watch industry. In 2009, NMFS concluded that the voluntary guidelines in place to

reduce vessel impacts on the whales were not adequately addressing this threat and initiated a formal rulemaking process to establish mandatory regulations. The final rule published in 2011 consisted of two measures: (1) A prohibition on approaching any killer whale within 200 yards, and (2) a prohibition on parking in the path of any killer whale within 400 yards. These regulations apply to all killer whales in the inland waters of Washington State.

When NMFS implemented these protective vessel regulations in 2011, we committed to evaluating their effectiveness post-implementation. NMFS completed this evaluation in 2017 and the Technical Memo (Ferrara et al., 2017) can be found here: *https://archive.fisheries.noaa.gov/wcr/publications/protected_species/marine_mammals/killer_whales/noaa_techmemo_nmfsopr-58_dec2017.pdf.* Although received noise levels were variable and not significantly lower after the regulations were put in place (Holt *et al.,* 2017), the conclusions of this evaluation indicate that there have been some benefits to having protective regulations in place (Ferrara *et al.,* 2017). An economic analysis showed that, based on a review of multiple indicators for the ecotourism industry, the regulations did not have a negative impact on the commercial whale watch industry, but rather that the industry continued to grow after the regulations were put in place (Industrial Economics, 2015). These results indicate that additional protective measures could provide a greater biological benefit to the whales without necessarily harming the commercial whale watch industry.

Since the implementation of the 2011 vessel regulations, NMFS has continued to participate in efforts to develop and receive public input for protective measures to reduce vessel impacts on killer whales in Washington's inland waters. NMFS has partnered with the Washington Department of Fish and Wildlife (WDFW) to enforce the regulations, providing funding through three ESA grants from 2013 to the present to expand WDFW's involvement in protecting Southern Resident killer whales. A killer whale protection workshop held by NMFS in 2013 brought scientists, enforcement officers, non-governmental organizations, industry, and members of the public together to review existing protections for the whales as well as the role of monitoring, enforcement of boater education efforts, identify data gaps, and provide an opportunity for stakeholder input on next steps to address vessel effects on killer whales. In late 2016, NMFS received a petition to establish a Whale Protection Zone (WPZ) on the west side of San Juan Island. In response to that petition, NMFS sought public comment and, during a 90-day comment period in 2017, members of the public, local and state government, federal agencies, tribal organizations, NGOs, and industry submitted comments on the proposed WPZ design as well as protected areas for Southern Residents in general.

NMFS also engaged in broader efforts to study and develop measures to reduce vessel impacts. In March 2018, the Washington State Governor established the Southern Resident Orca Task Force to identify immediate actions to benefit Southern Residents as well as develop a long-term action plan for recovery. NMFS serves on this Task Force as well as in its Vessel Working Group. In its first year, the Task Force made 12 recommendations to fulfill the goal of reducing disturbance from vessels to Southern Residents. The full list of recommendations can be found here: *https://www.governor.wa.gov/sites/default/files/OrcaTaskForce_reportandrecommendations_11.16.18.pdf.* Several of these recommendations were taken up by the Washington State legislature in 2019, including the recommendations to increase the approach distance and establish a go-slow zone around Southern Residents.

Since 2017 NMFS has also served on the Advisory Working Group and the Acoustic Technical Committee for a voluntary slow-down trial, called ECHO, for piloted vessels transiting through Haro Strait. This trial has provided valuable insight into the impact of reducing the speed of large ships on the ambient noise level in an important foraging area for Southern Resident killer whales, as well as the impact of displacing vessel traffic away from an area frequented by Southern Residents. When compared to the pre-trial period, the acoustic intensity of ambient noise in the area of the west coast of San Juan Island was reduced by as much as 44 percent (corresponding to a 2.5 DB reduction in media sound pressure level) when vessel slowed down through the Strait (Joy *et al.,* 2019). Results of the lateral displacement trials are pending.

Public Comments

This scoping process aims to gather input regarding the need to revise the existing regulations, the scope of actions to be proposed for any rulemaking, the development of alternatives to that would be analyzed in the NEPA analysis, and the potential impact of management actions. NMFS is soliciting information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties. In particular, we request information and comments concerning: (1) The advisability of and need for changes to the existing regulations; (2) alternative management options for regulating vessel interactions with killer whales; (3) scientific and commercial information regarding the effect of vessels on killer whales and their habitat; (4) potential economic impacts of management options; and (5) any additional relevant information that NMFS should consider should it undertake rulemaking. In any future rulemaking, NMFS would consider existing voluntary and regulatory efforts to protect the whales, effectiveness and consistency of protective measures, transboundary coordination, the best available scientific information and public input in developing any amendments to the current federal vessel regulations.

Comments and suggestions received as part of this scoping process will be considered when developing the alternatives for analysis. Comments that were submitted to NMFS regarding the 2010 Environmental Assessment or previous proposed rule will be considered and do not need to be resubmitted.

Authority: 40 CFR 1501.2, 1501.7; 16 U.S.C. 1540(f)) and MMPA section 112(a) (16 U.S.C. 1382(a)).

Dated: October 18, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–23183 Filed 10–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR039

Marine Mammals; File No. 22677

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS Pacific Islands Fisheries Science Center, Hawaiian monk seal Research Program (Responsible Party, Charles Littnan), has applied in due form for a permit to conduct research and

enhancement activities on Hawaiian monk seals (*Neomonachus schauinslandi*).

DATES: Written, telefaxed, or email comments must be received on or before November 25, 2019.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 22677 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a 5-year permit to carry out research and enhancement activities designed to recover the endangered Hawaiian monk seal. Activities would occur along beaches and nearshore waters throughout the Hawaiian Archipelago (Northwestern Hawaiian Islands [NWHI] and main Hawaiian Islands [MHI]) and Johnston Atoll.

Research is intended to identify impediments to recovery, inform the design of conservation interventions, and evaluate those measures. Research activities include visual and photographic monitoring, tagging, pelage bleach/dye marking, health screening, foraging studies, deworming research, necropsies, tissue sampling, import/export of parts, behavioral modification research, vocalization studies and vaccination research.

Enhancement activities are designed to improve the survival and reproductive success of individual monk seals, with the intent to improve subpopulation and overall species' status. Enhancement activities include deworming, translocation, hazing and removal of aggressive adult male seals that harm or kill other seals, disentangling, dehooking, medical treatment, behavioral modification, vaccination, and supplemental feeding of post-release rehabilitated seals.

Annual number of individual seals to be taken by take type (annually, unless otherwise specified) could be up to 1,500 for monitoring, 400 for tagging, 1,200 for bleach/dye marking, 150 for health screening, 10 moribund seals by euthanasia, 80 instrumentations, 300 for deworming treatments, 80 for acoustic recording, translocations of nursing pups to birth or foster mothers as warranted (estimated 20 pups), translocations to alleviate risk as warranted (estimated 60 seals), translocations to the NWHI of any age seal in the MHI with unmanageable behavior to alleviate risk to humans and the seals involved (as warranted but likely not to exceed 2 per year), translocation of 20 weaned pups and 30 juvenile/subadults as one-way or as part of two-stage translocation for enhancement, hazing aggressive adult males from conspecifics as warranted (estimated 10 seals), 20 adult male removals (including up to 10 lethal removals over five years), unlimited (*i.e.,* as warranted) disentanglements, dehookings, necropsies, opportunistic samplings and import/exports (including import and export of Mediterranean monk seal samples for research and conservation purposes), 12 seals supplementary fed, 50 seals subject to behavioral modification, 1,500 seals vaccinated, and 200 incidentally harassed. Research on captive monk seals to test and validate field studies is proposed. The applicant also requests the following unintentional lethal takes or mortalities: Two seals annually not to exceed four animals in five years during research, two seals annually not to exceed four weaned pups in five years during enhancement, four juveniles/subadults not to exceed eight animals in five years during enhancement, two adult males not to exceed four across five years during enhancement activities. Up to 500 spinner dolphins (*Stenella longirostris*), and 20 bottlenose dolphins (*Tursiops truncatus*) may be incidentally harassed annually during research and enhancement activities.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are consistent with the Preferred Alternative in the Final Hawaiian Monk Seal Recovery Actions Programmatic Environmental Impact Statement (NMFS 2014), and that issuance of the permit would not have a significant adverse impact on the human environment.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 21, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–23230 Filed 10–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0121]

Proposed Collection; Comment Request

AGENCY: Defense Counterintelligence and Security Agency, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Counterintelligence and Security Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 23, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of Defense Consolidated Adjudications Facility, Attn: E.A. Foster, Fort George Meade, Maryland 20755, or call the DoD CAF Privacy Act Office, at 301–833–3790.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD Consolidations Facility Request for Records; OMB Control Number 0704–0561.

Needs and Uses: The information collection requirement is necessary to ensure needed information is collected to positively identify individuals who request records regarding themselves that are maintained by the DoD Consolidated Adjudications Facility. These records will also be used in any Privacy Act appeals or related litigation. The Law Enforcement, Congressional Inquiries, Department of Justice for Litigation, National Archives and Records Administration, and Data Breach Remediation, and Routine Uses found at *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.* The DoD Consolidated Adjudications Facility Request for Records form will also be used to refer records under the release authority of another Federal Agency.

Affected Public: Individuals or Households.

Annual Burden Hours: 10.

Number of Respondents: 120.

Responses per Respondent: 1.

Annual Responses: 120.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: October 21, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–23228 Filed 10–23–19; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2017–10; FRL–10001–39–Region 4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Mill Creek Generating Station (Jefferson County, Kentucky)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petitions to object to state operating permits.

SUMMARY: The EPA Administrator signed an Order, dated October 3, 2019, denying the petition submitted by Sierra Club (Petitioner) objecting to a proposed Clean Air Act (CAA) title V operating permit issued to Mill Creek Generating Station (Mill Creek) located in Jefferson County, Kentucky. The Order responds to a June 2, 2017, petition requesting that the EPA object to the final operating permit number O–0127–16–V. This permitting action was issued by the Louisville Metro Air Pollution Control District (LMAPCD). The Order constitutes a final action on the petition addressed therein.

ADDRESSES: Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4; Air and Radiation Division; 61 Forsyth Street SW; Atlanta, Georgia 30303–8960. The Order is also available electronically at the following address: *https://www.epa.gov/title-v-operating-permits/2019-order-denying-petition-object-title-v-operating-permit-mill-creek.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice is published in the **Federal Register**.

Petitioner submitted a petition requesting that the EPA object to the proposed CAA title V operating permit no. O–0127–16–V issued by LMAPCD to Mill Creek. Petitioner claims that this permitting action: Includes an impermissible long-term emission limit that is inadequate to protect the 1-hour sulfur dioxide National Ambient Air Quality Standards (NAAQS) and, even if it were permissible, the long-term limit is too high to protect the NAAQS.

On October 3, 2019, the Administrator issued an Order denying the petition. The Order explains the EPA's basis for denying the petition.

Dated: October 10, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–23223 Filed 10–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10001–38–Region 6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; Veolia ES Technical Solutions, LLC (Veolia) Port Arthur Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a UIC no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the Land Disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to Veolia for two Class I

hazardous waste injection wells located at their Port Arthur, Texas facility. The company has adequately demonstrated to the satisfaction of the EPA by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Veolia of the specific restricted hazardous wastes identified in this exemption reissuance request into Class I hazardous waste injection wells WDW–160 and WDW–358 until December 31, 2041, unless the EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the EPA Region 6 Ground Water/UIC Section. A public notice was issued August 8, 2019, and the public comment period closed on September 23, 2019, and no comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action was effective as of October 2, 2019.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Division, Safe Drinking Water Branch (6WDD), 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: October 2, 2019.

Charles W. Maguire,

Director, Water Division.

[FR Doc. 2019–23222 Filed 10–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2018–0618; FRL 10001–41–OW]

Preliminary Effluent Guidelines Program Plan 14

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice of availability announces the Environmental Protection Agency's (EPA) Preliminary Effluent Guidelines Program Plan 14 (Preliminary Plan 14) and solicits public comment. Section 304(m) of the Clean Water Act (CWA) requires the EPA to biennially publish a plan for new and revised effluent limitations guidelines, after public review and comment. Preliminary Plan 14 identifies any new or existing industrial categories selected for effluent guidelines or pretreatment standards and provides a schedule for their development. The EPA typically publishes a preliminary plan upon which the public is invited to comment, and then publishes a final plan thereafter. The EPA developed Preliminary Plan 14 based on its review and analysis of data from 2016, 2017, and 2018 as part of its annual review process.

DATES: Comments must be received on or before November 25, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2018–0618, to the *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Dr. Phillip Flanders, Engineering and Analysis Division, Office of Water, 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–8323; fax number: (202) 566–1053; email address: *flanders.phillip@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Supporting Documents—A key document providing additional information is the *Preliminary Effluent Guidelines Program Plan 14* document. Supporting documents providing further details are also available for review.

B. How can I get copies of these documents and other related information?

1. Docket. The EPA has established an official public docket for these actions under Docket ID No. EPA–HQ–OW–2018–0618. The official public docket is the collection of materials that are available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460.

2. Electronic Access. You can access this **Federal Register** document electronically through the United States Government online source for Federal regulations at *https://www.regulations.gov.*

3. Internet access. Copies of the supporting documents are available at *https://www.epa.gov/eg/effluent-guidelines-plan.*

II. How is this document organized?

The outline of this document follows.

A. Legal Authority.
B. Summary of Preliminary Effluent Guidelines Program Plan 14.
C. Request for Public Comments and Information.

A. Legal Authority

This notice of availability is published under the authority of the CWA, 33 U.S.C. 1251, *et seq.,* and in particular sections 301(d), 304(b), 304(g), 304(m), 306, 307(b) and 308 of the Act, 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, 1317(b), and 1318.

B. Summary of Preliminary Effluent Guidelines Program Plan 14

The EPA prepares Preliminary Effluent Guidelines Program Plans pursuant to CWA section 304(m). Preliminary plans provide a summary of the EPA's annual review of effluent guidelines and pretreatment standards, consistent with CWA sections 301(d), 304(b), 304(g), 304(m), and 307(b). From these reviews, preliminary plans identify any new or existing industrial categories selected for effluent guidelines or pretreatment standards rulemakings and provide a schedule for such rulemakings. In addition, preliminary plans present any new or existing categories of industry selected for further review and analysis.

Preliminary Plan 14 discusses the one ongoing rulemaking (and the associated schedule) for the Steam Electric Power Generating Point Source Category. The EPA has concluded that no additional categories warrant new or revised effluent guidelines at this time. Preliminary Plan 14 provides updates

on the Electrical and Electronic Components Category Detailed Study and the Oil and Gas Extraction Wastewater Management Study and concludes the Petroleum Refining Point Source Category Detailed Study. Additionally, Preliminary Plan 14 introduces new analyses and tools that the EPA is developing to improve its annual review and biennial planning process.

Preliminary Plan 14 can be found at *https://www.epa.gov/eg/effluent-guidelines-plan.*

C. Request for Public Comments and Information

The EPA requests comments and information on the overall content of Preliminary Plan 14 and specifically on the following topics.

1. Reviews of Industrial Wastewater Discharges and Treatment Technologies

The EPA solicits comments on the reviews of industrial wastewater discharges and treatment technologies that were conducted for the development of Preliminary Plan 14 and described therein. The EPA solicits comments on the new analyses and tools announced in Preliminary Plan 14, including analyses of industrial sources and discharges of nutrients and per- and polyfluoroalkyl substances (PFAS), a new methodology for proposed treatment technology reviews, and a proposed effluent limitations guidelines database. Preliminary Plan 14 presents initial results for some new analyses (*e.g.,* industrial discharges of nutrients). The EPA solicits comments on the utility and applicability of these results along with any comments or suggestions on the methodologies used to obtain them.

2. Data Sources

The EPA solicits comment on other data sources it might use in its annual reviews and biennial planning process.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2019–23192 Filed 10–23–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council

October 29, 2019, 1:00 p.m., 77 K Street NE, Washington, DC 20002

1. Approval of the minutes of the May 29, 2019 Joint Board/ETAC meeting
2. Investment Benchmark Update
3. FY2020 Budget Briefing
4. Spillover Implementation
5. 5% Auto Enrollment Implementation
6. Two Step Account Authentication
7. Additional Withdrawals Implementation Update
9. New Business

Contact Person For More Information: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: October 18, 2019.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2019–23153 Filed 10–23–19; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0096; Docket No. 2019–0003; Sequence No. 32]

Information Collection; Patents

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning patents. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through January 31, 2020. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by December 23, 2019.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0096, Patents.

Instructions: All items submitted must cite Information Collection 9000–0096, Patents. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0096, Patents.

B. Need and Uses

The patent coverage in Federal Acquisition Regulation (FAR) subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract (FAR 52.227–2).

The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (FAR 52.227–6, and 52.227–9).

C. Annual Burden

Respondents: 158.
Total Annual Responses: 158.
Total Burden Hours: 238.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F

Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0096, Patents, in all correspondence.

Dated: October 17, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–23152 Filed 10–23–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC). This meeting is open to the public limited only by the space and ports available. The meeting room accommodates 70 participants and there will be 2,000 ports available. Due to the limited availability of meeting space, we are encouraging the pubic to please register using the link provided: *https://www.surveymonkey.com/r/TPPT2T2.*

There will be public comment periods at the end of each meeting day; from 3:35 p.m.–4:05 p.m. on December 4, 2019 and from 10:40 a.m.–10:55 a.m. on December 5, 2019.

DATES: The meeting will be held on December 4, 2019, 9:00 a.m. to 4:40 p.m., EST and December 5, 2019, 9:00 a.m. to 11:30 a.m., EST.

ADDRESSES: Hilton Garden Inn Atlanta—Buckhead, 3342 Peachtree Road NE, Atlanta, Georgia 30326 and via Teleconference: Dial-In Number: 1–800–475–0522, Participant Code: 7074867.

FOR FURTHER INFORMATION CONTACT: Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Deputy Associate Director for Science, NCIPC, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, GA 30341, Telephone (770) 488–1430. Email address: *ncipcbsc@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Board will: (1) Conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist States and their political subdivisions in preventing and suppressing communicable and non-communicable diseases and other preventable conditions and in promoting health and well-being; and (3) conduct and assist in research and control activities related to injury. The Board of Scientific Counselors makes recommendations regarding policies, strategies, objectives, and priorities; and reviews progress toward injury prevention goals and provides evidence in injury prevention-related research and programs. The Board also provides advice on the appropriate balance of intramural and extramural research, the structure, progress and performance of intramural programs. The Board is designed to provide guidance on extramural scientific program matters, including the: (1) Review of extramural research concepts for funding opportunity announcements; (2) conduct of Secondary Peer Review of extramural research grants, cooperative agreements, and contracts applications received in response to the funding opportunity announcements as it relates to the Center's programmatic balance and mission; (3) submission of secondary review recommendations to the Center Director of applications to be considered for funding support; (4) review of research portfolios, and (5) review of program proposals.

Matters To Be Considered: The agenda will include Day One: Discussions on Lung Injury, Overdose Prevention Research Priorities Update, The Nation's Opioid Crisis, Work Implementation for Workers and Employees (CDC/NIOSH), and a request for the establishment of an Opioid Workgroup. Day Two: The discussions will focus on The Importance of Accounting for Contextual Factors when Developing Strategies to address Health Inequities, Health Disparities among American Indian and Alaskan Native Population and Health Disparities Research Activities at CDC. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–23201 Filed 10–23–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3389–PN]

Medicare Program; Application from Utilization Review Accreditation Commission for Initial CMS-Approval of Its Home Infusion Therapy Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of an application from Utilization Review Accreditation Commission for initial recognition as a national accrediting organization for suppliers of home infusion therapy services that wish to participate in the Medicare program. Within 60 days of receipt of an organization's complete application, the statute requires CMS to publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 25, 2019.

ADDRESSES: In commenting, please refer to file code CMS–3389–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3389–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3389–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Christina Mister-Ward, (410) 786–2441.

Shannon Freeland, (410) 786–4348.

Lillian Williams, (410) 786–8636.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov* . Follow the search instructions on that website to view public comments.

I. Background

Infusion therapy is a treatment option for Medicare beneficiaries with a wide range of acute and chronic conditions. Section 5012 of the 21st Century Cures Act (Pub. L. 114–255, enacted December 13, 2016) added section 1861(iii) to the Social Security Act (the Act), establishing a new Medicare benefit for home infusion therapy (HIT) services. Section 1861(iii)(1) of the Act defines HIT as professional services, including nursing services; training and education not otherwise covered under the durable medical equipment (DME) benefit; remote monitoring; and other monitoring services. HIT must be furnished by a qualified HIT supplier and furnished in the individual's home. The individual must be under—

- The care of an applicable provider (that is, physician, nurse practitioner, or physician assistant); and
- A plan of care established and periodically reviewed by a physician in coordination with the furnishing of home infusion drugs under Part B, that prescribes the type, amount, and duration of infusion therapy services that are to be furnished.

Section 1861(iii)(3)(D)(III) of the Act requires that a qualified HIT supplier be accredited by an accrediting organization (AO) designated by the Secretary in accordance with section 1834(u)(5) of the Act. Section 1834(u)(5)(A) of the Act identifies factors for designating AOs and in reviewing and modifying the list of designated AOs. These statutory factors are as follows:

- The ability of the organization to conduct timely reviews of accreditation applications.
- The ability of the organization take into account the capacities of suppliers located in a rural area (as defined in section 1886(d)(2)(D) of the Act).
- Whether the organization has established reasonable fees to be charged to suppliers applying for accreditation.
- Such other factors as the Secretary determines appropriate.

Section 1834(u)(5)(B) of the Act requires the Secretary to designate AOs to accredit HIT suppliers furnishing HIT not later than January 1, 2021. Section 1861(iii)(3)(D) of the Act defines ''qualified home infusion therapy suppliers'' as being accredited by a CMS-approved AO.

In the March 1, 2019 **Federal Register**, we published the ''Medicare Program; Solicitation of Independent Accrediting Organizations To Participate in the Home Infusion Therapy Supplier Accreditation Program'' solicitation notice (84 FR 7057). This notice informed national AOs that accredit HIT suppliers of an opportunity to submit applications to participate in the HIT supplier accreditation program. Complete applications will be considered for the January 1, 2021 designation deadline if received by February 1, 2020.

Regulations for the approval and oversight of AOs for HIT organizations are located at 42 CFR part 488, subpart L. The requirements for HIT suppliers are located at 42 CFR part 486, subpart I.

II. Approval of Accreditation Organizations

Section 1834(u)(5) of the Act and the regulations at 42 CFR 488.1010 (Application and re-application procedures for national HIT AOs) require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data.

Section 488.1020(a) requires that we publish, after receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. In accordance with § 488.1010(d), we have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of the Utilization Review Accreditation Commission's (URAC) initial request for CMS approval of its HIT accreditation program. This notice also solicits public comment on whether URAC's requirements meet or exceed the Medicare conditions of participation for HIT services.

III. Evaluation of Deeming Authority Request

URAC submitted all the necessary materials to enable us to make a determination concerning its request for initial approval of its HIT accreditation program. This application was determined to be complete on August 30, 2019. Under section 1834(u)(5) of the Act and § 488.1010, our review and evaluation of URAC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of URAC's standards for HIT as compared with CMS' HIT conditions for certification.
- URAC's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of URAC's to CMS standards and processes, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ URAC's processes and procedures for monitoring a HIT supplier found out of compliance with URAC's program requirements.

++ URAC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ URAC's capacity to provide CMS with electronic data and reports necessary for effective assessment and interpretation of the organization's survey process.

++ The adequacy of URAC's staff and other resources, and its financial viability.

++ URAC's capacity to adequately fund required surveys.

++ URAC's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ URAC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys, audits or participate in accreditation decisions.

++ URAC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

• URAC's agreement or policies for voluntary and involuntary termination of suppliers.

• URAC agreement or policies for voluntary and involuntary termination of the HIT AO program.

IV. Collection of Information Requirements

This document does not impose information collection and requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** summarizing our response to comments and announcing the result of our evaluation.

Dated: October 10, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–23137 Filed 10–23–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7055–N]

Announcement of the Advisory Panel on Outreach and Education (APOE) November 14, 2019 Meeting

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES:

Meeting Date: Thursday, November 14, 2019, 8:30 a.m. to 4:00 p.m. eastern standard time (e.s.t).

Deadline for Meeting Registration, Presentations, Special Accommodations and Comments: Thursday, October 31, 2019, 5:00 p.m. eastern daylight time (e.d.t).

ADDRESSES:

Meeting Location: U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Room 505A, Washington, DC 20201.

Presentations and Written Comments: Presentations and written comments should be submitted to: Lisa Carr, Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the website *https://www.eventbrite.com/e/apoe-november-14-2019-meeting-tickets-68776334869* or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Lisa Carr, Designated Federal Official, Office of Communications, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

Additional information about the APOE is available at: *http://www.cms.gov/Regulations-and-guidance/Guidance/FACA/APOE.html.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background and Charter Renewal Information

A. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory Panel on Medicare Education [1] (the predecessor to the APOE) on January 21, 1999 (64 FR 7899) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105–33).

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. CMS has had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and

[1] We note that the Citizen's Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR 4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Patient Protection and Affordable Care Act (Pub. L. 111–148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the Affordable Care Act) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and CHIP. Qualified individuals and qualified employers are now able to purchase private health insurance coverage through a competitive marketplace, called an Affordable Insurance Exchange (also called Health Insurance Marketplace℠, or Marketplace℠ [2]). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through the Marketplace℠. The APOE (the Panel) allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this Panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 19, 2019, and will terminate on January 19, 2021 unless renewed by appropriate action.

B. Charter Renewal

In accordance with the January 19, 2019, charter, the APOE will advise the HHS and CMS on developing and implementing education programs that support individuals who are enrolled in or eligible for Medicare, Medicaid, CHIP, or health coverage available through the Health Insurance Marketplace℠ and other CMS programs. The Federal Advisory Committee Act (FACA) group will also advise on issues relating to education of providers and stakeholders with respect to health care reform and certain provisions of the HITECH Act enacted as part of the ARRA.

The charter will terminate on January 19, 2021, unless renewed by appropriate action. The APOE was chartered under 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended. The APOE is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

In accordance with the renewed charter, the APOE will advise the Secretary of Health and Human Services and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, the CHIP, and coverage available through the Health Insurance Marketplace℠ and other CMS programs.
- Enhancing the federal government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance Marketplace℠ consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs of issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, partners and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, the CHIP and the Health Insurance Marketplace℠ education programs, and other CMS programs as designated.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel as of September 9, 2019 are—Angie Boddie, Director of Health Programs, National Caucus and Center on Black Aging, Inc.; Julie Carter, Senior Federal Policy Associate, Medicare Rights Center; Scott Ferguson, Director of Care Transitions and Population Health, Mount Sinai St. Luke's Hospital; Leslie Fried, Senior Director, Center for Benefits Access, National Council on Aging; David Goldberg, President and CEO of Mon Health System; Jean-Venable R. Goode, Professor, Department of Pharmacotherapy and Outcomes Science, School of Pharmacy, Virginia Commonwealth University; Louise Scherer Knight, Director, Harry J. Duffey Family Patient and Family Services Program, Johns Hopkins Sidney Kimmel Comprehensive Cancer Center; Cheri Lattimer, Executive Director, National Transitions of Care Coalition; Michael Minor, National Director, H.O.P.E. HHS Partnership, National Baptist Convention USA, Incorporated; Cathy Phan, Business Development Coordinator, Asian American Health Coalition dba HOPE Clinic; Margot Savoy, Chair, Department of Family and Community Medicine, Temple University Physicians; Congresswoman Allyson Schwartz, President and CEO, Better Medicare Alliance; and Tobin Van Ostern, Co-Founder, Young Invincibles Advisors; Tia Whitaker, Statewide Director, Outreach and Enrollment, Pennsylvania Association of Community Health Centers.

II. Provisions of This Notice

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the November 14, 2019 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (July 16, 2019) meeting
- CMS programs, initiatives, and priorities
- An opportunity for public comment
- Meeting summary, review of recommendations, and next steps

[2] Health Insurance Marketplace℠ and Marketplace℠ are service marks of the U.S. Department of Health & Human Services.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

III. Security, Building, and Parking Guidelines

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice. This meeting will be held in a federal government building, the Hubert H. Humphrey (HHH) Building; therefore, federal security measures are applicable.

The REAL ID Act of 2005 (Pub. L. 109–13) establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits federal agencies from accepting an official driver's license or ID card from a state for any official purpose unless the Secretary of the Department of Homeland Security determines that the state meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a state or territory not in compliance with the Real ID Act will not be accepted as identification to enter federal buildings. Visitors from these states/territories will need to provide alternative proof of identification (such as a valid passport) to gain entrance into federal buildings. The current list of states from which a federal agency may accept driver's licenses for an official purpose is found at *http://www.dhs.gov/real-id-enforcement-brief.*

We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of a government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into HHH Building, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.

IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Authority: Sec. 1114 (f) of the Social Security Act (42 U.S.C. 1314(f)), sec. 222 of the Public Health Service Act (42 U.S.C. 217a), and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR part 102–3).

Dated: October 10, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–23136 Filed 10–23–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10527]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by November 25, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *or* Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each

proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Eligibility Redetermination, Product Discontinuation and Renewal Notices; *Use:* Section 1411(f)(1)(B) of the Affordable Care Act directs the Secretary of Health and Human Services (the Secretary) to establish procedures to redetermine the eligibility of individuals on a periodic basis in appropriate circumstances. Section 1321(a) of the Affordable Care Act provides authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, qualified health plans (QHPs) and other components of title I of the Affordable Care Act. Under section 2703 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, and former section 2712 and section 2741 of the PHS Act, enacted by the Health Insurance Portability and Accountability Act of 1996, health insurance issuers in the group and individual markets must guarantee the renewability of coverage unless an exception applies.

The final rule ''Patient Protection and Affordable Care Act; Annual Eligibility Redeterminations for Exchange Participation and Insurance Affordability Programs; Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges'' (79 FR 52994), provides that an Exchange may choose to conduct the annual redetermination process for a plan year (1) in accordance with the existing procedures described in 45 CFR 155.335; (2) in accordance with procedures described in guidance issued by the Secretary for the coverage year; or (3) using an alternative proposed by the Exchange and approved by the Secretary. The final rule also amends the requirements for product renewal and re-enrollment (or non-renewal) notices to be sent by QHP issuers in the Exchanges and specifies content for these notices. *Form Number:* CMS–10527 (OMB control number 0938–1254); *Frequency:* Annually; *Affected Public:* Private Sector, State Governments; *Number of Respondents:* 1,805; *Total Annual Responses:* 7,420; *Total Annual Hours:* 90,331. (For policy questions regarding this collection contact Usree Bandyopadhyay at 410–786–6650.)

Dated: October 18, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–23143 Filed 10–23–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3384–PN]

Medicare and Medicaid Programs; Application From the Joint Commission (TJC) for Continued Approval of its Home Health Agency Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of an application from The Joint Commission (TJC) for continued recognition as a national accrediting organization for home health agencies (HHAs) that wish to participate in the Medicare or Medicaid programs. The statute requires that within 60 days of receipt of an organization's complete application, the Centers for Medicare and Medicaid Services (CMS) publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 25, 2019.

ADDRESSES: In commenting, please refer to file code CMS–3384–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.*

Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3384–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3384–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Sharon Lash (410) 786–9457.

Caecilia Blondiaux (410) 786–2190.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a home health agency (HHA), provided certain requirements are met. Sections 1861(m) and (o), 1891 and 1895 of the Social Security Act (the Act) establish distinct criteria for an entity seeking designation as an HHA. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities and other entities are at 42 CFR part 488. The regulations at 42 CFR parts 409 and 484 specify the conditions that an HHA must meet to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for home health care.

Generally, to enter into a provider agreement with the Medicare program, an HHA must first be certified by a state survey agency as complying with the conditions or requirements set forth in 42 CFR part 484 of our regulations. Thereafter, the HHA is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements.

However, there is an alternative to surveys by state agencies. Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for CMS approval of their accreditation program under 42 CFR part 488, subpart A must provide CMS with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require accrediting organizations to reapply for continued approval of their accreditation program every 6 years or sooner as determined by CMS.

The Joint Commission's (TJC's) term of approval for their HHA accreditation program expires March 31, 2020.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of TJC's request for continued approval for its HHA accreditation program. This notice also solicits public comment on whether TJC's requirements meet or exceed the Medicare conditions of participation (CoPs) for HHAs.

III. Evaluation of Deeming Authority Request

TJC submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its HHA accreditation program. This application was determined to be complete on July 15, 2019. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of TJC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of TJC's standards for HHAs as compared with CMS' HHA CoPs.
- TJC's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of TJC's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited HHAs.

++ TJC's processes and procedures for monitoring HHAs found out of compliance with TJC's program requirements. These monitoring procedures are used only when TJC identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.9(c).

++ TJC's capacity to report deficiencies to the surveyed HHAs and respond to the HHA's plan of correction in a timely manner.

++ TJC's capacity to provide us with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of TJC's staff and other resources, and its financial viability.

++ TJC's capacity to adequately fund required surveys.

++ TJC's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ TJC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ TJC's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal**

Register summarizing our response to comments and announcing the result of our evaluation.

Dated: September 26, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–23185 Filed 10–23–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–4467]

Breast Implants—Certain Labeling Recommendations To Improve Patient Communication; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Breast Implants—Certain Labeling Recommendations to Improve Patient Communication.'' This draft guidance contains recommendations concerning the content and format for certain labeling information for saline and silicone gel-filled breast implants. FDA is seeking comments on all aspects of the draft guidance, including the respective benefits and risks of smooth and textured breast implants and applicability of the recommendations to both types. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by December 23, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–4467 for ''Breast Implants—Certain Labeling Recommendations to Improve Patient Communication.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Breast Implants—Certain Labeling Recommendations to Improve Patient Communication'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Cynthia Chang, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4646, Silver Spring, MD 20993–0002, 301–796–6891.

SUPPLEMENTARY INFORMATION:

I. Background

Over the past few years, FDA has received new information pertaining to risks associated with breast implants, including breast implant-associated anaplastic large cell lymphoma and systemic symptoms commonly referred to as breast implant illness that some patients attribute to their implants. FDA has taken several steps to better understand and address risks associated with breast implants, including convening the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee on March

25–26, 2019, to discuss the long-term benefits and risks of breast implants indicated for breast augmentation and reconstruction. FDA learned from presentations at the March 2019 panel meeting, and through comments submitted to the associated public docket, that some patients may not be receiving or understanding important information regarding the benefits and risks of breast implants in a format that allows them to make a well-informed decision about whether or not to have a breast implantation.

For these reasons, FDA is now providing recommendations concerning the content and format of certain labeling information for these devices. Specifically, FDA is recommending that manufacturers incorporate a boxed warning and a patient decision checklist into the labeling for these devices to better ensure certain information is received and understood by patients. This draft guidance also recommends updated and additional labeling information, including updates to the silicone gel-filled breast implant rupture screening recommendations, inclusion of an easy-to-find description of materials, and provision of patient device cards that were recommended at the March 2019 panel meeting.

This draft guidance is not intended to include a complete listing of all labeling components for breast implants. When finalized, the recommendations in this draft guidance will supplement or in some cases replace recommendations in FDA's guidance entitled ''Saline, Silicone Gel, and Alternative Breast Implants'' (November 2006) (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/saline-silicone-gel-and-alternative-breast-implants*).

Based on the information presented at the March 2019 panel meeting, FDA continues to gather available information regarding the benefits and risks associated with different types of breast implants, and consider appropriate labeling and regulatory requirements for them. FDA will continue to analyze all available information regarding the risks associated with breast implants and take additional actions as determined necessary or appropriate. FDA invites comments on the benefits and risks of smooth and textured breast implants, respectively, as well as the labeling recommendations for these implants.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Breast Implants—Certain Labeling Recommendations to Improve Patient Communication.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Breast Implants—Certain Labeling Recommendations to Improve Patient Communication'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 19021 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR Part; guidance; or FDA form	Topic	OMB control No.
814, subparts A through E	Premarket approval	0910–0231
812	Investigational Device Exemption	0910–0078
801	Medical Device Labeling Regulations	0910–0485
50, 56	Protection of Human Subjects: Informed Consent; Institutional Review Boards	0910–0755
830	Unique Device Identification System	0910–0720
820	Current Good Manufacturing Practice (CGMP); Quality System Regulation	0910–0073

Dated: October 18, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23197 Filed 10–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0557]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Postmarket Surveillance of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 25, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0449. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Postmarket Surveillance of Medical Devices—21 CFR part 822

OMB Control Number 0910–0449—Extension

Section 522 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360*l*) authorizes FDA to require a manufacturer to conduct postmarket surveillance (PS) of any device that meets the criteria set forth in the statute. The PS regulation establishes procedures that FDA uses to approve and disapprove PS plans. The regulation provides instructions to manufacturers, so they know what information is required in a PS plan submission. FDA reviews PS plan submissions in accordance with §§ 822.15 through 822.19 of the regulation, which describe the grounds for approving or disapproving a PS plan. In addition, the PS regulation provides instructions to manufacturers to submit interim and final reports in accordance with § 822.38. Respondents to this collection of information are those manufacturers that require PS of their products.

In the **Federal Register** of June 19, 2019 (84 FR 28554), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
PS submission (822.9 and 822.10)	25	1	25	120	3,000
Changes to PS plan after approval (822.21)	9	1	9	40	360
Changes to PS plan for a device that is no longer marketed (822.28)	6	1	6	8	48
Waiver (822.29)	1	1	1	40	40
Exemption request (822.30)	16	1	16	40	640
Periodic reports (822.38)	25	3	75	40	3,000
Total					7,088

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Explanation of Reporting Burden Estimate: The burden captured in table 1 is based on the data from FDA's internal tracking system. Sections 822.26, 822.27, and 822.34 do not constitute information collection subject to review under the PRA because it entails no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument (see 5 CFR 1320.3(h)(1)).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Manufacturer records (822.31)	25	1	25	20	500
Investigator records (822.32)	75	1	75	5	375
Total					875

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Explanation of Recordkeeping Burden Estimate: FDA expects that at least some of the manufacturers will be able to satisfy the PS requirement using information or data they already have. For purposes of calculating burden, however, FDA has assumed that each PS order can only be satisfied by a 3-year clinically based surveillance plan, using three investigators. These estimates are based on FDA's knowledge and experience with PS.

Our estimated burden for the information collection reflects a decrease of 29,982 hours. We attribute this adjustment to a decrease in the number of submissions we received over the last few years.

Dated: October 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23205 Filed 10–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0825]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for premarket approval of medical devices.

DATES: Submit either electronic or written comments on the collection of information by December 23, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 23, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 23, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–N–0825 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Approval of Medical Devices.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Approval of Medical Devices

OMB Control Number 0910–0231—Extension

Under section 515 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360e) all devices placed into class III by FDA are subject to

premarket approval application (PMA) requirements. PMA is the process of scientific and regulatory review to ensure the safety and effectiveness of class III devices. An approved PMA is, in effect, a private license granted to the applicant for marketing a particular medical device. A class III device that fails to meet PMA requirements is considered to be adulterated under section 501(f) of the FD&C Act (21 U.S.C. 351(f)) and cannot be marketed. PMA requirements apply differently to preamendments devices, postamendments devices, and transitional class III devices.

Manufacturers of class III preamendments devices (devices that were in commercial distribution before May 28, 1976) are not required to submit a PMA until 30 months after the issuance of a final classification regulation or until 90 days after the publication of a final regulation requiring the submission of a PMA, whichever period is later. FDA may allow more than 90 days after issuance of a final rule for submission of a PMA.

A postamendments device is one that was first distributed commercially on or after May 28, 1976. Postamendments devices determined by FDA to be substantially equivalent to preamendments class III devices are subject to the same requirements as the preamendments devices. FDA determines substantial equivalence after reviewing an applicant's premarket notification submitted in accordance with section 510(k) of the FD&C Act (21 U.S.C. 360(k)). Postamendments devices determined by FDA to be not substantially equivalent to either preamendments devices or postamendments devices classified into class I or II are ''new'' devices and fall automatically into class III. Before such devices can be marketed, they must have an approved PMA or be must reclassified into class I or class II.

The Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended the FD&C Act by streamlining the process of bringing safe and effective drugs, medical devices, and other therapies to the U.S. market. FDAMA added section 515(d)(6) to the FD&C Act, which provided that PMA supplements were required for all device changes that affect safety and effectiveness unless such changes are modifications to manufacturing procedures or method of manufacture. That type of manufacturing change requires a 30-day notice, or where FDA finds such notice inadequate, a 135-day PMA supplement.

The implementing regulations, contained in 21 CFR part 814, further specify the contents of a PMA for a medical device and the criteria FDA will employ in approving, denying, or withdrawing approval of a PMA and supplements to PMAs. The regulations' purpose is to establish an efficient and thorough procedure for FDA's review of PMAs and supplements to PMAs for class III medical devices. The regulations facilitate the approval of PMAs and supplements to PMAs for devices that have been shown to be reasonably safe and effective and otherwise meet the statutory criteria for approval. The regulations also allow for the denial of PMAs and supplements to PMAs for devices that have not been shown to be reasonably safe and effective and that do not otherwise meet the statutory criteria for approval.

The burden estimate is based on the annual rate of receipt of PMA submissions for fiscal years (FYs) 2016 through 2018 and our expectation of submissions to come in the next few years. The burden data for PMAs is based on data provided by applicants by device type and cost element in an earlier study.

Reporting Burden

Section 814.15(b) (21 CFR 814.15(b))—Research Conducted Outside the United States. FDA will accept information on a clinical investigation conducted outside the United States (OUS) to support a PMA if the investigation is well-designed and well-conducted and certain other conditions are met, including that the investigation was conducted in accordance with good clinical practice (GCP) as specified in 21 CFR 812.28. If the OUS clinical investigation did not conform to GCP, then the PMA submission should include a waiver request or a statement explaining the reason for not conducting the investigation in accordance with GCP and a description of steps taken to ensure that the data and results are credible and accurate and that the rights, safety, and well-being of subjects have been adequately protected. Based on the number of PMAs received that contained studies from overseas, FDA estimates that the burden estimate necessary to meet this requirement is 50 hours.

Section 814.20 (21 CFR 814.20)—Application. Specifies the information required in a PMA and update reports such as the applicant's name and address, a description of the device, its labeling, its indications for use, and summary of clinical and non-clinical studies. Included in this requirement is the conduct of laboratory and clinical trials, as well as the analysis, review, and physical preparation of the PMA application. FDA estimates that 38 applicants, including hospital remanufacturers of single-use devices, will be affected by these requirements, which are based on the actual average of FDA receipt of new PMA applications in FYs 2016 through 2018.

Additionally, the ''Human Subject Protection; Acceptance of Data from Clinical Investigations for Medical Devices'' final rule (83 FR 7366; February 21, 2018) amended this section to address requirements for a PMA supported by data from clinical investigations conducted outside the United States. The applicant will be required to submit the information as described in § 814.20(b)(6)(ii)(C). We estimate this will take 30 minutes per respondent. We estimate that 10 respondents annually will submit such information.

The collections in OMB control number 0910–0741, ''Human Subject Protection; Acceptance of Data from Clinical Studies for Medical Devices,'' were submitted to OMB as a new information collection request with the expectation that the currently approved requirements will be amended. As noted in the Supporting Statement for OMB control number 0910–0741, we are amending OMB control number 0910–0231 to reflect the information collections associated with the rulemaking under § 814.20(b)(6)(ii)(C).

Section 814.37(a) through (c) and (e) (21 814.37(a) through (c) and (e))—PMA Amendments and Resubmitted PMAs. As part of the review process, FDA often requests the PMA applicant to submit additional information regarding the device necessary for FDA to file the PMA or to complete its review and make a final decision. The PMA applicant may, on their own initiative, submit additional information to FDA during the review process. These amendments contain information ranging from additional test results and reanalysis of the original data set to revised device labeling. Almost all PMAs received by the Agency have amendments submitted during the review process.

Section 814.39(a) (21 CFR 814.39(a))—PMA Supplements. This information collection includes the requirements for the range of PMA supplements (panel track, 180-day fee-based, 180-day non-fee-based, and real-time supplements).

Section 814.39(d)—Special PMA Supplements—Changes Being Affected. This type of supplement is intended to enhance the safety of the device or the safe use of the device. The number of PMA supplements received that fit this

category averaged 75 per year based on the numbers received from FYs 2016 through 2018.

Section 814.39(f)—30-Day Notice. Under section 515(d) of the FD&C Act, modifications to manufacturing procedures or methods of manufacture that affect the safety and effectiveness of a device subject to an approved PMA do not require submission of a PMA supplement under paragraph (a) of that section and are eligible to be the subject of a 30-day notice. A 30-day notice shall describe in detail the change, summarize the data or information supporting the change, and state that the change has been made in accordance with the requirements of part 820 (21 CFR part 820). The applicant may distribute the device 30 days after the date on which FDA receives the 30-day notice, unless FDA notifies the applicant within 30 days from receipt of the notice that it is not adequate.

Section 814.82(a)(9) (21 CFR 814.82(a)(9))—Postapproval Requirements. Postapproval requirements concerns approved PMAs that were not reclassified and require a periodic report. After approval, all PMAs require a submission of an annual report. A majority of the submitted PMAs require associated postapproval studies, *i.e.,* followup of patients used in clinical trials to support the PMA or additional preclinical information that is labor-intensive to compile and complete; the remaining PMAs require minimal information.

Section 814.84(b) (21 CFR 814.84(b))—Periodic Reports. Postapproval requirements described in § 814.82(a)(7) require submission of an annual report for each approved PMA. FDA estimates that respondents will average about 10 hours in preparing their reports to meet this requirement. This estimate is based on FDA's experience and consultation with industry.

The Breakthrough Devices Program— The Breakthrough Devices Program supersedes the Expedited Access Pathway and Priority Review for medical devices. The guidance document ''Breakthrough Devices Program'' implements section 515B of the FD&C Act (21 U.S.C. 360e–3), as created by section 3051 of the 21st Century Cures Act (Pub. L. 114–255) and amended by section 901 of the FDA Reauthorization Act of 2017 (Pub. L. 115–52). The Breakthrough Devices Program is a voluntary program for certain medical devices and device-led combination products that provide for more effective treatment or diagnosis of life-threatening or irreversibly debilitating diseases or conditions. The program is intended to help patients have more timely access to these medical devices by expediting their development, assessment, and review, while preserving the statutory standards for premarket approval, 510(k) clearance, and De Novo marketing authorization, consistent with the Agency's mission to protect and promote public health.

Agreement Meeting—Section 520(g)(7) of the FD&C Act (21 U.S.C. 360j(g)(7)). Applicants planning to submit a PMA may submit a written request to reach agreement with FDA on the key parameters of the investigational plan.

Determination Meeting—Section 513(a)(3)(D) of the FD&C Act (21 U.S.C. 360c(a)(3)(D)). Applicants planning to submit a PMA may submit a written request to FDA for a meeting to determine the type of information (valid scientific evidence) necessary to support the effectiveness of their device.

Panel of Experts—Section 515(c)(3) of the FD&C Act. An original PMA or panel track PMA supplement is taken to an advisory panel of experts unless FDA determines that the information in the application substantially duplicates information that has previously been reviewed by the panel.

Day 100 Meeting—Section 515(d)(3) of the FD&C Act. FDA must, upon the written request of the applicant, meet with that party within 100 days of receipt of the filed PMA application to discuss the review status of the application. With the concurrence of the applicant, a different schedule may be established. Prior to this meeting, FDA must inform the applicant in writing of any identified deficiencies and what information is required to correct those deficiencies. FDA must also promptly notify the applicant if FDA identifies additional deficiencies or of any additional information required to complete Agency review.

Recordkeeping

Section 814.82(a)(5) and (6)—Maintenance of Records. The recordkeeping burden under this section requires the maintenance of records used to trace patients, and the organization and indexing of records into identifiable files to ensure the device's continued safety and effectiveness. These records are required of all applicants who have an approved PMA.

PMAs have been required since 1976, and there are 801 active PMAs that could be subject to these requirements, based on actual FDA data, and approximately 39 new PMAs are approved every year. The aggregate burden for the estimated 446 PMA holders of approved original PMAs for the next few years is estimated to be 7,582 hours.

The applicant determines which records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practices for medical devices regulation (part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions of approval to ensure the device's continuing safety and effectiveness.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR or FD&C Act Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Research conducted outside the United States (814.15(b))	25	1	25	2	50
PMA application (814.20)	46	1	46	668	30,728
Information on clinical investigations conducted outside the United States (814.20(b)(6)(ii)(C))	10	1	10	0.5	5
PMA amendments and resubmitted PMAs (814.37(a)-(c) and (e))	1,528	1	1,528	167	255,176
PMA supplements (814.39(a))	777	1	777	60	46,620
Special PMA supplement—changes being effected (814.39(d))	75	1	75	6	450
30-day notice (814.39(f))	1,722	1	1,722	16	27,552
Postapproval requirements (814.82(a)(9))	121	1	121	135	16,335

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity/21 CFR or FD&C Act Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Periodic reports (814.84(b))	764	1	764	10	7,640
Breakthrough Devices Program (515(B) of the FD&C Act)	11	1	11	10	110
Agreement meeting (520(g)(7) of the FD&C Act)	1	1	1	50	50
Determination Meeting (513(a)(3)(D) of the FD&C Act)	1	1	1	50	50
Panel meeting (515(c)(3) of the FD&C Act)	1	1	1	30	30
Day 100 meeting (515(d)(3) of the FD&C Act)	14	1	14	10	140
Total					384,936

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total Hours
Maintenance of records (814.82(a)(5) and (6))	446	1	446	17	7,582

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We made the following changes to the information collection:

- Added the burden estimate for ''Information on clinical investigations conducted outside the United States (814.20(b)(6)(ii)(C)),'' which is associated with the ''Human Subject Protection; Acceptance of Data from Clinical Investigations for Medical Devices'' final rule as described previously in this document.
- Revised the burden description and table to reflect that the Expedited Access Pathway and Priority Review have been superseded by the Breakthrough Devices Program.
- Updated our burden estimate with FYs 2016 to 2018 data.

These adjustments resulted in an overall increase of 34,782 hours to the estimated burden.

Dated: October 15, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23204 Filed 10–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 052

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA Recognized Consensus Standards). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 052'' (Recognition List Number: 052), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit either electronic or written comments on the notice at any time. These modifications to the list of recognized standards are applicable October 24, 2019.

ADDRESSES: You may submit comments on the current list of FDA Recognized Consensus Standards at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2004–N–0451 for ''Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 052.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider any comments received in determining whether to amend the current listing of

modifications to the list of recognized standards, Recognition List Number: 052.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of Recognition List Number: 052 is available on the internet at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section IV for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 052 modifications and other standards related information. Submit written requests for a single hard copy of the document entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 052'' to Scott Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 66, Rm. 5514, Silver Spring, MD 20993, 301–796–6287. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8144.

FOR FURTHER INFORMATION CONTACT: Scott Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5514, Silver Spring, MD 20993, 301–796–6287, *CDRHStandardsStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In the **Federal Register** of September 14, 2018 (83 FR 46738), FDA announced the availability of a guidance entitled ''Appropriate Use of Voluntary Consensus Standards in Premarket Submissions for Medical Devices.'' The guidance describes how FDA has implemented its standards recognition program and is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/appropriate-use-voluntary-consensus-standards-premarket-submissions-medical-devices.* Modifications to the initial list of recognized standards, as published in the **Federal Register**, can be accessed at *https://www.fda.gov/medical-devices/standards-and-conformity-assessment-program/federal-register-documents.*

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains hypertext markup language (HTML) and portable document format (PDF) versions of the list of FDA Recognized Consensus Standards. Additional information on the Agency's Standards and Conformity Assessment Program is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/standards-and-conformity-assessment-program.*

II. Modifications to the List of Recognized Standards, Recognition List Number: 052

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency is recognizing for use in premarket submissions and other requirements for devices. FDA is incorporating these modifications to the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA is using the term ''Recognition List Number: 052'' to identify the current modifications.

In Table 1, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, if applicable; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III, FDA lists modifications the Agency is making that involve new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 052.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old Recognition No.	Replacement Recognition No.	Title of standard [1]	Change
		A. Anesthesiology	
1–116		ISO 5360 Fourth edition 2016–02–15 Anaesthetic vaporizers—Agent specific filling systems.	Extent of Recognition.
1–122		ISO 5364 Fifth edition 2016–09–01 Anaesthetic and respiratory equipment—Oropharyngeal airways.	Extent of Recognition.
1–125		ISO 8836 Fourth edition 2014–10–15 Suction catheters for use in the respiratory tract.	Extent of Recognition.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Title of standard [1]	Change
1–126		ISO 11712 First edition 2009–05–15 Anaesthetic and respiratory equipment—Supralaryngeal airways and connectors.	Extent of Recognition.
1–131	1–142	ISO 10079–1 Third Edition 2015–11–01 Medical suction equipment—Part 1: Electrically powered suction equipment [Including AMENDMENT 1 (2018)].	Withdrawn and replaced with newer version including amendment.
B. Biocompatibility			
2–162	2–263	ASTM F1903–18 Standard Practice for Testing for Cellular Responses to Particles in vitro.	Withdrawn and replaced with newer version.
2–206	2–264	ASTM F2148–18 Standard Practice for Evaluation of Delayed Contact Hypersensitivity Using the Murine Local Lymph Node Assay (LLNA).	Withdrawn and replaced with newer version.
2–223	2–265	ASTM F2901–19 Standard Guide for Selecting Tests to Evaluate Potential Neurotoxicity of Medical Devices.	Withdrawn and replaced with newer version.
2–257	2–266	ASTM F2382–18 Standard Test Method for Assessment of Circulating Blood-Contacting Medical Device Materials on Partial Thromboplastin Time (PTT).	Withdrawn and replaced with newer version.
C. Cardiovascular			
3–122	3–160	ISO 81060–2 Third edition 2018–11 Non-invasive sphygmomanometers—Part 2: Clinical investigation of intermittent automated measurement type.	Withdrawn and replaced with newer version.
3–123		IEC 80601–2–30 Edition 2.0 2018–03 Medical electrical equipment—Part 2–30: Particular requirements for the basic safety and essential performance of automated non-invasive sphygmomanometers.	Extent of Recognition.
3–137		ASTM F3036–13 Standard Guide for Testing Absorbable Stents	Extent of Recognition.
D. Dental/Ear, Nose, and Throat (ENT)			
4–182	4–258	ISO 10139–2 Third edition 2016–06–15 Dentistry—Soft lining materials for removable dentures—Part 2: Materials for long-term use.	Withdrawn and replaced with newer version.
4–196		ISO 6872 Third edition 2008–09–01 Dentistry—Ceramic materials	Withdrawn. See #4–223.
E. General I (Quality Systems/Risk Management) (QS/RM)			
5–109	5–123	ISO 80369–3 First edition 2016–07–01 Small-bore connectors for liquids and gases in healthcare applications —Part 3: Connectors for enteral applications [Including AMENDMENT 1 (2019)].	Withdrawn and replaced with newer version including amendment.
5–115		ISO 80369–7 First edition 2016–10–15 Small-bore connectors for liquids and gases in healthcare applications—Part 7: Connectors for intravascular or hypodermic applications.	Transition removed.
F. General II (Electrical Safety/Electromagnetic Compatibility) (ES/EMC)			
		No new entries at this time.	
G. General Hospital/General Plastic Surgery (GH/GPS)			
6–11		ISO 594–1 First edition 1986–06–15 Conical fittings with a 6% (Luer) taper for syringes, needles and certain other medical equipment—Part 1: General requirements.	Transition removed. Recognition restored.
6–129		ISO 594–2 Second edition 1998–09–01 Conical fittings with a 6% (Luer) taper for syringes, needles and certain other medical equipment—Part 2: Lock fittings.	Transition removed. Recognition restored.
6–403	6–421	ISO 80601–2–56 Second edition 2017–03 Medical electrical equipment—Part 2–56: Particular requirements for basic safety and essential performance of clinical thermometers for body temperature measurement [Including AMENDMENT 1 (2018)].	Withdrawn and replaced with newer version including amendment.
H. In Vitro Diagnostics (IVD)			
7–215	7–287	CLSI M44–S3 (2018) Zone Diameter Interpretive Standards, Corresponding Minimal Inhibitory Concentration (MIC) Interpretive Breakpoints, and Quality Control Limits for Antifungal Disk Diffusion Susceptibility Testing of Yeasts; Third Informational Supplement.	Withdrawn and replaced with newer version.
7–222	7–288	CLSI M24 3rd Edition Susceptibility Testing of Mycobacteria, *Nocardia* spp., and Other Aerobic Actinomycetes.	Withdrawn and replaced with newer version.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Title of standard [1]	Change
7–274	7–289	CLSI MM17 2nd Edition Validation and Verification of Multiplex Nucleic Acid Assays.	Withdrawn and replaced with newer version.
I. Materials			
8–132	8–491	ASTM F1088–18 Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation.	Withdrawn and replaced with newer version.
8–150	8–492	ISO 5832–9 Third edition 2019–02 Implants for surgery—Metallic materials—Part 9: Wrought high nitrogen stainless steel.	Withdrawn and replaced with newer version.
8–188	8–493	ISO 13779–2 Third edition 2018–12 Implants for surgery—Hydroxyapatite—Part 2: Thermally sprayed coatings of hydroxyapatite.	Withdrawn and replaced with newer version.
8–194	8–494	ISO 6474–1 Second edition 2019–03 Implants for surgery—Ceramic materials—Part 1: Ceramic materials based on high purity alumina.	Withdrawn and replaced with newer version.
8–213	8–495	ISO 5834–3 Second edition 2019–02 Implants for surgery—Ultra-high-molecular-weight polyethylene—Part 3: Accelerated ageing methods.	Withdrawn and replaced with newer version.
8–214	8–496	ISO 5834–4 Second edition 2019–02 Implants for surgery—Ultra-high-molecular-weight polyethylene—Part 4: Oxidation index measurement method.	Withdrawn and replaced with newer version.
8–215	8–497	ISO 5834–5 Second edition 2019–02 Implants for surgery—Ultra-high-molecular-weight polyethylene—Part 5: Morphology assessment method.	Withdrawn and replaced with newer version.
8–229	8–498	ASTM F75–18 Standard Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Castings and Casting Alloy for Surgical Implants (UNS R30075).	Withdrawn and replaced with newer version.
8–331	8–499	ASTM F1580–18 Standard Specification for Titanium and Titanium-6 Aluminum-4 Vanadium Alloy Powders for Coatings of Surgical Implants.	Withdrawn and replaced with newer version.
8–351	8–500	ISO 5832–12 Third edition 2019–02 Implants for surgery—Metallic materials—Part 12: Wrought cobalt-chromium-molybdenum alloy.	Withdrawn and replaced with newer version.
8–352	8–501	ISO 5834–1 Fourth edition 2019–02 Implants for surgery—Ultra-high-molecular-weight polyethylene—Part 1: Powder form.	Withdrawn and replaced with newer version.
8–359	8–502	ASTM F2038—18 Standard Guide for Silicone Elastomers, Gels, and Foams Used in Medical Applications Part I—Formulations and Uncured Materials.	Withdrawn and replaced with newer version.
8–360	8–503	ASTM F2042–18 Standard Guide for Silicone Elastomers, Gels, and Foams Used in Medical Applications Part II—Crosslinking and Fabrication.	Withdrawn and replaced with newer version.
8–370	8–504	ASTM F561–19 Standard Practice for Retrieval and Analysis of Medical Devices, and Associated Tissues and Fluids.	Withdrawn and replaced with newer version.
8–388	8–505	ISO 6474–2 Second edition 2019–03 Implants for surgery—Ceramic materials—Part 2: Composite materials based on a high-purity alumina matrix with zirconia reinforcement.	Withdrawn and replaced with newer version.
8–397	8–506	ASTM F2516–18 Standard Test Method for Tension Testing of Nickel-Titanium Superelastic Materials.	Withdrawn and replaced with newer version.
8–402	8–507	ASTM F688–19 Standard Specification for Wrought Cobalt-35Nickel-20Chromium-10Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants (UNS R30035).	Withdrawn and replaced with newer version.
8–411	8–508	ASTM F2579–18 Standard Specification for Amorphous Poly(lactide) and Poly(lactide-co-glycolide) Resins for Surgical Implants.	Withdrawn and replaced with newer version.
J. Nanotechnology			
		No new entries at this time.	
K. Neurology			
		No new entries at this time.	
L. Obstetrics-Gynecology/Gastroenterology/Urology (OB-Gyn/G/Urology)			
		No new entries at this time.	
M. Ophthalmic			
10–89		ANSI Z80.7–2013 (R2018) American National Standard for Ophthalmic Optics—Intraocular Lenses.	Extent of recognition.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Title of standard [1]	Change
N. Orthopedic			
11–250	11–349	ISO 14242–3 First edition 2009–03–15 Implants for surgery—Wear of total hip-joint prostheses—Part 3: Loading and displacement parameters for orbital bearing type wear testing machines and corresponding environmental conditions for test [Including AMENDMENT 1 (2019)].	Withdrawn and replaced with newer version.
11–251	11–350	ASTM F2554–18 Standard Practice for Measurement of Positional Accuracy of Computer Assisted Surgical Systems.	Withdrawn and replaced with newer version.
11–273	11–351	ISO 18192–1 Second edition 2011–03–01 Implants for surgery—Wear of total intervertebral spinal disc prostheses—Part 1: Loading and displacement parameters for wear testing and corresponding environmental conditions for test [Including AMENDMENT 1 (2018)].	Withdrawn and replaced with newer version.
11–291	11–352	ISO 14242–1 Third edition 2014–10–15 Implants for surgery—Wear of total hip-joint prostheses —Part 1: Loading and displacement parameters for wear-testing machines and corresponding environmental conditions for test [Including AMENDMENT 1 (2018)].	Withdrawn and replaced with newer version including amendment.
O. Physical Medicine			
		No new entries at this time.	
P. Radiology			
12–225	12–325	NEMA XR 25–2019 Computed Tomography Dose Check	Withdrawn and replaced with newer version.
12–265	12–326	NEMA NU 2–2018 Performance Measurements of Positron Emission Tomographs (PETS).	Withdrawn and replaced with newer version.
Q. Software/Informatics			
		No new entries at this time.	
R. Sterility			
14–377	14–527	ASTM F2638–18 Standard Test Method for Using Aerosol Filtration for Measuring the Performance of Porous Packaging Materials as a Surrogate Microbial Barrier.	Withdrawn and replaced with newer version.
14–428	14–528	ISO 11137–1 First edition 2006–04–15 Sterilization of health care products—Radiation—Part 1: Requirements for development, validation and routine control of a sterilization process for medical devices [Including AMENDMENT 1 (2013) and AMENDMENT 2 (2018)].	Withdrawn and replaced with newer version including amendment.
14–452	14–529	ISO 11135 Second edition 2014–07–15 Sterilization of health-care products—Ethylene oxide—Requirements for the development, validation and routine control of a sterilization process for medical devices [Including: AMENDMENT 1 (2018)].	Withdrawn and replaced with newer version including amendment.
14–454	14–530	ISO 11607–1 Second edition 2019–02 Packaging for terminally sterilized medical devices—Part 1: Requirements for materials, sterile barrier systems and packaging systems.	Withdrawn and replaced with newer version.
14–455	14–531	ISO 11607–2 Second edition 2019–02 Packaging for terminally sterilized medical devices—Part 2: Validation requirements for forming, sealing and assembly processes.	Withdrawn and replaced with newer version.
S. Tissue Engineering			
15–27	15–57	F2315–18 Standard Guide for Immobilization or Encapsulation of Living Cells or Tissue in Alginate Gels.	Withdrawn and replaced with newer version.
15–28	15–58	F2103–18 Standard Guide for Characterization and Testing of Chitosan Salts as Starting Materials Intended for Use in Biomedical and Tissue-Engineered Medical Product Applications.	Withdrawn and replaced with newer version.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In Table 2, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 052. These entries are of standards not previously recognized by FDA.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference No. and date
A. Anesthesiology		
1–143	Medical electrical equipment—Part 2–79: Particular requirements for basic safety and essential performance of ventilatory support equipment for ventilatory impairment.	ISO 80601–2–79 First edition 2018–07.
1–144	Medical electrical equipment—Part 2–80: Particular requirements for basic safety and essential performance of ventilatory support equipment for ventilatory insufficiency.	ISO 80601–2–80 First edition 2018–07.
B. Biocompatibility		
2–267	Standard Practice for Platelet Leukocyte Count—An In-Vitro Measure for Hemocompatibility Assessment of Cardiovascular Materials.	ASTM F2888—19.
2–268	Biological evaluation of medical devices—Application of the threshold of toxicological concern (TTC) for assessing biocompatibility of medical device constituents.	ISO/TS 21726 First edition 2019–02.
C. Cardiovascular		
	No new entries at this time.	
D. Dental/Ear, Nose, and Throat (ENT)		
4–259	Dentistry—Implants—Dynamic loading test for endosseous dental implants	ISO 14801 Third edition 2016–11–01.
E. General I (Quality Systems/Risk Management) (QS/RM)		
	No new entries at this time.	
F. General II (Electrical Safety/Electromagnetic Compatibility) (ES/EMC)		
19–35	Standard for Standby Batteries	UL 1989 Edition 5, 2013–10–02, ANSI November 2018.
G. General Hospital/General Plastic Surgery (GH/GPS)		
6–422	Medical device safety assurance case guidance	AAMI TIR38:2019.
6–423	CONSOLIDATED VERSION Medical electrical equipment—Part 2–6: Particular requirements for the basic safety and essential performance of microwave therapy equipment.	IEC 60601–2–6 Edition 2.1 2016–04.
H. In Vitro Diagnostics (IVD)		
7–290	Establishing and Verifying an Extended Measuring Interval Through Specimen Dilution and Spiking.	CLSI EP34 1st Edition.
7–291	How to Construct and Interpret an Error Grid for Quantitative Diagnostic Assays; Approved Guideline.	CLSI EP27–A Vol. 32 No. 12, Replaces EP27–P Vol. 29 No. 16.
7–292	Performance Standards for Susceptibility Testing of Mycobacteria, *Nocardia* spp., and other Aerobic Actinomycetes.	CLSI M62 1st Edition.
I. Materials		
8–509	Standard Specification for Polysulfone Resin for Medical Applications	ASTM F702—18.
8–510	Standard Specification for Polycarbonate Resin for Medical Applications	ASTM F997—18.
8–511	Standard Specification for Semi-Crystalline Poly(lactide) Polymer and Copolymer Resins for Surgical Implants.	ASTM F1925—17.
8–512	Standard Specification for Polyetheretherketone (PEEK) Polymers for Surgical Implant Applications.	ASTM F2026—17.
8–513	Implants for surgery—Metallic materials—Classification of microstructures for alpha+beta titanium alloy bars.	ISO 20160 First edition 2006–05–01.
8–514	Implants for surgery—Ultra-high-molecular-weight polyethylene—Part 2: Moulded forms.	ISO 5834–2 Fifth edition 2019–02.
8–515	Implants for surgery—Hydroxyapatite—Part 3: Chemical analysis and characterization of crystallinity ratio and phase purity.	ISO 13779–3 Second edition 2018–12.
8–516	Implants for surgery—Hydroxyapatite—Part 4: Determination of coating adhesion strength.	ISO 13779–4 Second edition 2018–12.
8–517	Non-active surgical implants—Implant coating—Part 1: General requirements	ISO 17327–1 First edition 2018–02.
8–518	Standard Test Method for Ion Release Evaluation of Medical Implants	ASTM F3306—19.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
	J. Nanotechnology	
18–13	Nanotechnologies—Electron spin resonance (ESR) as a method for measuring reactive oxygen species (ROS) generated by metal oxide nanomaterials.	ISO/TS 18827 First edition 2017–06.
18–14	Nanotechnologies—Methodology for the classification and categorization of nanomaterials.	ISO/TR 11360 First edition 2010–07–15.
	K. Neurology	
	No new entries at this time.	
	L. Obstetrics-Gynecology/Gastroenterology/Urology (OB-Gyn/G/Urology)	
	No new entries at this time.	
	M. Ophthalmic	
10–116	American National Standard for Ophthalmics—Extended Depth of Focus Intraocular Lenses.	ANSI Z80.35–2018.
10–117	American National Standard for Ophthalmics—Slit-Lamp Microscopes	ANSI Z80.37–2017.
10–118	American National Standard for Ophthalmics—Light Hazard from Operation Microscopes Used in Ocular Surgery.	ANSI Z80.38–2017.
	N. Orthopedic	
11–353	Implants for surgery—Wear of total intervertebral spinal disc prostheses —Part 3: Impingement-wear testing and corresponding environmental conditions for test of lumbar prostheses under adverse kinematic conditions.	ISO 18192–3 First edition 2017–06.
11–354	Standard Guide for Impingement Testing of Total Disc Prostheses	ASTM F3295—18.
11–355	Implants for surgery—Metal intramedullary nailing systems—Part 1: Intramedullary nails.	ISO 15142–1 First edition 2003–08–01.
11–356	Implants for surgery—Metal intramedullary nailing systems—Part 2: Locking components.	ISO 15142–2 First edition 2003–08–01.
11–357	Implants for surgery—Metal intramedullary nailing systems—Part 3: Connection devices and reamer diameter instruments.	ISO 15142–3 First edition 2003–08–01.
11–358	Implants for surgery—Wear of total hip-joint prostheses—Part 4: Testing hip prostheses under variations in component positioning which results in direct edge loading.	ISO 14242–4 First edition 2018–05.
11–359	Implants for surgery—Partial and total hip-joint prostheses—Part 10: Determination of resistance to static load of modular femoral heads.	ISO 7206–10 Second edition 2018–08.
	O. Physical Medicine	
16–206	Wheelchairs—Part 30: Wheelchairs for changing occupant posture—Test methods and requirements.	ISO 7176–30 First edition 2018–12.
	P. Radiology	
	No new entries at this time.	
	Q. Software/Informatics	
13–108	Health informatics—Point-of-care medical device communication—Part 20701: Service-Oriented Medical Device Exchange Architecture and Protocol Binding.	IEEE Std 11073–20701–2018.
13–109	(American National Standard) Standard for Safety for Medical Device Interoperability.	ANSI/AAMI/UL 2800–1: 2019.
	R. Sterility	
14–532	Standard Test Method for Nondestructive Detection of Leaks in Packages by Mass Extraction Method.	ASTM F3287—17e1.
14–533	Guidance on aspects of a risk-based approach to assuring sterility of terminally sterilized, single-use health care product that is unable to withstand processing to achieve maximally a sterility assurance level of 10^{-6}.	ISO/TS 19930 First edition 2017–12.
	S. Tissue Engineering	
	No new entries at this time.	

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the current list of FDA Recognized Consensus Standards in a searchable database that may be accessed at *https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.* Such standards are those that FDA has recognized by notice published in the **Federal Register** or that FDA has decided to recognize but for which recognition is pending (because a periodic notice has not yet appeared in the **Federal Register**). FDA will announce additional modifications and revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to *CDRHStandardsStaff@fda.hhs.gov.* To be considered, such recommendations should contain, at a minimum, the following information available at *https://www.fda.gov/medical-devices/standards-and-conformity-assessment-program/recognition-standard.*

Dated: October 18, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23198 Filed 10–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Microbial (non-HIV) Diagnostics and Detection of Infectious Agents, Food and Waterborne Pathogens, and Methods in Microbial Sterilization, Disinfection and Bioremediation.

Date: November 14–15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.

Date: November 14–15, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street NW, Washington, DC 20001.

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; Population and Public Health Approaches to HIV/AIDS Study Section.

Date: November 14–15, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town, 625 First Street, Alexandria, VA 22315.

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Hematology.

Date: November 14–15, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H. Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, 301–806–7314, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Radiation Therapy and Biology.

Date: November 14–15, 2019.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Accelerating the Pace of Drug Abuse Research Using Existing Data.

Date: November 14, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Nephrology.

Date: November 14, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 18, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23150 Filed 10–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Health Informatics.
Date: November 14–15, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Ping Wu, Ph.D., Scientific Review Officer, HDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Medical Imaging.
Date: November 14–15, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Leonid V. Tsap, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–2507, *tsapl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-Infective Therapeutics.
Date: November 14–15, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301)435–2306, *kaushikbasun@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.
Date: November 14–15, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.
Contact Person: Aurea D. De Sousa, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5186 Bethesda, MD 20892, 301–827–6829, *aurea.desousa@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Drug Development and Therapeutics.
Date: November 14–15, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites—Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biochemistry and Biophysics of Biological Macromolecules Fellowship Applications.
Date: November 14, 2019.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Marriott at Metro Center. 775 12th Street NW, Washington, DC 20005.
Contact Person: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1504, *sudha.veeraraghavan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation.
Date: November 14–15, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1784, *gorshkoi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics, and Biosensors.
Date: November 14–15, 2019.
Time: 8:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.
Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846 Bethesda, MD 20892, 301–480–9069, *cbackman@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience Assay, Diagnostics and Animal Model Development.
Date: November 14–15, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–358: Molecular and Cellular Causal Aspects of Alzheimer's Disease.
Date: November 14, 2019.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Afia Sultana, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 4189 Bethesda, MD 20892, (301) 827–7083, *sultanaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bone Biology and Regeneration.
Date: November 14, 2019.
Time: 12:30 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 18, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23149 Filed 10–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1969]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or

regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before January 22, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1969, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazard data* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Mohave County, Arizona and Incorporated Areas **Project: 14–09–2095S Preliminary Date: June 28, 2019**	
Fort Mojave Indian Reservation	Fort Mojave Indian Tribe, 500 Merriman Avenue, Needles, CA 92363.
Unincorporated Areas of Mohave County	Mohave County Development Services, 3250 East Kino Avenue, Kingman, AZ 86409.
Inyo County, California and Incorporated Areas **Project: 17–09–0188S Preliminary Date: June 25, 2019**	
City of Bishop	City Hall, 377 West Line Street, Bishop, CA 93514.
Unincorporated Areas of Inyo County	Inyo County Courthouse, 168 North Edwards Street, Number 3, Independence, CA 93526.
Gem County, Idaho and Incorporated Areas **Project: 16–10–0631S Preliminary Date: April 12, 2019**	
City of Emmett	Public Works and Building Department, 601 East 3rd Street, Emmett, ID 83617.

Community	Community map repository address
Unincorporated Areas of Gem County	Gem County Development Services Department, 109 South McKinley Avenue, Emmett, ID 83617.

[FR Doc. 2019–23227 Filed 10–23–19; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1970]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama: Mobil	Unincorporated areas of Mobile County (19–04–3563P).	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, 10th Floor, South Tower, Mobile, AL 36644.	Mobile County Government Plaza, 205 Government Street, 6th Floor, South Tower, Mobile, AL 36644.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 27, 2020	015008
Colorado:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Adams	Unincorporated areas of Adams County (19–08–0428P).	The Honorable Mary Hodge, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, Suite C5000A, Brighton, CO 80601.	Adams County Public Works Department, 4430 South Adams County Parkway, Brighton, CO 80601.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 24, 2020	080001
Arapaho	City of Aurora (19–08–0428P).	The Honorable Bob LeGare, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Engineering Department, 15151 East Alameda Parkway, Aurora, CO 80012.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 24, 2020	080002
Archuleta	Town of Pagosa Springs (19–08–0182P).	The Honorable Don Volger, Mayor, Town of Pagosa Springs, P.O. Box 1859, Pagosa Springs, CO 81147.	Town Hall, 551 Hot Springs Boulevard, Pagosa Springs, CO 81147.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 31, 2020	080019
Archuleta	Unincorporated areas of Archuleta County (19–08–0182P).	Mr. Scott Wall, Archuleta County Administrator, P.O. Box 1507, Pagosa Springs, CO 81147.	Archuleta County Planning Department, 1122 Highway 84, Pagosa Springs, CO 81147.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 31, 2020	080273
Boulder	City of Boulder (19–08–0401P).	The Honorable Suzanne Jones, Mayor, City of Boulder, 1777 Broadway, Boulder, CO 80302.	Planning and Development Services Department, 1739 Broadway, Boulder, CO 80302.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 22, 2020	080024
El Paso	City of Colorado Springs (19–08–0304P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Suite 601, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch*	Feb. 3, 2020	080060
Larimer	Town of Berthoud (19–08–0573P).	Mr. Chris Kirk, Town of Berthoud Administrator, P.O. Box 1229, Berthoud, CO 80513.	Public Works Department, 807 Mountain Avenue, Berthoud, CO 80513.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 17, 2020	080296
Larimer	Unincorporated areas of Larimer County (19–08–0573P).	The Honorable Tom Donnelly, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 17, 2020	080101
Florida:						
Charlotte	Unincorporated areas of Charlotte County (18–04–3990P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18400 Murdock Circle, Port Charlotte, FL 33948.	*https://msc.fema.gov/portal/advanceSearch*	Dec. 31, 2019	120061
Lake	City of Clermont (19–04–1054P).	The Honorable Gail L. Ash, Mayor, City of Clermont, 685 West Montrose Street, Clermont, FL 34711.	Engineering Department, 400 12th Street, Clermont, FL 34711.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 28, 2020	120133
Lake	City of Groveland (19–04–4877X).	The Honorable Evelyn Wilson, Mayor, City of Groveland, 156 South Lake Avenue, Groveland, FL 34736.	City Hall, 156 South Lake Avenue, Groveland, FL 34736.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 17, 2020	120135
Lake	Town of Howey in the Hills (19–04–2449P).	The Honorable David Nebel, Mayor, Town of Howey in the Hills, 101 North Palm Avenue, Howey in the Hills, FL 34737.	Town Hall, 101 North Palm Avenue, Howey in the Hills, FL 34737.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 30, 2020	120585
Lake	Unincorporated areas of Lake County (19–04–1054P).	Mr. Jeff Cole, Lake County Manager, 315 West Main Street, Tavares, FL 32778.	Lake County Public Works Department, 323 North Sinclair Avenue, Tavares, FL 32778.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 28, 2020	120421
Lake	Unincorporated areas of Lake County (19–04–2449P).	Mr. Jeff Cole, Lake County Manager, 315 West Main Street, Tavares, FL 32778.	Lake County Public Works Department, 323 North Sinclair Avenue, Tavares, FL 32778.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 30, 2020	120421
Lake	Unincorporated areas of Lake County (19–04–4877X).	Mr. Jeff Cole, Lake County Manager, 315 West Main Street, Tavares, FL 32778.	Lake County Public Works Department, 323 North Sinclair Avenue, Tavares, FL 32778.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 17, 2020	120421

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Lee	Town of Fort Myers Beach (19–04–4050P).	The Honorable Anita Cereceda, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 23, 2020	120673
Lee	Town of Fort Myers Beach (19–04–5110P).	The Honorable Anita Cereceda, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 27, 2020	120673
Lee	Unincorporated areas of Lee County (18–04–3990P).	Mr. Roger Desjarlais, Lee County Manager, 2115 2nd Street, Fort Myers, FL 33901.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*https://msc.fema.gov/portal/advanceSearch*	Dec. 31, 2019	125124
Lee	Unincorporated areas of Lee County (19–04–0766P).	Mr. Roger Desjarlais, Lee County Manager, 2115 2nd Street, Fort Myers, FL 33901.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 29, 2020	125124
Lee	Unincorporated areas of Lee County (19–04–3867P).	Mr. Roger Desjarlais, Lee County Manager, 2115 2nd Street, Fort Myers, FL 33901.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 13, 2020	125124
Monroe	City of Marathon (19–04–5677P).	The Honorable John Bartus, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 29, 2020	120681
Monroe	Unincorporated areas of Monroe County (19–04–3460P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 29, 2020	125129
Monroe	Unincorporated areas of Monroe County (19–04–4672P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 9, 2020	125129
Monroe	Unincorporated areas of Monroe County (19–04–5713P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 22, 2020	125129
Osceola	Unincorporated areas of Osceola County (19–04–0903P).	The Honorable Cheryl Grieb, Chair, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 13, 2020	120189
Louisiana: Lincoln	City of Ruston (19–06–2114P).	The Honorable Ronny Walker, Mayor, City of Ruston, P.O. Box 2069, Ruston, LA 71273.	Department of Public Works, 701 East Tennessee Avenue, Ruston, LA 71273.	*https://msc.fema.gov/portal/advanceSearch*	Dec. 26, 2019	220347
Maryland: Prince George's.	Unincorporated areas of Prince George's County (19–03–0431P).	The Honorable Angela D. Alsobrooks, Prince George's County Executive, 1301 McCormick Drive, Suite 4000, Largo, MD 20774.	Prince George's County Inglewood Center II, 1801 McCormick Drive, Suite 500, Largo, MD 20774.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 17, 2020	245208
Massachusetts:						
Plymouth	Town of Duxbury (19–01–0097P).	The Honorable David J. Madigan, Chairman, Town of Duxbury Board of Selectmen, 878 Tremont Street, Duxbury, MA 02332.	Municipal Services Department, 878 Tremont Street, Duxbury, MA 02332.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 10, 2020	250263
Plymouth	Town of Marshfield (19–01–0097P).	The Honorable Joseph E. Kelleher, Chairman, Town of Marshfield Board of Selectmen, 870 Moraine Street, Marshfield, MA 02050.	Building Department, 870 Moraine Street, Marshfield, MA 02050.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 10, 2020	250273
New Mexico:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Taos	Town of Taos (19–06–1165P).	The Honorable Daniel R. Barrone, Mayor, Town of Taos, 400 Camino De La Placita, Taos, NM 87571.	Department of Public Works, 400 Camino De La Placita, Taos, NM 87571.	*https://msc.fema.gov/portal/advanceSearch*	Dec. 13, 2019	350080
Taos	Town of Taos (19–06–1284P).	The Honorable Daniel R. Barrone, Mayor, Town of Taos, 400 Camino De La Placita, Taos, NM 87571.	Department of Public Works, 400 Camino De La Placita, Taos, NM 87571.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 10, 2020	350080
South Carolina: Horry.	City of North Myrtle Beach (19–04–5172P).	Mr. Mike Mahaney, City of North Myrtle Beach Manager, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	Building Department, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 27, 2020	450110
Texas:						
Bexar	City of San Antonio (19–06–1449P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Storm Water Division, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch*	Dec. 30, 2019	480045
Collin	City of Princeton (19–06–0798P).	The Honorable John Mark Caldwell, Mayor, City of Princeton, 123 West Princeton Drive, Princeton, TX 75407.	Development Services Department, 123 West Princeton Drive, Princeton, TX 75407.	*https://msc.fema.gov/portal/advanceSearch*	Feb. 3, 2020	480757
Collin	Unincorporated areas of Collin County (19–06–0798P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch*	Feb. 3, 2020	480130
Dallas	City of Coppell (19–06–0270P).	The Honorable Karen Hunt, Mayor, City of Coppell, P.O. Box 9478, Coppell, TX 75019.	City Hall, 200 South Main Street, Coppell, TX 76099.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 6, 2020	480170
Denton	City of Carrollton (19–06–1616X).	The Honorable Kevin Falconer, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.	*https://msc.fema.gov/portal/advanceSearch*	Dec. 23, 2019	480167
Denton	City of Lewisville (19–06–1616X).	The Honorable Rudy Durham, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	Engineering Division, 151 West Church Street, Lewisville, TX 75057.	*https://msc.fema.gov/portal/advanceSearch*	Dec. 23, 2019	480195
Tarrant	City of Fort Worth (19–06–0340P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 27, 2020	480596
Tarrant	City of Grapevine (19–06–0270P).	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76099.	City Hall, 200 South Main Street, Grapevine, TX 76099.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 6, 2020	480598
Virginia: Prince William.	Unincorporated areas of Prince William County (19–03–0792P).	Mr. Christopher E. Martino, Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, Watershed Management Branch, 5 County Complex Court, Prince William, VA 22192.	*https://msc.fema.gov/portal/advanceSearch*	Jan. 16, 2020	510119

[FR Doc. 2019–23226 Filed 10–23–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2019–N147; FXES11140400000–190–FF04EF2000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Blue-Tailed Mole Skink, and Florida Scrub-Jay, Highlands County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Palmetto Lake Placid-Washington Blvd., LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink, blue-tailed mole skink, and Florida scrub-jay incidental to construction in Highlands County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments by November 25, 2019.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents by any of the following methods:

- *Telephone:* Heather Hitt, 772–469–4267.
- *Email: heather_hitt@fws.gov.*
- *U.S. mail:* Heather Hitt, South Florida Ecological Services Field Office, Attn: Permit number TE50084D–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In-person:* The documents may be reviewed by appointment during normal business hours at the above address. Please call to make an appointment.
- *Fax:* Heather Hitt, 772–562–4288, Attn.: Permit number TE50084D–0.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing via the above email address, U.S. mail address, or fax number, or you may hand-deliver comments to the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Heather Hitt, by U.S. mail (see **ADDRESSES**) or via phone at 772–469–4267. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Palmetto Lake Placid-Washington Blvd., LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregius lividus*) (skinks) and the Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jays) incidental to the construction of a commercial development (project) in Highlands County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

Palmetto Lake Placid-Washington Blvd., LLC requests a 5-year ITP to take skinks and scrub-jays incidental to the conversion of approximately 1.42 acres of occupied skink and scrub-jay foraging and sheltering habitat for the construction of a commercial development on a 1.42-acre parcel in Section 33, Township 36 South, Range 30 East, Highlands County, Florida. The applicant proposes to mitigate for take of the skinks and scrub-jays by purchasing credits equivalent to 2.84 acres of skink-occupied habitat from the Backbone Conservation Bank and to 2.84 acres of scrub-jay occupied habitat from the Tippen Bay Scrub-Jay Conservation Bank. The Service would require the applicant to purchase the credits prior to engaging in land clearing activities on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, construction of the commercial development, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on skinks, scrub-jays, and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE50084D–0 to Palmetto Lake Placid-Washington Blvd., LLC for incidental take of skinks and scrub-jays.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulations 40 CFR 1506.6.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2019–23206 Filed 10–23–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2019–N114; FXMB12310900WHO–190–FF09M26000; OMB Control Number 1018–0023]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Migratory Bird Harvest Information Program and Migratory Bird Surveys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before November 25, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: JAO/1N PRB/PERMA, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0023 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On February 28, 2019, we published a **Federal Register** notice (84 FR 6814) soliciting public comment on this information collection for 60 days, ending April 29, 2019. We received no comments in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Migratory Bird Treaty Act (16 U.S.C. 703–711) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for (1) the wise management of migratory bird populations frequenting the United States, and (2) setting hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well-being. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird harvest. Based on information from harvest surveys, we can adjust hunting regulations as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

Under 50 CFR 20.20, migratory bird hunters must register for the Migratory Bird Harvest Information Program (HIP) in each State in which they hunt each year. State natural resource agencies must send names and addresses of all migratory bird hunters to Branch of Monitoring and Information Management, U.S. Fish and Wildlife Service Division of Migratory Bird Management, on an annual basis.

The Migratory Bird Hunter Survey is based on the Migratory Bird Harvest Information Program. We randomly select migratory bird hunters and ask them to report their harvest. The resulting estimates of harvest per hunter are combined with the complete list of migratory bird hunters to provide estimates of the total harvest for the species surveyed.

The Parts Collection Survey estimates the species, sex, and age composition of the harvest, and the geographic and temporal distribution of the harvest. Randomly selected successful hunters who responded to the Migratory Bird Hunter Survey the previous year are asked to complete and return a postcard if they are willing to participate in the Parts Collection Survey. We provide postage-paid envelopes to respondents before the hunting season and ask them to send in a wing or the tail feathers from each duck or goose that they harvest, or a wing from each mourning dove, woodcock, band-tailed pigeon, snipe, rail, or gallinule that they harvest. We use the wings and tail feathers to identify the species, sex, and age of the harvested sample. We also ask respondents to report on the envelope the date and location of harvest for each bird. We combine the results of this survey with the harvest estimates obtained from the Migratory Bird Hunter Survey to provide species-specific national harvest estimates.

The combined results of these surveys enable us to evaluate the effects of season length, season dates, and bag limits on the harvest of each species, and thus help us determine appropriate hunting regulations.

The Sandhill Crane Harvest Survey is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and ask them to report the date, location, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of permits issued, enables us to estimate the total harvest of sandhill cranes. Based on information from this survey, we adjust hunting regulations as needed.

Proposed Revision

In fall of 2019, we will be implementing a new, online platform for the Migratory Bird Hunter Survey. In 2018, OMB approved usability testing of the online platform under the Department of the Interior's ''Fast

Track'' clearance process (OMB Control Number 1090–0011). We are now ready to seek full OMB approval for the platform under the Service's existing collection ''Migratory Bird Information Program and Migratory Bird Surveys, 50 CFR 20.20 (OMB Control Number 1018–0023).

The platform will be optimized for use on multiple device types (computer, tablet, or phone; Android or Apple OS). Unlike the paper survey form, the online survey platform walks a participant through the process of entering their harvest for a single day, asking for one piece of information at a time. This reduces confusion and the likelihood that the hunter will provide incorrect information. Also, data quality is improved at each step with a new system of checks and pre-populated menus which limit the types of responses and prevent errors (*e.g.,* reporting harvest of the wrong species, or in the wrong State). We will continue to conduct the paper survey for 3 years, in order to ensure that data collected through the new method is sound, and to provide a side-by-side comparison of harvest estimates that can be used to calibrate the old survey to the new one. This is particularly important for maintaining a continuous time series of harvest estimates, despite changing methodology.

Title of Collection: Migratory Bird Information Program and Migratory Bird Surveys, 50 CFR 20.20.

OMB Control Number: 1018–0023.

Form Number: FWS Forms 3–165, 3–165A through E, and 3–2056J through N.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: States and migratory game bird hunters.

Respondent's Obligation: Mandatory for HIP registration information; voluntary for participation in the surveys.

Frequency of Collection: Annually for States or on occasion for migratory bird hunters.

Total Estimated Annual Nonhour Burden Cost: None.

Collection type/ form number	Number of respondents	Average number of responses each	Number of annual responses *	Average time per response	Total annual burden hours *
Migratory Bird Harvest Information Program (State Governments)					
	49	16.5	809	157 hours ...	127,013
Migratory Bird Hunter Survey (Individuals)					
Form 3–2056J	31,900	1	31,900	5 minutes ...	2,658
Form 3–2056K	16,900	1	16,900	4 minutes ...	1,127
Form 3–2056L	8,500	1	8,500	4 minutes ...	567
Form 3–2056M	10,200	1	10,200	3 minutes ...	510
Subtotals:	*67,500*	.....	*67,500*	.....	*4,862*
Parts Collection Survey (Individuals)					
Form 3–165	4,870	22	107,140	5 minutes ...	8,928
Form 3–165A	1,000	5.5	5,500	5 minutes ...	458
Form 3–165B	3,600	1	3,600	1 minute	60
Form 3–165C	900	1	900	1 minute	15
Form 3–165D	1,134	1	1,134	1 minute	19
Form 3–165E	1,100	1.5	1,650	5 minutes ...	138
Subtotals:	12,604	.....	119,924	.....	9,619
Sandhill Crane Harvest Survey (Individuals)					
Form 3–2056N	4,300	1	4,300	3.5 minutes	251
Online Migratory Bird Harvest Survey (Individuals) NEW					
None (Online)	25,500	1	25,500	4 minutes ...	1,700
Totals:	109,953	.....	218,033	.....	143,444

* Rounded

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: October 21, 2019.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–23187 Filed 10–23–19; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–620 and 731–TA–1445 (Final)]

Wooden Cabinets and Vanities From China; Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–620 and 731–TA–1445 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of wooden cabinets and vanities from China, provided for in subheadings 9403.40.90, 9403.60.80, and 9403.90.70 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Calvin Chang ((202) 205–3062) or Ahdia Bavari ((202) 205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: *Scope.*—For purposes of these investigations, Commerce has defined the subject merchandise as wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Wooden cabinets and vanities and wooden components are made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo. Wooden cabinets and vanities consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may not include a frame, door, drawers and/or shelves. Subject merchandise includes wooden cabinets and vanities with or without wood veneers, wood, paper or other overlays, or laminates, with or without non-wood components or trim such as metal, marble, glass, plastic, or other resins, whether or not surface finished or unfinished, and whether or not completed.

Wooden cabinets and vanities are covered by the investigation whether or not they are imported attached to, or in conjunction with, faucets, metal plumbing, sinks and/or sink bowls, or countertops. If wooden cabinets or vanities are imported attached to, or in conjunction with, such merchandise, only the wooden cabinet or vanity is covered by the scope.

Subject merchandise includes the following wooden component parts of cabinets and vanities: (1) Wooden cabinet and vanity frames (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3) wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.

Subject merchandise includes all unassembled, assembled and/or ''ready to assemble'' (RTA) wooden cabinets and vanities, also commonly known as ''flat packs,'' except to the extent such merchandise is already covered by the scope of antidumping and countervailing duty orders on Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 83 FR 504 (January 4, 2018); Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order, 83 FR 513 (January 4, 2018). RTA wooden cabinets and vanities are defined as cabinets or vanities packaged so that at the time of importation they may include: (1) Wooden components required to assemble a cabinet or vanity (including drawer faces and doors); and (2) parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a cabinet or vanity. RTAs may enter the United States in one or in multiple packages.

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: Trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Excluded from the scope of this investigation, if entered separate from a wooden cabinet or vanity are:

(1) Aftermarket accessory items which may be added to or installed into an interior of a cabinet and which are not considered a structural or core component of a wooden cabinet or vanity.

Aftermarket accessory items may be made of wood, metal, plastic, composite material, or a combination thereof that can be inserted into a cabinet and which are utilized in the function of organization/accessibility on the interior of a cabinet; and include:

- Inserts or dividers which are placed into drawer boxes with the purpose of organizing or dividing the internal portion of the drawer into multiple areas for the purpose of containing smaller items such as cutlery, utensils, bathroom essentials, etc.
- Round or oblong inserts that rotate internally in a cabinet for the purpose of accessibility to foodstuffs, dishware, general supplies, etc.

(2) Solid wooden accessories including corbels and rosettes, which serve the primary purpose of decoration and personalization.

(3) Non-wooden cabinet hardware components including metal hinges, brackets, catches, locks, drawer slides, fasteners (nails, screws, tacks, staples), handles, and knobs.

(4) Medicine cabinets that meet all of the following five criteria are excluded from the scope: (1) Wall mounted; (2) assembled at the time of entry into the United States; (3) contain one or more mirrors; (4) be packaged for retail sale at time of entry; and (5) have a maximum depth of seven inches.

Also excluded from the scope of this investigation are:

(1) All products covered by the scope of the antidumping duty order on Wooden Bedroom Furniture from the People's Republic of China. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China, 70 FR 329 (January 4, 2005).

(2) All products covered by the scope of the antidumping and countervailing

duty orders on Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 83 FR 504 (January 4, 2018); Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order, 83 FR. 513 (January 4, 2018).

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of wooden cabinets and vanities, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on March 6, 2019, by the American Kitchen Cabinet Alliance.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 6, 2020, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Thursday, February 20, 2020, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 14, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on February 18, 2020, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 13, 2020. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 27, 2020. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before February 27, 2020. On March 18, 2020, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 20, 2020, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 21, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–23224 Filed 10–23–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Shaker Screens for Drilling Fluids, Components Thereof, and Related Marketing Materials, DN 3416;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of M–I L.L.C. on October 18, 2019. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain shaker screens for drilling fluids, components thereof, and related marketing materials. The complaint names as respondents: Hebei GN Solids Control Co., Ltd. of China; GN Solids America LLC of Houston, TX; Anping Shengjia Hardware Mesh Co., Ltd. of China; Hebei Hengying Wire Cloth Co., Ltd. of China; Xi'an Brightway Energy Equipment Co., Ltd. of China; and Brightway Solids Control Co., Ltd. of Houston, TX. The complainant requests that the Commission issue cease and desist orders, a general exclusion order, or in the alternative a limited exclusion order, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3416'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 18, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–23182 Filed 10–23–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–19–037]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 31, 2019 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 731–TA–1422 and 1423 (Final) (Strontium Chromate from Austria and France). The Commission is currently scheduled to complete and file its determinations and views of the Commission by November 21, 2019.
5. Vote on Inv. Nos. 701–TA–454 and 731–TA–1144 (Second Review) and 731–TA–1210–1212 (Review) (Welded Stainless Steel Pressure Pipe from China, Malaysia, Thailand, and Vietnam). The Commission is currently scheduled to complete and file its determinations and views of the Commission by November 14, 2019.
6. Vote on Inv. No. 731–TA–1021 (Third Review) (Malleable Iron Pipe Fittings from China). The Commission is currently scheduled to complete and file its determination and views of the Commission by November 21, 2019.
7. Outstanding action jackets: None.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 21, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–23292 Filed 10–22–19; 11:15 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on November 8, 2019, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Internal Revenue Service, 1555 Poydras Street, New Orleans, LA 70112.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at 202–317–3648.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Internal Revenue Service, 1555 Poydras Street, New Orleans, LA 70112, on November 8, 2019, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: October 15, 2019.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2019–23146 Filed 10–23–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Informant Agreement—ATF Form 3252.2

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 23, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Renee Reid, FO/ESB—Mailstop (7.E–401), either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at *Renee.Reid@atf.gov,* or by telephone at 202–648–9255.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (*check justification or form 83): New Collection.

2. *The Title of the Form/Collection:* Informant Agreement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 3252.2.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: Any individual registering as a confidential informant (CI) for ATF must provide their personally identifiable information (PII) on the Informant Agreement—(ATF Form 3252.2). ATF will utilize the information to verify the identity of the CI, who can provide useful and credible information to ATF regarding felonious criminal activities.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will utilize the form annually, and it will take each respondent approximately 6 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 200 hours, which is equal to 2,000 (# of respondents) * .10 (6 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 21, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–23229 Filed 10–23–19; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Antitrust Division, Department of Justice.

ACTION: Notice.

SUMMARY: The Department of Justice, Antitrust Division, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until December 23, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Sarah Oldfield, Deputy Chief Legal Advisor—Criminal, U.S. Department of Justice, Antitrust Division, 950 Pennsylvania Ave. NW, Room 3311, Washington, DC 20530 (email: *sarah.oldfield@usdoj.gov;* telephone: 202–305–8915).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Justice, Antitrust Division, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Procurement Collusion Strike Force Complaint Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Antitrust Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary respondents will be individuals or households. The Procurement Collusion Strike Force (PCSF) complaint form facilitates reporting by the public of complaints, concerns, and tips regarding potential antitrust crimes affecting government procurement, grants, and program funding. Respondents will be able to complete and submit information electronically through the PCSF complaint form on the Antitrust Division's website.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500 respondents annually and 30 minutes for an individual to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* 250 annual burden hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 21, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–23208 Filed 10–23–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed New Information Collection Activity; Comment Request, Proposed Study Entitled "The National Baseline Study on Public Health, Wellness, & Safety"

AGENCY: National Institute of Justice, U.S. Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, National Institute of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* November 25, 2019.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christine (Tina) Crossland, Senior Social Science Analyst, National Institute of Justice, Office of Research, Evaluation, and Technology, 810 Seventh Street NW, Washington, DC 20531 (overnight 20001) or via email at *NIJ_NationalBaselineStudy@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the National Institute of Justice, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New survey.

2. *The Title of the Form/Collection:* ''The National Baseline Study on Public Health, Wellness, & Safety''.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The applicable component within the U.S. Department of Justice is the National Institute of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Title IX, Section 904(a) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law No. 109–162 (codified at 42 U.S.C. 3796gg–10 note), as amended by Section 907 of the Violence Against Women Reauthorization Act, Public Law 113–4, mandates that the National Institute of Justice (NIJ), in consultation with the U.S. Department of Justice's Office on Violence Against Women (OVW), conduct a National Baseline Study (NBS) on violence against American Indian (AI) and Alaska Native (AN) women living in tribal communities. NIJ's NBS will examine violence against AI and AN women (including domestic violence, dating violence, sexual assault, and stalking) and identify factors that place AI and AN women at risk for victimization and propose recommendations to improve effectiveness of these responses. NIJ's NBS survey was designed to: (1) Provide an accurate reporting of violence against AI and AN women in tribal communities; (2) provide reliable, valid estimates of the scope of the problem; and (3) identify barriers to and possible solutions for dealing with these significant public safety issues.

The NBS will be conducted in geographically dispersed tribal communities across the U.S. (lower 48 and Alaska) using a NIJ-developed sampling strategy for which the primary aim is to provide an accurate *national* victimization rate of violence against adult AI and AN women specifically living in tribal communities. This information collection is a one-time information collection and is expected to take approximately thirty-six months from the time the first participant is enrolled until the last survey is administered.

The NBS is critical to quantifying the magnitude of violence and victimization in tribal communities and understanding service needs. At the end of this study, the NBS is expected to produce a deeper understanding of the issues faced by Native American women living in Indian Country and Alaska Native villages and help formulate public policies and prevention strategies to decrease the incidence of violent crimes against AI and AN women.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated range of burden for respondents is expected to be between 30 minutes to 1.5 hours for completion. Based on instrument testing results, we expect an average of 60 minutes per respondent. The following factors were considered when creating the burden estimate: the estimated total number of sites (40), households within sites (25), and respondents within households (1.5) in the sampling plan for a total of 1,500 expected respondents. NIJ estimates that nearly all of the approximately 1,500 respondents will fully complete the questionnaire.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1,500 hours. It is estimated that each of the 1,500 respondents will take 1 hour to complete a questionnaire (1,500 respondents × 1 hour = 1,500 hours). We estimate a 36-month data collection period, with approximately half of the interviews completed each year, or an annualized burden of 500 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 21, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–23188 Filed 10–23–19; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Advertising of Excess Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before December 23, 2019 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6018, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Mackie Malaka at the address above or telephone 703–548–2704.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0098.

Title: Advertising of Excess Insurance, 12 CFR part 740.3.

Form: None.

Type of Review: Extension of a currently approved collection.

Abstract: Requirements of 12 CFR 740.3, Advertising of excess insurance, prescribes that federally insured credit unions must disclose in advertising the share or savings account insurance provided by a party other than NCUA. This disclosure statement must include the identity of the carrier, the type and amount of such insurance and must avoid any statement or implication that the carrier is affiliated with NCUA or the federal government. The disclosure requirements under § 740.3 are necessary to ensure that share account holders are aware that their accounts are insured by carriers other than the NCUA.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 291.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 291.

Estimated Burden Hours per Response: 1.

Estimated Total Annual Burden Hours: 291.

Reason for Change: Adjustments are attributed to current updated data since the last previous submission.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on October 21, 2019.

Dated: October 21, 2019.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2019–23212 Filed 10–23–19; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management Renewal

The NSF management officials having responsibility for the advisory committee listed below have determined that renewing this committee for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Committee

STEM Education Advisory Panel, #2624.

Effective date for renewal is October 18, 2019. For more information, please contact Crystal Robinson, NSF, at (703) 292–8687.

Dated: October 18, 2019.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2019–23147 Filed 10–23–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0208]

Supplemental Guidance Regarding the Chromium-Coated Zirconium Alloy Fuel Cladding Accident Tolerant Fuel Concept

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft interim staff guidance which is intended to facilitate the staff's understanding of the in-reactor phenomena important to safety for the chromium-coated zirconium alloy fuel cladding concepts, as well as to provide guidance for NRC staff reviewing vendor applications. Chromium-coated zirconium alloy fuel cladding concepts are being pursued by several U.S. fuel vendors as part of the U.S. Department of Energy's accident tolerant fuel program.

DATES: Submit comments by November 25, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0208. Address questions about NRC dockets IDs in *www.regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tekia Govan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6197; email: *Tekia.Govan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0208 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0208.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The Draft Interim Staff Guidance Supplemental Guidance Regarding the Chromium-coated Zirconium Alloy Fuel Cladding Accident Tolerant Fuel Concept is available in ADAMS under Accession No. ML19276G621.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0208 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

This interim staff guidance (ISG) is intended to provide guidance for NRC staff reviewing applications involving fuel products with chromium-coated zirconium alloy cladding. For coated claddings of this type, a phenomena identification and ranking table (PIRT) was generated for the NRC by Pacific Northwest National Laboratory; the guidance provided in this ISG extensively references the PIRT report, ''Degradation and Failure Phenomena of Accident Tolerant Fuel Concepts: Chromium Coated Zirconium Alloy Cladding,'' issued June 2019. The suggested cladding properties specified acceptable fuel design limits and new failure mechanisms sections from the PIRT are replicated in Appendices B and C. These appendices supersede Sections 5.1 and 5.2 of the PIRT report.

This ISG is not intended as stand-alone review guidance, but instead supplements NUREG–0800, ''Standard Review Plan,'' Section 4.2, ''Fuel System Design,'' and discusses the potential impact of coated claddings on reviews performed under Standard Review Plan (SRP), Section 4.3, ''Nuclear Design,'' Section 4.4, ''Thermal and Hydraulic Design,'' and Chapter 15, ''Transient and Accident Analysis.'' In addition to the guidance provided in this ISG, reviewers of coated cladding applications should familiarize themselves with the PIRT report and with the relevant sections of the SRP.

The PIRT report and this ISG focus primarily on metallic chromium coatings applied to a zirconium alloy base metal, with some additional discussion that is applicable to chromium-based ceramic coatings. Reviewers of submittals on ceramic chromium-coated zirconium alloy claddings should carefully read the PIRT to determine the applicability to the review.

This ISG does not apply to reviews of fuel products other than metallic or ceramic chromium-based coatings on a zirconium alloy substrate.

Dated at Rockville, Maryland, this 18th day of October, 2019.

For the Nuclear Regulatory Commission.

Tekia V. Govan,

Project Manager, ROP Support and Generic Communication Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–23186 Filed 10–23–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

The U.S. Nuclear Waste Technical Review Board will meet in Alexandria, Virginia, on November 19, 2019 to review information on DOE research and development activities related to drying, packaging, and dry storage of spent nuclear fuel.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the U.S. Nuclear Waste Technical Review Board will hold a public meeting in Alexandria, Virginia, on Tuesday, November 19, 2019, to review information on U.S. Department of Energy (DOE) research and development (R&D) activities related to drying, packaging, and dry storage of spent nuclear fuel (SNF), including aluminum-clad SNF. The Board is an independent federal agency established by Congress to conduct an ongoing technical and scientific evaluation of activities undertaken by DOE to manage and dispose of SNF and high-level radioactive waste (HLW).

The Board meeting will be held at the Embassy Suites Alexandria Hotel, 1900 Diagonal Road, Alexandria, VA 22314. The hotel telephone number is (703) 684–5900.

The meeting will begin at 8:00 a.m. and is scheduled to adjourn at 5:00 p.m. Speakers representing the DOE Office of Nuclear Energy, the DOE Office of Environmental Management, and the national laboratories will report on R&D projects related to the drying, packaging, and dry storage of SNF. Computer modeling of the thermal behavior of SNF casks and canisters also will be discussed. Information on the development of the DOE standardized canister for DOE-managed SNF and research on long-term dry storage of aluminum-clad SNF will be presented. Additionally, the Board will hear presentations from researchers in other countries, where the drying and dry-storage of aluminum-clad SNF is under examination. A detailed meeting agenda will be available on the Board's website at *www.nwtrb.gov* approximately one week before the meeting.

The meeting will be open to the public, and opportunities for public comment will be provided before the lunch break and again at the end of the meeting. Those wanting to speak are encouraged to sign the Public Comment Register at the check-in table near the entrance to the meeting room. Speakers will be taken in the order in which they signed in and depending on the number a time limit on individual remarks may be set. However, written comments of any length may be submitted to the Board staff or by mail or electronic mail. All comments received in writing will be included in the meeting record, which will be posted on the Board's website after the meeting. The workshop will be webcast, and the link to the webcast will be available on the Board's website (*www.nwtrb.gov*) a few days before the workshop. An archived version of the webcast will be available on the Board's website following the workshop. The transcript of the workshop will be available on the Board's website by January 20, 2020.

The Board was established in the Nuclear Waste Policy Amendments Act of 1987 as an independent federal agency in the Executive Branch to evaluate the technical and scientific validity of DOE activities related to the management and disposal of SNF and HLW and to provide objective expert advice to Congress and the Secretary of Energy on these issues. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board reports its findings, conclusions, and recommendations to Congress and the Secretary of Energy. All Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's website.

For information on the meeting agenda, contact Dan Ogg: *ogg@nwtrb.gov* or Bret Leslie: *leslie@nwtrb.gov.* For information on logistics, or to request copies of the workshop agenda or transcript, contact Sonya Townsend: *townsend@nwtrb.gov.* All three may be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: October 18, 2019.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2019–23180 Filed 10–23–19; 8:45 am]

BILLING CODE 6820–AM–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–11 and CP2020–10]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 28, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–11 and CP2020–10; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 101 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 18, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* October 28, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–23200 Filed 10–23–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87346; File No. SR–NYSEArca–2019–76]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent Certain Options Market Rules That Are Linked to the Equity Market Plan To Address Extraordinary Market Volatility

October 18, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 16, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make permanent certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan''). This change is being proposed in connection with the recently approved amendment to the Limit Up-Limit Down Plan that allows the Plan to continue to operate on a permanent basis (''Amendment 18'').[4] The Exchange understands that the other national securities exchanges have filed or will file similar proposals to make permanent their respective pilot programs; thus this proposal would align Exchange rules with the rules of other options exchanges.[5]

In an attempt to address extraordinary market volatility in NMS Stock, and, in particular, events like the severe volatility on May 6, 2010, U.S. national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Act.[6] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[7] Though the Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rule 6.65A–O and Commentary .03 to Rule 6.87–O to ensure the option markets were not harmed as a result of the Plan's implementation and has implemented such rules on a pilot basis that has coincided with the pilot period for the Plan (the ''Options Pilots'').[8]

Rule 6.65A–O essentially serves as a roadmap for the Exchange's universal changes due to the implementation of the Plan, and Commentary .03 to Rule 6.87–O provides that transactions executed during a limit or straddle state are not subject to the obvious and catastrophic error rules. A limit or straddle state occurs when at least one side of the National Best Bid (''NBB'') or Offer (''NBO'') bid/ask is priced at a non-tradable level. Specifically, a straddle state exists when the NBB is below the lower price band while the NBO is inside the prices band or when the NBO is above the upper price band and the NBB is within the band, while a limit state occurs when the NBO equals the lower price band (without crossing the NBB), or the NBB equals the upper price band (without crossing the NBO). The Exchange adopted the Options Pilots to protect investors because when an underlying security is in a limit or straddle state, there will not be a reliable price for the security to serve as a benchmark for the price of the option. Specifically, the Exchange adopted Commentary .03 to Rule 6.87–O because the application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during limit and straddle states. When adjusting or busting a trade pursuant to the obvious error rule, the determination of theoretical value of a trade generally references the NBB (for erroneous sell transactions) or NBO (for erroneous buy transactions) just prior to the trade in question, and is therefore not reliable when at least one side of the NBBO is priced at a non-tradeable level, as is the case in limit and straddle states. In such a situation, determining theoretical value is often a subjective rather than an objective determination and could give rise to additional uncertainty and confusion for investors. As a result, application of the obvious and catastrophic error rules would be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and may produce undesirable effects or unanticipated consequences.

The Exchange adopted additional measures via other Options Pilot rules that are designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders[9] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Furthermore, the Exchange believes that eliminating the application of obvious error rules during a limit or straddle state eliminates the re-evaluation of a transaction executed during such a state that could potentially create an unreasonable adverse selection opportunity due to lack of a reliable reference price on one side of the market or another and discourage participants from providing liquidity during limit and straddle states, which is contrary to the goal in limiting participants' adverse selection with the application of the obvious error rule during normal trading states.

For these reasons, the Exchange believes the Options Pilots are designed to add certainty on the options markets, which encourages more investors to participate in light of the changes associated with the Plan. The Plan was originally implemented on a pilot-basis in order to allow the public, the participating exchanges, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis. As stated, the Exchange adopted the Option Pilots to coincide with this pilot; to continue the protections therein while the industry gains further experience operating the Plan.

In connection with the order approving the establishment of the obvious error pilot, as well as the extensions of the obvious error pilot, the Exchange committed to submit monthly data regarding the program and to

[4] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[5] For example, Cboe Exchange, Inc. (''Cboe'') filed a proposal with the Commission to make permanent rules related to the Options Pilots, which filing has been approved. *See* Securities Exchange Act Release Nos. 86744 (August 23, 2019), 84 FR 45565 (August 29, 2019); 87311 (October 15, 2019) (SR–CBOE–2019–049) (''Cboe filing''). The Exchange notes that the substance of this proposal is identical to the Cboe filing.

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[7] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[8] *See* Securities Exchange Act Release Nos. 69340 (April 8, 2013), 78 FR 22004 (April 12, 2013) (SR–NYSEArca–2013–10) (amending certain options rules to coincide with the pilot period for the Plan); 76246 (October 23, 2015), 80 FR 66603 (October 29, 2015) (SR–NYSEArca–2015–101) (amending certain options rules to coincide with the pilot period for the Plan) and 85610 (April 11, 2019), 84 FR 16053 (April 17, 2019) (SR–NYSEArca–2019–22) (amending Rules 6.65A–O and 6.87–O, to extend the pilot period in connection with the Plain).

[9] This includes rules in connection with special handling for market orders, market-on-close orders, stop orders, and stock-option orders, as well as for certain electronic order handling features in a Limit Up-Limit Down state, the obvious error rules, and providing that the Exchange will not require Market-Makers to quote in series of options when the underlying security is in a Limit Up-Limit Down state.

submit an overall analysis of the obvious error pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission. Pursuant to a rule filing, submitted on April 4, 2014, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange (the ''LULD Limit and Straddle Reports'').[10] The Exchange has continued to provide the Commission with this data on a monthly basis from October 2015. For each trade on the Exchange, the Exchange provides (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state. In addition, to help evaluate the impact of the pilot program, the Exchange has provided to the Commission, and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. The Exchange has concluded that the obvious error pilot does not negatively impact market quality during normal market conditions,[11] and that there has been insufficient data to assess whether a lack of obvious error rules is problematic, however, the Exchange believes the continuation of Commentary .03 to Rule 6.87–O functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets.

The Commission recently approved the Plan on a permanent basis (Amendment 18).[12] In connection with this approval, the Exchange now proposes to amend Rule 6.65A–O and Commentary .03 to Rule 6.87–O that currently implement the provisions of the Plan on a pilot basis to eliminate the pilot basis, which effectiveness expires on October 18, 2019, and to make such rules permanent. In its approval order to make the Plan permanent, the Commission recognized that, as a result of the Participants' and industry analysis of the Plan's operation, the Limit Up-Limit Down mechanism effectively addresses extraordinary market volatility. Indeed, the Plan benefits markets and market participants by helping to ensure orderly markets, but also, the Exchange believes, based on the data made available to the public and the Commission during the pilot period, that the obvious error pilot does not negatively impact market quality during normal market conditions.[13] Rather, the Exchange believes the obvious error pilot functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets.

The Exchange also believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders[14] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state This removes impediments to and perfects the mechanism of a free and open market and national market system by encouraging more investors to participate in light of the changes associated with the Plan. The Exchange believes that if approved on a permanent basis, the Options Pilots would permanently provide investors with the above-described additional certainty of market prices and mitigation of unanticipated consequences and unreasonable adverse selection risk during limit and straddle states.

The Exchange understands that the other national securities exchanges have filed or will file similar proposals to make permanent their respective pilot programs. Since the Commission's approval of Amendment 18 allowing the Plan to operate on a permanent basis, the Exchange and other national securities exchanges have determined that no further amendments should be made to the Options Pilots;[15] the current Options Pilots effectively address extraordinary market volatility, are reasonably designed to comply with the requirements of the Plan, facilitate compliance with the Plan and should now operate on a permanent basis, consistent with the Plan. The Exchange does not propose any additional changes to Rule 6.65A–O and Commentary .03 to Rule 6.87–O.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[16] in general, and Section 6(b)(5) of the Act,[17] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. The Exchange believes that eliminating the Options Pilots and making such rules permanent facilitates compliance with the Plan.

In particular, the Exchange believes that the proposed rule supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. The Exchange believes that eliminating the pilot basis for the Options Pilots and making such rules permanent facilitates compliance with the Plan by adding certainty to the markets during periods of market

[10] *See* Securities Exchange Act Release No. 71869 (April 4, 2014), 79 FR 19689 (April 9, 2014) (SR–NYSEArca–2014–36); *see also* NYSE Arca, LULD Limit and Straddle Reports, *available at: https://www.nyse.com/markets/arca-options/reports.*

[11] *See* NYSE Arca, LULD Limit and Straddle Reports, *available at: https://www.nyse.com/markets/arca-options/reports.* During the most recent Review Period the Exchange did not receive any obvious error review requests for Limit-Up-Limit Down trades, and Limit Up-Limit Down trade volume accounted for nominal overall trade volume.

[12] *See supra* note 4.

[13] *See supra* note 11. The Exchange's obligation to submit and publish the LULD Limit and Straddle Reports was extinguished upon the approval of Amendment 18.

[14] *See supra* note 9.

[15] *See* Securities Exchange Act Release No. 85610 (April 11, 2019), 84 FR 16053 (April 17, 2019) (SR–NYSEARCA–2019–22) (proposal to extend the pilot for certain options market rules linked to the Plan).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

volatility, which has been approved and found by the Commission to be reasonably designed to prevent potentially harmful price volatility in NMS Stocks. It has been determined by the Commission that the Plan benefits markets and market participants by helping to ensure orderly markets, and, based on the data made available to the public and the Commission during the pilot period for Commentary .03 to Rule 6.87–O, the Plan does not negatively impact options market quality during normal market conditions. Rather, the Plan, as it is implemented under the obvious error pilot, functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. During a limit or straddle state, determining theoretical value of an option may be a subjective rather than an objective determination given the lack of a reliable NBBO, which may create an unreasonable adverse selection opportunity and discourage participants from providing liquidity during limit and straddle states. Therefore, the Exchange believes eliminating obvious error review in such states would, in turn, eliminate uncertainty and confusion for investors and benefit investors by encouraging more participation in light of the changes associated with the Plan.

As stated, the Exchange believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders [18] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Accordingly, the Exchange believes that making the Options Pilots permanent will further the goals of investor protection and fair and orderly markets as the rules effectively address extraordinary market volatility pursuant to the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is necessary to reflect that the Plan no longer operates as a pilot and has been approved to operate on a permanent basis by the Commission. As such, Exchange Rules 6.65A–O and Commentary .03 to Rule 6.87–O, which implement protections in connection with the Plan, should be amended to operate on a permanent basis. The Exchange understands that the other national securities exchanges have filed or will also file similar proposals to make permanent their respective pilot programs.[19] Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) [22] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [23] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current Options Pilots to continue on a permanent basis without any changes, prior to the pilot expiration on October 18, 2019. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2019–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–76. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

[18] *See supra* note 9.

[19] *See e.g.,* Cboe filing, *supra* note 5.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–76 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23171 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87352; File No. SR–NYSENAT–2019–24]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

October 18, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 16, 2019, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2020. The pilot program is currently due to expire on October 18, 2019.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11.19 (Clearly Erroneous Executions) that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A Series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6] Rule 11.19 is no longer applicable to any securities that trade on the Exchange and has been replaced with Rule 7.10, which is substantively identical to Rule 11.19.[7]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[8] including any extensions to the pilot period for the LULD Plan.[9] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[10] In light of that change, the Exchange amended Rule 7.10 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[11]

The Exchange now proposes to amend Rule 7.10 to extend the pilot's effectiveness for a further six months to the close of business on April 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) as described in former Rule 11.19 will be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[12] In such an event, the remaining sections of Rule 7.10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NSX–2010–07).

[5] *See* Securities Exchange Act Release No. 68803 (Feb. 1, 2013), 78 FR 9078 (Feb. 7, 2013) (SR–NSX–2013–06).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NSX–2014–08).

[7] *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR–NYSENAT–2018–02).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71797 (March 25, 2014), 79 FR 18108 (March 31, 2014) (SR–NSX–2014–07).

[10] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[11] *See* Securities Exchange Act Release No. 85522 (April 5, 2019), 84 FR 14704 (April 11, 2019) (SR–NYSENAT–2019–07).

[12] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of Rule 7.10 for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSENAT–2019–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2019–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2019–24 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23165 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87345; File No. SR–NYSEAMER–2019–45]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent Certain Options Market Rules That Are Linked to the Equity Market Plan To Address Extraordinary Market Volatility

October 18, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 16, 2019, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make permanent certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan''). This change is being proposed in connection with the recently approved amendment to the Limit Up-Limit Down Plan that allows the Plan to continue to operate on a permanent basis (''Amendment 18'').[4] The Exchange understands that the other national securities exchanges have filed or will file similar proposals to make permanent their respective pilot programs; thus this proposal would align Exchange rules with the rules of other options exchanges.[5]

In an attempt to address extraordinary market volatility in NMS Stock, and, in particular, events like the severe volatility on May 6, 2010, U.S. national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Act.[6] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[7] Though the Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended and Rule 953.1NY and Commentary .03 to Rule 975NY to ensure the option markets were not harmed as a result of the Plan's implementation and has implemented such rules on a pilot basis that has coincided with the pilot period for the Plan (the ''Options Pilots'').[8]

Rule 953.1NY essentially serves as a roadmap for the Exchange's universal changes due to the implementation of the Plan, and Commentary .03 to Rule 975NY provides that transactions executed during a limit or straddle state are not subject to the obvious and catastrophic error rules. A limit or straddle state occurs when at least one side of the National Best Bid (''NBB'') or Offer (''NBO'') bid/ask is priced at a non-tradable level. Specifically, a straddle state exists when the NBB is below the lower price band while the NBO is inside the prices band or when the NBO is above the upper price band and the NBB is within the band, while a limit state occurs when the NBO equals the lower price band (without crossing the NBB), or the NBB equals the upper price band (without crossing the NBO). The Exchange adopted the Options Pilots to protect investors because when an underlying security is in a limit or straddle state, there will not be a reliable price for the security to serve as a benchmark for the price of the option. Specifically, the Exchange adopted Commentary .03 to Rule 975NY because the application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[5] For example, Cboe Exchange, Inc. (''Cboe'') filed a proposal with the Commission to make permanent rules related to the Options Pilots, which filing has been approved. *See* Securities Exchange Act Release Nos. 86744 (August 23, 2019), 84 FR 45565 (August 29, 2019); 87311 (October 15, 2019) (SR–CBOE–2019–049) (''Cboe filing''). The Exchange notes that the substance of this proposal is identical to the Cboe filing.

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011)(File No. 4–631).

[7] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[8] *See* Securities Exchange Act Release Nos. 69339 (April 8, 2013), 78 FR 22011 (April 12, 2013) (SR–NYSEMKT–2013–10) (amending certain options rules to coincide with the pilot period for the Plan, including Rule 953NY and Rule 953.1NY); 76248 (October 23, 2015), 80 FR 66591 (October 29, 2015) (SR–NYSEMKT–2015–88) (amending Rules 953.1NY and 975NY to coincide with the pilot period for the Plan); and 85617 (April 11, 2019), 84 FR 16059 (April 17, 2019) (SR–NYSEAMER–2019–12) (amending Rules 953.1NY and 975NY to extend the pilot).

market during limit and straddle states. When adjusting or busting a trade pursuant to the obvious error rule, the determination of theoretical value of a trade generally references the NBB (for erroneous sell transactions) or NBO (for erroneous buy transactions) just prior to the trade in question, and is therefore not reliable when at least one side of the NBBO is priced at a non-tradeable level, as is the case in limit and straddle states. In such a situation, determining theoretical value is often a subjective rather than an objective determination and could give rise to additional uncertainty and confusion for investors. As a result, application of the obvious and catastrophic error rules would be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and may produce undesirable effects or unanticipated consequences.

The Exchange adopted additional measures via other Options Pilot rules that are designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders [9] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Furthermore, the Exchange believes that eliminating the application of obvious error rules during a limit or straddle state eliminates the re-evaluation of a transaction executed during such a state that could potentially create an unreasonable adverse selection opportunity due to lack of a reliable reference price on one side of the market or another and discourage participants from providing liquidity during limit and straddle states, which is contrary to the goal in limiting participants' adverse selection with the application of the obvious error rule during normal trading states.

For these reasons, the Exchange believes the Options Pilots are designed to add certainty on the options markets, which encourages more investors to participate in light of the changes associated with the Plan. The Plan was originally implemented on a pilot-basis in order to allow the public, the participating exchanges, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis. As stated, the Exchange adopted the Option Pilots to coincide with this pilot; to continue the protections therein while the industry gains further experience operating the Plan.

In connection with the order approving the establishment of the obvious error pilot, as well as the extensions of the obvious error pilot, the Exchange committed to submit monthly data regarding the program and to submit an overall analysis of the obvious error pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission. Pursuant to a rule filing, submitted on April 4, 2014, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange (the ''LULD Limit and Straddle Reports'').[10] The Exchange has continued to provide the Commission with this data on a monthly basis from October 2015. For each trade on the Exchange, the Exchange provides (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state. In addition, to help evaluate the impact of the pilot program, the Exchange has provided to the Commission, and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. The Exchange has concluded that the obvious error pilot does not negatively impact market quality during normal market conditions,[11] and that there has been insufficient data to assess whether a lack of obvious error rules is problematic, however, the Exchange believes the continuation of Commentary .03 to Rule 975NY functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets.

The Commission recently approved the Plan on a permanent basis (Amendment 18).[12] In connection with this approval, the Exchange now proposes to amend Rule 953.1NY and Commentary .03 to Rule 975NY that currently implement the provisions of the Plan on a pilot basis to eliminate the pilot basis, which effectiveness expires on October 18, 2019, and to make such rules permanent. In its approval order to make the Plan permanent, the Commission recognized that, as a result of the Participants' and industry analysis of the Plan's operation, the Limit Up-Limit Down mechanism effectively addresses extraordinary market volatility. Indeed, the Plan benefits markets and market participants by helping to ensure orderly markets, but also, the Exchange believes, based on the data made available to the public and the Commission during the pilot period, that the obvious error pilot does not negatively impact market quality during normal market conditions.[13] Rather, the Exchange believes the obvious error pilot functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets.

The Exchange also believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders [14] during a Limit Up-Limit Down state to ensure that only those orders

[9] This includes rules in connection with special handling for market orders, market-on-close orders, stop orders, and stock-option orders, as well as for certain electronic order handling features in a Limit Up-Limit Down state, the obvious error rules, and providing that the Exchange will not require Market-Makers to quote in series of options when the underlying security is in a Limit Up-Limit Down state.

[10] *See* Securities Exchange Act Release No. 71870 (April 4, 2014), 79 FR 19692 (April 9, 2014) (SR–NYSEMKT–2014–31); *see also* NYSE American, LULD Limit and Straddle Reports, *available at: https://www.nyse.com/markets/american-options/reports.*

[11] *See* NYSE American, LULD Limit and Straddle Reports, *available at: https://www.nyse.com/markets/american-options/reports.* During the most recent Review Period the Exchange did not receive any obvious error review requests for Limit-Up-Limit Down trades, and Limit Up-Limit Down trade volume accounted for nominal overall trade volume.

[12] *See supra* note 4.

[13] *See supra* note 11. The Exchange's obligation to submit and publish the LULD Limit and Straddle Reports was extinguished upon the approval of Amendment 18.

[14] *See supra* note 9.

with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. This removes impediments to and perfects the mechanism of a free and open market and national market system by encouraging more investors to participate in light of the changes associated with the Plan. The Exchange believes that if approved on a permanent basis, the Options Pilots would permanently provide investors with the above-described additional certainty of market prices and mitigation of unanticipated consequences and unreasonable adverse selection risk during limit and straddle states.

The Exchange understands that the other national securities exchanges have filed or will file similar proposals to make permanent their respective pilot programs. Since the Commission's approval of Amendment 18 allowing the Plan to operate on a permanent basis, the Exchange and other national securities exchanges have determined that no further amendments should be made to the Options Pilots;[15] the current Options Pilots effectively address extraordinary market volatility, are reasonably designed to comply with the requirements of the Plan, facilitate compliance with the Plan and should now operate on a permanent basis, consistent with the Plan. The Exchange does not propose any additional changes to Rule 953.1NY and Commentary.03 to Rule 975NY.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[16] in general, and Section 6(b)(5) of the Act,[17] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. The Exchange believes that eliminating the Options Pilots and making such rules permanent facilitates compliance with the Plan.

In particular, the Exchange believes that the proposed rule supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. The Exchange believes that eliminating the pilot basis for the Options Pilots and making such rules permanent facilitates compliance with the Plan by adding certainty to the markets during periods of market volatility, which has been approved and found by the Commission to be reasonably designed to prevent potentially harmful price volatility in NMS Stocks. It has been determined by the Commission that the Plan benefits markets and market participants by helping to ensure orderly markets, and, based on the data made available to the public and the Commission during the pilot period for Commentary .03 to Rule 975NY, the Plan does not negatively impact options market quality during normal market conditions. Rather, the Plan, as it is implemented under the obvious error pilot, functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. During a limit or straddle state, determining theoretical value of an option may be a subjective rather than an objective determination given the lack of a reliable NBBO, which may create an unreasonable adverse selection opportunity and discourage participants from providing liquidity during limit and straddle states. Therefore, the Exchange believes eliminating obvious error review in such states would, in turn, eliminate uncertainty and confusion for investors and benefit investors by encouraging more participation in light of the changes associated with the Plan.

As stated, the Exchange believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders[18] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Accordingly, the Exchange believes that making the Options Pilots permanent will further the goals of investor protection and fair and orderly markets as the rules effectively address extraordinary market volatility pursuant to the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is necessary to reflect that the Plan no longer operates as a pilot and has been approved to operate on a permanent basis by the Commission. As such, Exchange Rules 953.1NY and Commentary .03 to Rule 975NY, which implement protections in connection with the Plan, should be amended to operate on a permanent basis. The Exchange understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public

[15] *See* Securities Exchange Act Release No. 85617 (April 11, 2019), 84 FR 16059 (April 17, 2019) (SR–NYSEAMER–2019–12) (proposal to extend the pilot for certain options market rules linked to the Plan).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *See supra* note 9.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current Options Pilots to continue on a permanent basis without any changes, prior to the pilot expiration on October 18, 2019. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2019–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2019–45 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23172 Filed 10–23–19; 8:45 am]

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[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87351; File No. SR–NYSECHX–2019–13]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related To Article 20, Rule 10 and Rule 7.10

October 18, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 17, 2019, the NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Article 20, Rule 10 (Handling of Clearly Erroneous Transactions) and Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Article 20, Rule 10 (Handling of Clearly Erroneous Transactions) and Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2020. The pilot program is currently due to expire on October 18, 2019.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Article 20, Rule 10 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–CHX–2010–13).

operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Article 20, Rule 10 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10]

The Exchange has announced that it will transition to trading on Pillar on November 4, 2019.[11] The Exchange's Pillar rules include Rule 7.10, which is substantively identical to Article 20, Rule 10.[12]

The Exchange now proposes to amend Article 20, Rule 10 and Rule 7.10 to extend the pilot's effectiveness for a further six months until the close of business on April 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Article 20, Rule 10 prior to being amended by SR–CHX–2010–13 shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[13] In such an event, the remaining sections of Article 20, Rule 10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Article 20, Rule 10 and Rule 7.10.

The Exchange does not propose any additional changes to Article 20, Rule 10 or Rule 7.10. Extending the effectiveness of these rules for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[14] in general, and Section 6(b)(5) of the Act,[15] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Article 20, Rule 10 and Rule 7.10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

[5] *See* Securities Exchange Act Release No. 68802 (Feb. 1, 2013), 78 FR 9092 (Feb. 7, 2013) (SR–CHX–2013–04).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–CHX–2014–06).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71782 (March 24, 2014), 79 FR 17630 (March 28, 2014) (SR–CHX–2014–04).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85533 (April 5, 2019), 84 FR 14701 (April 11, 2019) (SR–NYSECHX–2019–04).

[11] *See* Trader Update, available here: *https://www.nyse.com/publicdocs/nyse/markets/nyse-chicago/NYSE_Chicago_Migration.pdf.*

[12] *See* Securities Exchange Act Release No. 87264 (October 9, 2019) (SR–NYSECHX–2019–08).

[13] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to

Continued

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2019–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2019–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2019–13 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23166 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87357; File No. SR–LTSE–2019–03]

Self-Regulatory Organizations; Long-Term Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Set the Date of the Pilot Related to the Market-Wide Circuit Breaker in Rule 11.280 and To Move the Limit Up-Limit Down Mechanism, Authority To Initiate Trading Halts, and Procedure for Initiating and Terminating a Trading Halt Into Separate Rules for Clarity

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''), [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2019, Long-Term Stock Exchange (''LTSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

LTSE proposes to untie the effectiveness of the market-wide circuit breaker (''MWCB'') mechanism in Rule 11.280 from that of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan'') and to extend the MWCB pilot's effectiveness to the close of business on October 18, 2020. LTSE has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [3] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[4]

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4.

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Paragraphs (a) through (d) and (f) of Rule 11.280 describe the methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.,* market-wide circuit breakers). The MWCB mechanism under Rule 11.280 was approved by the Commission to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan. The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[6] The Exchange proposes to amend Rule 11.280 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2020. The Exchange does not propose any additional changes to Rule 11.280, other than to move the LULD provisions and regulatory trading halt provisions in paragraph (e), and paragraphs (g) and (h), of Rule 11.280, respectively, to separate rules for clarity.

Specifically, the Exchange proposes to move Rule 11.280(e) (''Limit Up-Limit Down Mechanism'') to new Rule 11.281, keep Rule 11.280(f) within Rule 11.280 by renumbering it as Rule 11.280(e), and move Rule 11.280(g) (''Authority to Initiate Trading Halts'') and Rule 11.280(h) (''Procedure for Initiating and Terminating a Trading Halt'') to new Rule 11.282. Cross-references to these provisions in the LTSE rulebook—contained in Rules 11.230, 11.350, 14.001, and 14.210, and the supplementary material to Rule 14.207—would be updated accordingly.

MWCBs under Rule 11.280 provide an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges have rules relating to MWCBs, which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity. MWCBs provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 11.280, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2) and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 circuit breaker after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 circuit breaker, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

The Exchange will use the MWCB pilot extension period to develop with the other self-regulatory organizations (''SROs'') rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The extension will also permit the SROs to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The MWCB mechanism under Rule 11.280 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the MWCB pilot for an additional year, to expire on October 18, 2020, would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, which would include industry member participation in such testing. The extension would also permit the SROs to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.280 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

Additionally, the Exchange believes that it is consistent with the public interest and the protection of investors to move to separate rules for clarity the LULD provisions and regulatory trading halt provisions in Rule 11.280. Furthermore, the Exchange believes it is consistent with the public interest and the protection of investors to clarify that these provisions, found in paragraphs (e), (g) and (h) are not subject to any pilot period. These clarifying changes are designed to ensure continued compliance by the Exchange and its Members with the requirements of the LULD Plan and to remove any ambiguity on the ongoing applicability of the LULD Plan or other trading halt provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism. Furthermore, as noted above, the pilot proposed to be scheduled to expire on October 18, 2020, will permit the exchanges to

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[6] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (''LULD Plan Amendment 18 Approval Order'').

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

consider enhancements to the MWCB processes such as modifications to the Level 3 process.

Further, the Exchange understands that FINRA and other national securities exchanges have filed or will file proposals to extend their rules regarding the MWCB pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

Additionally, the clarity to be provided by re-designating paragraph (e) as a separate rule implementing the LULD provisions, and paragraphs (g) and (h) as a separate rule providing the authority under which the Exchange can initiate a trading halt ''in circumstances in which LTSE deems it necessary to protect investors and the public interest,'' and the procedures by which LTSE can both initiate and terminate a trading halt, would not have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) [9] of the Act and Rule 19b–4(f)(6) [10] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot to halt trading across the U.S. markets. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LTSE–2019–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–LTSE–2019–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–LTSE–2019–03 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23160 Filed 10–23–19; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[12] *Id.*

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87361; File No. SR–MIAX–2019–44]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors, Interpretation and Policy .01, and Exchange Rule 530, Limit Up-Limit Down

October 18, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2019, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors, Interpretation and Policy .01, and Exchange Rule 530, Limit Up-Limit Down, to make permanent certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make permanent certain options market rules in connection with the equity market Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan''). This change is being proposed in connection with the recently approved amendment to the Limit Up-Limit Down Plan that allows the Plan to continue to operate on a permanent basis (''Amendment 18'').[3]

In an attempt to address extraordinary market volatility in NMS Stock, and, in particular, events like the severe volatility on May 6, 2010, U.S. national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Act.[4] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[5] Though the Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Exchange Rule 521, Interpretation and Policy .01, and Exchange Rule 530, to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rules on a pilot basis that has coincided with the pilot period for the Plan (collectively, the ''Options Pilots'').[6] Exchange Rule 530 essentially serves as a roadmap for the Exchange's universal changes due to the implementation of the Plan and provides for trading halts whenever a market-wide trading halt is initiated due to extraordinary market conditions pursuant to the Plan. Exchange Rule 521, Interpretation and Policy .01, provides that transactions executed during a limit or straddle state are not subject to the obvious and catastrophic error rules. A limit or straddle state occurs when at least one side of the National Best Bid (''NBB'') or Offer (''NBO'') bid/ask is priced at a non-tradable level. Specifically, a straddle state exists when the NBB is below the lower price band while the NBO is inside the price band or when the NBO is above the upper price band and the NBB is within the band, while a limit state occurs when the NBO equals the lower price band (without crossing the NBB), or the NBB equals the upper price band (without crossing the NBO).

The Exchange adopted the Options Pilots to protect investors because when an underlying security is in a limit or straddle state, there will not be a reliable price for the security to serve as a benchmark for the price of the option. Specifically, the Exchange adopted Exchange Rule 521, Interpretation and Policy .01, because the application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during limit and straddle states. When adjusting or busting a trade pursuant to the obvious error rule, the determination of theoretical value of a trade generally references the NBB (for erroneous sell transactions) or NBO (for erroneous buy transactions) just prior to the trade in question, and is therefore not reliable when at least one side of the NBBO is priced at a non-tradeable level, as is the case in limit and straddle states. In such a situation, determining theoretical value may often times be a very subjective rather than an objective determination and could give rise to additional uncertainty and confusion for investors. As a result, application of the obvious and catastrophic error rules would be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and may produce undesirable effects or unanticipated consequences.

The Exchange adopted additional measures via other Options Pilot rules that are designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders[7] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Furthermore, the Exchange believes that eliminating the application of obvious error rules during a limit or straddle state eliminates the re-evaluation of a transaction executed during such a state that could potentially create an unreasonable adverse selection opportunity due to lack of a reliable reference price on one side of the market or another and discourage participants from providing liquidity during limit and straddle states, which is contrary to the goal in limiting participants' adverse selection with the application of the obvious error rule during normal trading states. For these reasons, the Exchange believes the Options Pilots are designed to add

[3] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[4] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[5] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[6] *See* Securities Exchange Act Release Nos. 69181 (March 19, 2013), 78 FR 18403 (March 26, 2013) (SR–MIAX–2013–07); 69342 (April 8, 2013), 78 FR 22017 (April 12, 2013) (SR–MIAX–2013–12); 69354 (April 9, 2013), 78 FR 22357 (April 15, 2013) (SR–MIAX–2013–15); 69997 (July 17, 2013), 78 FR 44180 (July 23, 2013) (SR–MIAX–2013–33); 71881 (April 4, 2014), 79 FR 19956 (April 10, 2014) (SR–MIAX–2014–14); 74307 (February 19, 2015), 80 FR 10196 (February 25, 2015) (SR–MIAX–2015–11); 74918 (May 8, 2015), 80 FR 27781 (May 14, 2015) (SR–MIAX–2015–25); 76237 (October 22, 2015), 80 FR 66100 (October 28, 2015) (SR–MIAX–2015–60); 81321 (August 7, 2017), 82 FR 37633 (August 11, 2017) (SR–MIAX–2017–38); 85567 (April 9, 2019), 84 FR 15245 (April 15, 2019) (SR–MIAX–2019–19).

[7] This includes rules in connection with special handling for market orders, market-on-close orders, stop orders, and stock-option orders, as well as for certain electronic order handling features in a Limit Up-Limit Down state, the obvious error rules, and providing that the Exchange will not require Market-Makers to quote in series of options when the underlying security is in a Limit Up-Limit Down state.

certainty on the options markets, which encourages more investors to participate in light of the changes associated with the Plan. The Plan was originally implemented on a pilot-basis in order to allow the public, the participating exchanges, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis. As stated, the Exchange adopted the Option Pilots to coincide with this pilot; to continue the protections therein while the industry gains further experience operating the Plan.

In connection with the order approving the establishment of the obvious error pilot, as well as the extensions of the obvious error pilot, the Exchange committed to submit monthly data regarding the program and to submit an overall analysis of the obvious error pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission. Pursuant to a rule filing, approved on April 8, 2013, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.[8] The Exchange has continued to provide the Commission with this data on a monthly basis since April 2013. For each trade on the Exchange, the Exchange provides (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state. In addition, to help evaluate the impact of the pilot program, the Exchange has provided to the Commission, and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. The Exchange has concluded that the Options Pilots do not negatively impact market quality during normal market conditions,[9] and that there has been insufficient data to assess whether a lack of obvious error rules is problematic; however, the Exchange believes the continuation of Exchange Rule 521, Interpretation and Policy .01, functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets.

The Commission recently approved the Plan on a permanent basis (Amendment 18).[10] In connection with this approval, the Exchange now proposes to amend Exchange Rule 521, Interpretation and Policy .01, and Exchange Rule 530 that currently implement the provisions of the Plan on a pilot basis to eliminate the pilot basis, which effectiveness expires on October 18, 2019, and to make such rules permanent. In its approval order to make the Plan permanent, the Commission recognized that, as a result of the Participants' and industry analysis of the Plan's operation, the Limit Up-Limit Down mechanism effectively addresses extraordinary market volatility. Indeed, the Plan benefits markets and market participants by helping to ensure orderly markets, but also, the Exchange believes, based on the data made available to the public and the Commission during the pilot period, that the obvious error pilot does not negatively impact market quality during normal market conditions.[11] Rather, the Exchange believes the obvious error pilot functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. The Exchange also believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders[12] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. This removes impediments to and perfects the mechanism of a free and open market and national market system by encouraging more investors to participate in light of the changes associated with the Plan. The Exchange believes that if approved on a permanent basis, the Options Pilots would permanently provide investors with the above-described additional certainty of market prices and mitigation of unanticipated consequences and unreasonable adverse selection risk during limit and straddle states.

The Exchange understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs. Since the Commission's approval of Amendment 18 allowing the Plan to operate on a permanent basis, the Exchange and other national securities exchanges have determined that no further amendments should be made to the Options Pilots;[13] the current Options Pilots effectively address extraordinary market volatility, are reasonably designed to comply with the requirements of the Plan, facilitate compliance with the Plan and should now operate on a permanent basis, consistent with the Plan. The Exchange does not propose any substantive or additional changes to Exchange Rule 521, Interpretation and Policy .01, or Exchange Rule 530.

The Exchange also proposes to amend Exchange Rule 530 to remove the following sentence from the first paragraph: ''The Exchange will provide the Commission with data and analysis during the duration of this pilot as requested.'' The purpose of this proposed change is to further align the Exchange's Limit Up-Limit Down rules with competing options exchanges that have proposed rules consistent with this proposal. For example, Cboe Exchange, Inc. (''Cboe'') removed a similar provision in a 2015 rule filing[14] and continued to provide the Commission, and the public, each month with a

[8] *See* Securities Exchange Act Release No. 69342 (April 8, 2013), 78 FR 22017 (April 12, 2013) (SR–MIAX–2013–12); *see also* MIAX Options, LULD Pilot Reports, available at *https://www.miaxoptions.com/pilot-reports.*

[9] *See also* MIAX Options, LULD Pilot Reports, available at *https://www.miaxoptions.com/pilot-reports.* During the most recent Review Period the Exchange did not receive any obvious error review requests for Limit-Up-Limit Down trades, and Limit Up-Limit Down trade volume accounted for nominal overall trade volume.

[10] *See supra* note 3.

[11] *See supra* note 9.

[12] *See supra* note 7.

[13] *See* Securities Exchange Act Release No. 85567 (April 9, 2019), 84 FR 15245 (April 15, 2019) (SR–MIAX–2019–19).

[14] *See* Securities Exchange Act Release No. 74898 (May 7, 2015), 80 FR 27354 (May 13, 2015(SR–CBOE–2015–039) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Nullification and Adjustment of Options Transactions Including Obvious Errors).

dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.

Additionally, the proposed changes would align the Exchange's rules with the similar rule by Cboe.[15]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule changes support the objectives of perfecting the mechanism of a free and open market and the national market system because they promote transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. The Exchange believes that eliminating the pilot basis for the Options Pilots and making such rules permanent facilitates compliance with the Plan by adding certainty to the markets during periods of market volatility, which has been approved and found by the Commission to be reasonably designed to prevent potentially harmful price volatility in NMS Stocks. It has been determined by the Commission that the Plan benefits markets and market participants by helping to ensure orderly markets, and, based on the data made available to the public and the Commission during the pilot period for Exchange Rule 521, Interpretation and Policy .01, the Plan does not negatively impact options market quality during normal market conditions. Rather, the Plan, as it is implemented under the obvious error pilot, functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. During a limit or straddle state, determining theoretical value of an option may be a subjective rather than an objective determination given the lack of a reliable NBBO, which may create an unreasonable adverse selection opportunity and discourage participants from providing liquidity during limit and straddle states. Therefore, the Exchange believes eliminating obvious error review in such states would, in turn, eliminate uncertainty and confusion for investors and benefit investors by encouraging more participation in light of the changes associated with the Plan. As stated, the Exchange believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders[19] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Accordingly, the Exchange believes that making the Options Pilots permanent will further the goals of investor protection and fair and orderly markets as the rules effectively address extraordinary market volatility pursuant to the Plan.

Further, the Exchange believes that the proposed rule change to remove text in the first paragraph of Exchange Rule 530 regarding the Exchange providing the Commission with data and analysis during the duration of the pilot as requested supports the objectives of perfecting the mechanism of a free and open market and the national market system because it furthers aligns the Exchange's Limit Up-Limit Down rules with competing options exchanges.[20]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is necessary to reflect that the Plan no longer operates as a pilot and has been approved to operate on a permanent basis by the Commission. As such, Exchange Rule 521, Interpretation and Policy .01 and Exchange Rule 530, which implement protections in connection with the Plan, should be amended to operate on a permanent basis. The Exchange understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and subparagraph (f)(6) of Rule 19b–4 thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[24] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the

[15] *See* Securities Exchange Act Release No. 87311 (October 15, 2019) (SR–CBOE–2019–049) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Make Permanent Certain Options Market Rules That Are Linked to the Equity Market Plan to Address Extraordinary Market Volatility).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *See supra* note 7.

[20] *See supra* note 14.

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

current Options Pilots to continue on a permanent basis without any changes, prior to the pilot expiration on October 18, 2019. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2019–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2019–44 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23156 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[25] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87344; File No. SR–FINRA–2019–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 10, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the current pilot program related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) (''Clearly Erroneous Transaction Pilot'' or ''Pilot'') until April 20, 2020.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing a rule change to extend the current pilot program related to FINRA Rule 11892 governing clearly erroneous transactions in exchange-listed securities until the close of business on April 20, 2020. Extending the Pilot would provide FINRA and the national securities exchanges additional time to consider a permanent proposal for clearly erroneous transaction reviews.

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 that, among other things: (i) Provided for uniform treatment of clearly erroneous transaction reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of FINRA to deviate from the objective standards set forth in the rule.[3] In 2013, FINRA adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (''Plan'').[4] Finally, in 2014, FINRA adopted two additional provisions addressing (i) erroneous transactions that occur over one or more trading days

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–032).

[4] *See* Securities Exchange Act Release No. 68808 (February 1, 2013), 78 FR 9083 (February 7, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–012).

that were based on the same fundamentally incorrect or grossly misinterpreted information resulting in a severe valuation error; and (ii) a disruption or malfunction in the operation of the facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a trading halt.[5]

On April 9, 2019, FINRA filed a proposed rule change to untie the effectiveness of the Clearly Erroneous Transaction Pilot from the effectiveness of the Plan, and to extend the Pilot's effectiveness to the close of business on October 18, 2019.[6] FINRA now is proposing to further extend the Pilot until April 20, 2020, so that market participants can continue to benefit from the more objective clearly erroneous transaction standards under the Pilot.[7] Extending the Pilot also would provide more time to permit FINRA and the other self-regulatory organizations to consider what changes, if any, to the clearly erroneous transaction rules are appropriate—particularly in light of the permanent approval of the Plan.[8]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning the review of transactions as clearly erroneous. FINRA believes that extending the Pilot under FINRA Rule 11892, until April 20, 2020, would help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, FINRA believes the Clearly Erroneous Transaction Pilot should continue to be in effect while FINRA and the national securities exchanges consider a permanent proposal for clearly erroneous transaction reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous transaction rules across the U.S. equities markets while FINRA and the national securities exchanges consider further amendments to these rules in light of the approval of the Plan as permanent. FINRA understands that the national securities exchanges also will file similar proposals to extend their clearly erroneous execution pilot programs, as applicable. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while FINRA and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2019–025 on the subject line.

[5] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (Order Approving File No. SR–FINRA–2014–021).

[6] *See* Securities Exchange Act Release No. 85612 (April 11, 2019), 84 FR 16107 (April 17, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–011).

[7] If the pilot period is not either extended or approved as permanent, the version of Rule 11892 prior to SR–FINRA–2010–032 shall be in effect, and the amendments set forth in SR–FINRA–2014–021 and the provisions of Supplementary Material .03 of the rule shall be null and void.

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving the Eighteenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2019–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2019–025 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23173 Filed 10–23–19; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87349; File No. SR–CboeBZX–2019–090]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Permanent an Options Market Rule Linked to the Equity Market Plan To Address Extraordinary Market Volatility

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') to make permanent an options market rule linked to the equity market Plan to Address Extraordinary Market Volatility. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make permanent certain options market rules in connection with the equity market Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan''). This change is being proposed in connection with the recently approved amendment to the Limit Up-Limit Down Plan that allows the Plan to continue to operate on a permanent basis (''Amendment 18'').[5]

In an attempt to address extraordinary market volatility in NMS Stocks, and, in particular, events like the severe volatility on May 6, 2010, U.S. national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation NMS under the Act.[6] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[7] Though the Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rule 20.6.01 to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rule on a pilot basis that has coincided with the pilot period for the Plan (the ''Options Pilot'').[8] Rule 20.6.01 provides that transactions executed during a limit or straddle state are not subject to the obvious and catastrophic error rules. A limit or straddle state occurs when at least one side of the National Best Bid (''NBB'') or Offer (''NBO'') bid/ask is priced at a non-tradable level.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[7] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[8] *See* Securities Exchange Act Release Nos. 76231 (October 22, 2015), 80 FR 66069 (October 28, 2015) (SR–BATS–2015–91) (extending the effectiveness of the pilot program of Interpretation and Policy .01 of Rule 20.6 to coincide with the pilot period for the Plan); and 85604 (April 11, 2019), 84 FR 16071 (April 17, 2019) (SR–CboeBZX–2019–026) (proposal to extend the pilot for the Options Pilot).

Specifically, a straddle state exists when the NBB is below the lower price band while the NBO is inside the prices band or when the NBO is above the upper price band and the NBB is within the band, while a limit state occurs when the NBO equals the lower price band (without crossing the NBB), or the NBB equals the upper price band (without crossing the NBO). The Exchange adopted the Options Pilot to protect investors because when an underlying security is in a limit or straddle state, there will not be a reliable price for the security to serve as a benchmark for the price of the option. Specifically, the Exchange adopted Rule 6.29.01 because the application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during limit and straddle states. When adjusting or busting a trade pursuant to the obvious error rule, the determination of theoretical value of a trade generally references the NBB (for erroneous sell transactions) or NBO (for erroneous buy transactions) just prior to the trade in question, and is therefore not reliable when at least one side of the NBBO is priced at a non-tradeable level, as is the case in limit and straddle states. In such a situation, determining theoretical value may often times be a very subjective rather than an objective determination and could give rise to additional uncertainty and confusion for investors. As a result, application of the obvious and catastrophic error rules would be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and may produce undesirable effects or unanticipated consequences. Furthermore, the Exchange believes that eliminating the application of obvious error rules during a limit or straddle state eliminates the re-evaluation of a transaction executed during such a state that could potentially create an unreasonable adverse selection opportunity due to lack of a reliable reference price on one side of the market or another and discourage participants from providing liquidity during limit and straddle states, which is contrary to the goal in limiting participants' adverse selection with the application of the obvious error rule during normal trading states. For these reasons, the Exchange believes the Options Pilot is designed to add certainty on the options markets, which encourages more investors to participate in light of the changes associated with the Plan. The Plan was originally implemented on a pilot-basis in order to allow the public, the participating exchanges, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis. As stated, the Exchange adopted the Option Pilot to coincide with this pilot; to continue the protections therein while the industry gains further experience operating the Plan.

In connection with the order approving the establishment of the obvious error pilot, as well as the extensions of the obvious error pilot, the Exchange committed to submit monthly data regarding the program and to submit an overall analysis of the obvious error pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission. Pursuant to a rule filing, approved on October 22, 2015, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.[9] The Exchange has continued to provide the Commission with this data on a monthly basis from October 2015. For each trade on the Exchange, the Exchange provides (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state. In addition, to help evaluate the impact of the pilot program, the Exchange has provided to the Commission, and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. The Exchange has concluded that the obvious error pilot does not negatively impact market quality during normal market conditions,[10] and that there has been insufficient data to assess whether a lack of obvious error rules is problematic, however, the Exchange believes the continuation of Rule 20.6.01 functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets.

The Commission recently approved the Plan on a permanent basis (Amendment 18).[11] In connection with this approval, the Exchange now proposes to amend Exchange Rule 20.6.01 that currently implement the provisions of the Plan on a pilot basis to eliminate the pilot basis, which effectiveness expires on October 18, 2019, and to make such rule permanent. In its approval order to make the Plan permanent, the Commission recognized that, as a result of the Participants' and industry analysis of the Plan's operation, the Limit Up-Limit Down mechanism effectively addresses extraordinary market volatility. Indeed, the Plan benefits markets and market participants by helping to ensure orderly markets, but also, the Exchange believes, based on the data made available to the public and the Commission during the pilot period, that the obvious error pilot does not negatively impact market quality during normal market conditions.[12] Rather, the Exchange believes the obvious error pilot functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. This removes impediments to and perfects the mechanism of a free and open market and national market system by encouraging more investors to participate in light of the changes associated with the Plan. The Exchange believes that if approved on a permanent basis, the Options Pilot would permanently provide investors with the above-described additional certainty of market prices and mitigation of unanticipated

[9] *See* Securities Exchange Act Release No. 76231 (October 22, 2015), 80 FR 66069 (October 28, 2015) (SR–BATS–2015–91); *see also* Cboe Global Markets, LULD Limit and Straddle Reports, available at *http://markets.cboe.com/us/options/market_statistics/luld_reports/?mkt=opt.*

[10] *See also* Cboe Global Markets, LULD Limit and Straddle Reports, available at *http://markets.cboe.com/us/options/market_statistics/luld_reports/?mkt=opt.* During the most recent Review Period the Exchange did not receive any obvious error review requests for Limit-Up-Limit Down trades, and Limit Up-Limit Down trade volume accounted for nominal overall trade volume.

[11] *See supra* note 5.

[12] *See supra* note 11.

consequences and unreasonable adverse selection risk during limit and straddle states.

The Exchange notes that the Commission recently approved to make permanent a substantively identical options pilot rule of the Exchange's affiliated exchange, Cboe Options Exchange, Inc. (''Cboe Options) [13], and understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs. Since the Commission's approval of Amendment 18 allowing the Plan to operate on a permanent basis, the Exchange and other national securities exchanges have determined that no further amendments should be made to the Options Pilot; [14] the current Options Pilot effectively addresses extraordinary market volatility, is reasonably designed to comply with the requirements of the Plan, facilitates compliance with the Plan and should now operate on a permanent basis, consistent with the Plan. The Exchange does not propose any substantive or additional changes to Exchange Rule 20.6.01.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. As stated, the Commission recently approved to make permanent a substantively identical options pilot within the rules of the Exchange's affiliated exchange, Cboe Options, and the Exchange now proposes the same. The Exchange believes that eliminating the pilot basis for the Options Pilot and making such rule permanent facilitates compliance with the Plan by adding certainty to the markets during periods of market volatility, which has been approved and found by the Commission to be reasonably designed to prevent potentially harmful price volatility in NMS Stocks. It has been determined by the Commission that the Plan benefits markets and market participants by helping to ensure orderly markets, and, based on the data made available to the public and the Commission during the pilot period for Rule 6.29.01, the Plan does not negatively impact options market quality during normal market conditions. Rather, the Plan, as it is implemented under the obvious error pilot, functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. During a limit or straddle state, determining theoretical value of an option may be a subjective rather than an objective determination given the lack of a reliable NBBO, which may create an unreasonable adverse selection opportunity and discourage participants from providing liquidity during limit and straddle states. Therefore, the Exchange believes eliminating obvious error review in such states would, in turn, eliminate uncertainty and confusion for investors and benefit investors by encouraging more participation in light of the changes associated with the Plan. Accordingly, the Exchange believes that making the Options Pilot permanent will further the goals of investor protection and fair and orderly markets as the rule effectively addresses extraordinary market volatility pursuant to the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is necessary to reflect that the Plan no longer operates as a pilot and has been approved to operate on a permanent basis by the Commission. As such, Exchange Rule 20.6.01, which implements protections in connection with the Plan, should be amended to operate on a permanent basis. The Exchange understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs, and, as stated above, notes that the Commission recently approved to make permanent substantively the same options pilot rule on Cboe Options. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [21] permits the Commission to designate a shorter time if such action is consistent with the

[13] *See* Securities and Exchange Act Release No. 87311 (October 15, 2019) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Make Permanent Certain Options Market Rules That Are Linked to the Equity Market Plan to Address Extraordinary Market Volatility) (SR–CBOE–2019–049).

[14] *See* Securities Exchange Act Release No. 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (proposal to extend the pilot for certain options market rules linked to the Plan).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current Options Pilot to continue on a permanent basis without any changes, prior to the pilot expiration on October 18, 2019. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2019–090 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–090. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–090 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23168 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87341; File No. SR–CBOE–2019–100]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Extend the Pilot Period Related to the Market-Wide Circuit Breaker in Rule 5.22

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to extend the pilot period related to the market-wide circuit breaker in Rule 5.22. The text of the proposed rule change is provided in Exhibit 5.

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to extend the pilot period related to the market-wide circuit breaker in Rule 5.22. The text of the proposed rule change is provided in Exhibit 5.[sic]

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 5.22 describes the methodology for determining when to halt trading in all stock options due to extraordinary market volatility, *i.e.,* market-wide circuit breakers (''MWCB''). The MWCB mechanism was approved by the Securities and Exchange Commission (the ''Commission'') to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan. Though the LULD Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rule 5.22[6] (as well as other options pilot rules) to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rule on a pilot basis that has coincided with the pilot period for the Plan.[7] The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 5.22 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[9]

The Exchange now proposes to amend Rule 5.22 to extend the pilot to the close of business on October 18, 2020. This filing does not propose any substantive or additional changes to Rule 5.22. The Exchange will use the extension period to develop with the other SROs rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The market-wide circuit breaker under Rule 5.22 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. As stated above, because all U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity, the Exchange, too, adopted a MWCB mechanism on a pilot basis pursuant to Rule 5.22[sic] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 5.22, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading until the primary listing market opens the next trading day.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The MWCB mechanism under Rule 5.22 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the MWCB pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, which would include industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 5.22 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism. In addition, as noted above, the extension will permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] The Exchange recently restructured its Rulebook and relocated previous Rule 6.3B, governing the MWCB mechanism, to current Rule 5.22. No substantive changes were made to the rule. *See* Securities Exchange Act Release No. 87224 (October 4, 2019), 84 FR 54652 (October 10, 2019) (SR–CBOE–2019–081).

[7] *See* Securities Exchange Act Release Nos. 65438 (September 28, 2011), 76 FR 61447 (October 4, 2011) (SR–CBOE–2011–087) (amending Rule 5.22, prior Rule 6.3B, for determining when to halt trading in all stocks and stock options due to extraordinary market volatility); 68770 (January 30, 2013), 78 FR 8211 (February 5, 2013) (SR–CBOE–2013–011) (amending Rule 5.22, prior Rule 6.3B, to delay the operative date of the pilot to coincide with the initial date of operations of the Plan); and 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (proposal to extend the pilot for certain options pilots, including Rule 5.22, prior Rule 6.3B).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[9] *See* Securities Exchange Act Release No. 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (proposal to extend the pilot for certain options pilots, including Rule 5.22, prior Rule 6.3B).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

process. Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) [14] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot to halt trading across the U.S. markets. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[17]

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the pre-filing requirement.

[15] *Id.*

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Cboe–2019–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Cboe–2019–100. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Cboe–2019–100 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23176 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87347; File No. SR–CboeEDGX–2019–063]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Permanent an Options Market Rule Linked to the Equity Market Plan To Address Extraordinary Market Volatility

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') to make permanent an options market rule linked to the equity market Plan to Address Extraordinary Market Volatility. The

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make permanent certain options market rules in connection with the equity market Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan''). This change is being proposed in connection with the recently approved amendment to the Limit Up-Limit Down Plan that allows the Plan to continue to operate on a permanent basis (''Amendment 18'').[5]

In an attempt to address extraordinary market volatility in NMS Stocks, and, in particular, events like the severe volatility on May 6, 2010, U.S. national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation NMS under the Act.[6] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[7] Though the Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rule 20.6.01 to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rule on a pilot basis that has coincided with the pilot period for the Plan (the ''Options Pilot'').[8] Rule 20.6.01 provides that transactions executed during a limit or straddle state are not subject to the obvious and catastrophic error rules. A limit or straddle state occurs when at least one side of the National Best Bid (''NBB'') or Offer (''NBO'') bid/ask is priced at a non-tradable level. Specifically, a straddle state exists when the NBB is below the lower price band while the NBO is inside the prices band or when the NBO is above the upper price band and the NBB is within the band, while a limit state occurs when the NBO equals the lower price band (without crossing the NBB), or the NBB equals the upper price band (without crossing the NBO). The Exchange adopted the Options Pilot to protect investors because when an underlying security is in a limit or straddle state, there will not be a reliable price for the security to serve as a benchmark for the price of the option. Specifically, the Exchange adopted Rule 6.29.01 because the application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during limit and straddle states. When adjusting or busting a trade pursuant to the obvious error rule, the determination of theoretical value of a trade generally references the NBB (for erroneous sell transactions) or NBO (for erroneous buy transactions) just prior to the trade in question, and is therefore not reliable when at least one side of the NBBO is priced at a non-tradeable level, as is the case in limit and straddle states. In such a situation, determining theoretical value may often times be a very subjective rather than an objective determination and could give rise to additional uncertainty and confusion for investors. As a result, application of the obvious and catastrophic error rules would be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and may produce undesirable effects or unanticipated consequences. Furthermore, the Exchange believes that eliminating the application of obvious error rules during a limit or straddle state eliminates the re-evaluation of a transaction executed during such a state that could potentially create an unreasonable adverse selection opportunity due to lack of a reliable reference price on one side of the market or another and discourage participants from providing liquidity during limit and straddle states, which is contrary to the goal in limiting participants' adverse selection with the application of the obvious error rule during normal trading states. For these reasons, the Exchange believes the Options Pilot is designed to add certainty on the options markets, which encourages more investors to participate in light of the changes associated with the Plan. The Plan was originally implemented on a pilot-basis in order to allow the public, the participating exchanges, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis. As stated, the Exchange adopted the Option Pilot to coincide with this pilot; to continue the protections therein while the industry gains further experience operating the Plan.

In connection with the order approving the establishment of the obvious error pilot, as well as the extensions of the obvious error pilot, the Exchange committed to submit monthly data regarding the program and to submit an overall analysis of the obvious error pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission. Pursuant to a rule filing, approved on October 22, 2015, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.[9] The Exchange has continued to provide the Commission with this data on a monthly basis from October 2015. For each trade on the Exchange, the Exchange provides (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was

[5] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[7] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[8] *See* Securities Exchange Act Release Nos. 76230 (October 22, 2015), 80 FR 66094 (October 28, 2015) (SR–EDGX–2015–49) (extending the effectiveness of the pilot program of Interpretation and Policy .01 of Rule 20.6 to coincide with the pilot period for the Plan); and 85634 (April 12, 2019), 84 FR 16096 (April 17, 2019) (SR–CboeEDGX–2019–022) (proposal to extend the pilot for the Options Pilot).

[9] *See* Securities Exchange Act Release No. 76230 (October 22, 2015), 80 FR 66094 (October 28, 2015) (SR–CboeEDGX–2015–49); *see also* Cboe Global Markets, LULD Limit and Straddle Reports, available at *http://markets.cboe.com/us/options/market_statistics/luld_reports/?mkt=opt.*

received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state. In addition, to help evaluate the impact of the pilot program, the Exchange has provided to the Commission, and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. The Exchange has concluded that the obvious error pilot does not negatively impact market quality during normal market conditions,[10] and that there has been insufficient data to assess whether a lack of obvious error rules is problematic, however, the Exchange believes the continuation of Rule 20.6.01 functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets.

The Commission recently approved the Plan on a permanent basis (Amendment 18).[11] In connection with this approval, the Exchange now proposes to amend Exchange Rule 20.6.01 that currently implement the provisions of the Plan on a pilot basis to eliminate the pilot basis, which effectiveness expires on October 18, 2019, and to make such rule permanent. In its approval order to make the Plan permanent, the Commission recognized that, as a result of the Participants' and industry analysis of the Plan's operation, the Limit Up-Limit Down mechanism effectively addresses extraordinary market volatility. Indeed, the Plan benefits markets and market participants by helping to ensure orderly markets, but also, the Exchange believes, based on the data made available to the public and the Commission during the pilot period, that the obvious error pilot does not negatively impact market quality during normal market conditions.[12] Rather, the Exchange believes the obvious error pilot functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. This removes impediments to and perfects the mechanism of a free and open market and national market system by encouraging more investors to participate in light of the changes associated with the Plan. The Exchange believes that if approved on a permanent basis, the Options Pilot would permanently provide investors with the above-described additional certainty of market prices and mitigation of unanticipated consequences and unreasonable adverse selection risk during limit and straddle states.

The Exchange notes that the Commission recently approved to make permanent a substantively identical options pilot rule of the Exchange's affiliated exchange, Cboe Options Exchange, Inc. (''Cboe Options),[13] and understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs. Since the Commission's approval of Amendment 18 allowing the Plan to operate on a permanent basis, the Exchange and other national securities exchanges have determined that no further amendments should be made to the Options Pilot;[14] the current Options Pilot effectively addresses extraordinary market volatility, is reasonably designed to comply with the requirements of the Plan, facilitates compliance with the Plan and should now operate on a permanent basis, consistent with the Plan. The Exchange does not propose any substantive or additional changes to Exchange Rule 20.6.01.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. As stated, the Commission recently approved to make permanent a substantively identical options pilot within the rules of the Exchange's affiliated exchange, Cboe Options, and the Exchange now proposes the same. The Exchange believes that eliminating the pilot basis for the Options Pilot and making such rule permanent facilitates compliance with the Plan by adding certainty to the markets during periods of market volatility, which has been approved and found by the Commission to be reasonably designed to prevent potentially harmful price volatility in NMS Stocks. It has been determined by the Commission that the Plan benefits markets and market participants by helping to ensure orderly markets, and, based on the data made available to the public and the Commission during the pilot period for Rule 6.29.01, the Plan does not negatively impact options market quality during normal market conditions. Rather, the Plan, as it is implemented under the obvious error pilot, functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. During a limit or straddle state, determining theoretical value of an option may be a subjective

[10] *See also* Cboe Global Markets, LULD Limit and Straddle Reports, available at *http://markets.cboe.com/us/options/market_statistics/luld_reports/?mkt=opt.* During the most recent Review Period the Exchange did not receive any obvious error review requests for Limit-Up-Limit Down trades, and Limit Up-Limit Down trade volume accounted for nominal overall trade volume.

[11] *See supra* note 5.

[12] *See supra* note 11.

[13] *See* Securities and Exchange Act Release No. 87311 (October 15, 2019) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Make Permanent Certain Options Market Rules That Are Linked to the Equity Market Plan to Address Extraordinary Market Volatility) (SR–CBOE–2019–049).

[14] *See* Securities Exchange Act Release No. 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (proposal to extend the pilot for certain options market rules linked to the Plan).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

rather than an objective determination given the lack of a reliable NBBO, which may create an unreasonable adverse selection opportunity and discourage participants from providing liquidity during limit and straddle states. Therefore, the Exchange believes eliminating obvious error review in such states would, in turn, eliminate uncertainty and confusion for investors and benefit investors by encouraging more participation in light of the changes associated with the Plan. Accordingly, the Exchange believes that making the Options Pilot permanent will further the goals of investor protection and fair and orderly markets as the rule effectively addresses extraordinary market volatility pursuant to the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is necessary to reflect that the Plan no longer operates as a pilot and has been approved to operate on a permanent basis by the Commission. As such, Exchange Rule 20.6.01, which implements protections in connection with the Plan, should be amended to operate on a permanent basis. The Exchange understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs, and, as stated above, notes that the Commission recently approved to make permanent substantively the same options pilot rule on Cboe Options. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current Options Pilot to continue on a permanent basis without any changes, prior to the pilot expiration on October 18, 2019. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2019–063 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2019–063. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–063 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23170 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87353; File No. SR–NYSE–2019–56]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

October 18, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 16, 2019, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2020. The pilot program is currently due to expire on October 18, 2019.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 128 (Clearly Erroneous Executions) that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision to Rule 128 designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions to Rule 128 providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6] Rule 128 is no longer applicable to any securities that trade on the Exchange and has been replaced with Rule 7.10, which is substantively identical to Rule 128.[7]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[8] including any extensions to the pilot period for the LULD Plan.[9] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[10] In light of that change, the Exchange amended Rules 7.10 and 128 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[11]

The Exchange now proposes to amend Rule 7.10 to extend the pilot program's effectiveness for a further six months until the close of business on April 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[12] In such an event, the remaining sections of Rules 7.10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of Rule 7.10 for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSE–2010–47).

[5] *See* Securities Exchange Act Release No. 68804 (Feb. 1, 2013), 78 FR 8677 (Feb. 6, 2013) (SR–NYSE–2013–11).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSE–2014–22).

[7] *See* Securities Exchange Act Release Nos. 82945 (March 26, 2019), 83 FR 13553, 13565 (March 29, 2019) (SR–NYSE–2017–36) (Approval Order) and 85962 (May 29, 2019), 84 FR 26188, 26189 n.13 (June 5, 2019) (SR–NYSE–2019–05) (Approval Order).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71821 (March 27, 2014), 79 FR 18592 (April 2, 2014) (SR–NYSE–2014–17).

[10] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[11] *See* Securities Exchange Act Release No. 85523 (April 5, 2019), 84 FR 14706 (April 11, 2019) (SR–NYSE–2019–17).

[12] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

Act,[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2019–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–56 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23164 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87110]

Order Granting a Conditional Exemption From Exchange Act Section 11(D)(1) and Exchange Act Rules 10B–10, 15C1–5, 15C1–6, and 14E–5 for Certain Exchange Traded Funds

AGENCY: Securities and Exchange Commission.

ACTION: Exemptive order.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is issuing an order granting an exemption from compliance with certain provisions of the Securities Exchange Act of 1934 (''Exchange Act'') and the rules thereunder to broker-dealers and certain other persons engaging in certain transactions in securities of exchange-traded funds (''ETFs'') relying on rule 6c–11 under the Investment Company Act of 1940 (''Investment Company Act'').

DATES: This exemptive order is effective December 23, 2019.

FOR FURTHER INFORMATION CONTACT: Darren Vieira, Special Counsel, Brandon Hill, Special Counsel, or Joanne Rutkowski, Assistant Chief Counsel, at (202) 551–5550; in the Division of Trading and Markets; Daniel Duchovny, Special Counsel, Office of Mergers and Acquisitions, at (202) 551–3440, in the Division of Corporation Finance; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission adopted rule 6c–11 under the Investment Company Act, which permits ETFs that satisfy certain conditions to operate without the expense and delay of obtaining an exemptive order from the Commission under the Investment Company Act.[1] Rule 6c–11 is designed to create a consistent, transparent, and efficient regulatory framework for ETFs and to facilitate greater competition and innovation among ETFs.

While the relief under rule 6c–11 is limited to exemptions under the Investment Company Act,[2] commenters on proposed rule 6c–11 also recommended that the Commission harmonize with rule 6c–11 certain Exchange Act relief that ETFs currently rely on in order to operate, including relief from section 11(d)(l) of the Exchange Act and Exchange Act rules 10b–10, 15c1–5, 15c1–6, and 14e–5.[3] Commenters expressed concern that the conditions that have been associated with Exchange Act relief are duplicative or, in some cases, inconsistent with other requirements applicable to ETFs.[4]

The Commission agrees that such relief could further reduce regulatory complexity and administrative delay, and eliminate potential inconsistencies between rule 6c–11 and the related Exchange Act relief that ETFs have obtained to operate.[5] The Commission has considered the issues raised and believes that it is appropriate to grant relief from section 11(d)(1) and rules 10b–10, 15c1–5, 15c1–6, and 14e–5 because broker-dealers and certain other persons that engage in these transactions and satisfy the conditions below, as applicable, would not raise the issues or concerns that underlie those provisions. Accordingly, the Commission finds that it is necessary and appropriate in the public interest and consistent with the protection of investors to grant an exemption from section 11(d)(1) of the Exchange Act and Exchange Act rules 10b–10, 15c1–5, 15c1–6, and 14e–5,to broker-dealers and certain other persons, as applicable, that engage in certain transactions with ETFs relying on rule 6c–11, subject to the conditions below.

II. Background

An ETF issues shares that can be bought or sold throughout the day in the secondary market at a market-determined price. Like other investment companies, an ETF pools the assets of multiple investors and invests those assets according to its investment objective and principal investment strategies. Each share of an ETF represents an undivided interest in the underlying assets of the ETF. Similar to mutual funds, ETFs continuously offer their shares for sale.

Unlike mutual funds, however, ETFs do not sell or redeem individual shares. Instead, ''authorized participants'' that have contractual arrangements with the ETF, or one of its service providers, purchase and redeem ETF shares directly from the ETF in blocks called ''creation units.''[6] An authorized participant may act as a principal for its own account when purchasing or redeeming creation units from the ETF. Authorized participants also may act as agent for others, such as market makers, proprietary trading firms, hedge funds or other institutional investors, and receive fees for processing creation units

[1] Exchange Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019) (''Rule 6c–11 Adopting Release'').

[2] In the Rule 6c–11 Adopting Release, the Commission also provided an interpretation of certain other Exchange Act rules containing exemptions for transactions in redeemable securities issued by open-end companies and unit investment trusts as follows:

After considering comments, we believe that it is appropriate to make all ETFs, including those that do not rely on rule 6c–11, eligible for the redeemable securities exceptions in rules 101(c)(4) and 102(d)(4) of Regulation M and rule 10b–17(c) under the Exchange Act in connection with secondary market transactions in ETF shares and the creation or redemption of creation units and the exemption in rule 11d1–2 under the Exchange Act for a registered open-end investment company or unit investment trust.

[3] *See* Comment Letter of Blackrock, Inc. at 21 (Sept. 26, 2018) (''BlackRock Comment Letter''); Comment Letter of the Investment Company Institute at 32 (Sept. 21, 2018) (''ICI Comment Letter''); Comment Letter of Fidelity Management & Research Company at 12 (Sept. 28, 2018); Comment Letter of Dechert LLP at 8 (Sept. 28, 2018) (''Dechert Comment Letter''); Comment Letter of the Securities Industry and Financial Markets Association—Asset Management Group at 22 and 23 (Sept. 28, 2018) (''SIFMA AMG Comment Letter''); Comment Letter of Vanguard at 2 (Sept. 28, 2018); Comment Letter of WisdomTree Asset Management at 2 (Oct. 1, 2018); Comment Letter of the American Bar Association at 4 (Oct. 11, 2018); Comment Letter of John Hancock Investments at 5 (Oct. 1, 2018); and Comment Letter of Flow Traders US LLP at 2 (Oct. 1, 2018).

[4] *See, e.g.,* BlackRock Comment Letter. *See also, e.g.,* ICI Comment Letter (''Currently, ETFs often must satisfy multiple and sometimes conflicting requirements from different divisions within the SEC.''). Commenters also expressed concerns about delays in obtaining such additional relief. *See, e.g.,* SIFMA AMG Comment Letter I.

[5] Although the exemption granted by this order applies only to transactions in securities of ETFs that meet certain requirements and conditions, the beneficiaries of the relief, other than the relief under Exchange Act rule 14e–5, are broker-dealers that engage in transactions subject to the relevant provisions of the Exchange Act and rules thereunder. The beneficiaries of the relief under Exchange Act rule 14e–5 are ETFs, the legal entity of which the ETF is a series, and authorized participants, as described below.

[6] Rule 6c–11(a)(1) defines ''authorized participant'' as a member or participant of a clearing agency registered with the Commission, which has a written agreement with the ETF or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units. *See* Rule 6c–11 Adopting Release.

on their behalf.[7] Market makers, proprietary trading firms, and hedge funds provide additional liquidity to the ETF market through their trading activity. Institutional investors may engage in primary market transactions with an ETF through an authorized participant as a way to efficiently hedge a portion of their portfolio or balance sheet or to gain exposure to a strategy or asset class.[8] Redemptions from ETFs are often made in kind (that is, by delivering certain assets from the ETF's portfolio), rather than in cash, thereby avoiding the need for the ETF to sell assets and potentially realize capital gains that are distributed to its shareholders. Similarly, ETF creations may be made in kind by delivering certain assets to the ETF's portfolio, rather than solely delivering cash.

An authorized participant that purchases a creation unit of ETF shares directly from the ETF deposits with the ETF a ''basket'' of securities and other assets identified by the ETF that day, and then receives the creation unit of ETF shares in return for those assets.[9] The basket is generally representative of the ETF's portfolio,[10] and together with a cash balancing amount, it is equal in value to the aggregate net asset value (''NAV'') of the ETF shares in the creation unit.[11] After purchasing a creation unit, the authorized participant may hold the individual ETF shares, or sell some or all of them in secondary market transactions.[12] Investors then purchase individual ETF shares in the secondary market.

By this order, the Commission is seeking to reduce the complexities and burden that may otherwise be associated with the ETF creation and redemption process, subject to appropriate conditions intended to ensure investor protections.

III. Discussion of the Exemption

The Commission is granting a conditional exemption from Exchange Act section 11(d)(1) and Exchange Act rules 10b–10, 15c1–5, 15c1–6, and 14e–5 as discussed further below. The exemption should help to simplify the offering and operating process for ETFs. The exemption will provide relief to broker-dealers from these provisions of the Exchange Act with respect to ETFs relying on rule 6c–11.[13] In order for a broker-dealer to rely on the relief, other than the relief from rule 14e–5, a transaction must involve an ETF that further satisfies the diversification requirement below. In addition, a broker-dealer relying on this relief must meet certain conditions specific to each applicable Exchange Act provision or rule. Finally, except as provided in Sections III.E.2 and III.F below, this relief does not apply to purchases or sales of ETF shares in the secondary market.[14]

The Commission is limiting relief under this exemption to transactions in securities issued by ETFs that rely on rule 6c–11 because the specific findings in support of the exemptive order are based, in part, on the conditions in rule 6c–11. The Commission believes that the portfolio and other transparency requirements in rule 6c–11, when combined with the conditions in this order, address the policy concerns underlying the relevant statutory provision and rules. For example, rule 6c–11 requires ETFs to disclose their portfolio holdings each day through their website. This portfolio transparency, along with the availability of information regarding ETFs through the National Securities Clearing Corporation (''NSCC''), other intermediaries, and the ETF itself, should provide customers engaging in creation or redemption transactions an opportunity to identify or inquire about potential conflicts of interest involving a component security a broker-dealer would otherwise be required to disclose. These requirements should also help customers determine if they should request that their broker-dealer provide any omitted information.

A. Reliance on Rule 6c–11

The exemption from Exchange Act section 11(d)(1) and Exchange Act rules 10b–10, 15c1–5, 15c1–6, and 14e–5 is only available with respect to transactions involving securities of an ETF relying on rule 6c–11. The rule defines an ETF as a registered open-end management investment company that: (i) Issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount (if any); and (ii) issues shares that are listed on a national securities exchange and traded at market-determined prices.[15] Among the requirements to rely on rule 6c–11 are:

1. The ETF is structured as an open-end management investment company;

2. The ETF discloses portfolio holdings each business day on its website before the opening of regular trading on the primary listing exchange of the ETF's shares in a standardized manner;

3. The ETF provides website disclosure of (i) the ETF's current NAV per share, market price, and premium or discount, each as of the end of the prior business day; (ii) a table showing the number of days the ETF's shares traded at a premium or discount during the most recently completed calendar year and calendar quarters of the current year; (iii) a line graph showing ETF premiums and discounts for the most recently completed year and calendar

[7] *See* David J. Abner, The ETF Handbook: How to Value and Trade Exchange Traded Funds, 2nd ed. (2016).

[8] *Id.*

[9] An ETF may impose fees in connection with the purchase or redemption of creation units that are intended to defray operational processing and brokerage costs to prevent possible shareholder dilution (''transaction fees'').

[10] The basket might not reflect a *pro rata* slice of an ETF's portfolio holdings. Subject to the terms of the applicable exemptive relief, an ETF may substitute other securities or cash in the basket for some (or all) of the ETF's portfolio holdings. Conditions related to flexibility in baskets have varied over time. *See* Rule 6c–11 Adopting Release, at section II.C.5.

[11] An open-end fund is required by law to redeem its securities on demand from shareholders at a price approximating their proportionate share of the fund's NAV at the time of redemption. *See* 15 U.S.C. 80a–22(d). 17 CFR 270.22c–1 (''rule 22c–1'') generally requires that funds calculate their NAV per share at least once daily Monday through Friday. *See* rule 22c–1(b)(1). Today, most funds calculate NAV per share as of the time the major U.S. stock exchanges close (typically at 4:00 p.m. Eastern Time). Under rule 22c–1, an investor who submits an order before the 4:00 p.m. pricing time receives that day's price, and an investor who submits an order after the pricing time receives the next day's price. *See also* 17 CFR 270.2a–4 (''rule 2a–4'') (defining ''current net asset value'').

[12] ETFs register offerings of shares under the Securities Act of 1933 (the ''Securities Act''), and list their shares for trading under the Exchange Act. Depending on the facts and circumstances, authorized participants that purchase a creation unit and sell the shares may be deemed to be participants in a distribution, which could render them statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. *See* 15 U.S.C. 77b(a)(11) (defining the term ''underwriter'').

[13] Going forward, this exemptive order will provide exemptive relief from section 11(d)(1) and rules 10b–10, 15c1–5, 15c1–6, and 14e–5 in connection with transactions in securities issued by newly formed ETFs that rely on rule 6c–11. Commission staff will continue to consider requests with respect to the relevant Exchange Act provisions in connection with transactions in securities issued by newly formed ETFs that do not rely on rule 6c–11 or otherwise do not satisfy the conditions of this exemption.

[14] As discussed below, this order provides an exemption from section 11(d)(1) for a Non-AP Broker-Dealer (defined below) that transacts in shares of an ETF that relies on rule 6c–11, exclusively in the secondary market, when it extends or maintains or arranges for the extension or maintenance of credit to or for customers on such ETF shares. This order also provides an exemption that allows certain specified ''covered persons'' with respect to a tender offer to engage in creation and redemption transactions with an ETF that relies on rule 6c–11 subject to certain conditions described below.

[15] Rule 6c–11(a)(1). Under the rule, the term ''basket'' means the securities, assets, or other positions in exchange for which an ETF issues (or in return for which it redeems) creation units. *See id.* ETFs will therefore transact on an in-kind basis, on a cash basis, or both.

quarter of the current year; (iv) for ETFs whose premium or discount was greater than two percent for more than seven consecutive trading days, disclosure of this premium or discount, along with a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount; and (iv) the ETF's median bid-ask spread over the most recent thirty calendar days;

4. The ETF adopts and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of baskets. If the ETF utilizes custom baskets, these policies and procedures must (i) set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interest of the ETF and its shareholders, including the process for any revisions to, or deviations from, those parameters; and (ii) specify the titles or roles of the employees of the ETF's investment adviser who are required to review each custom basket for compliance with those parameters; and

5. The ETF preserves and maintains copies of all written agreements between an authorized participant and the ETF (or one of the ETF's service providers) that allow the authorized participant to purchase or redeem creation units.

Consistent with our approach in Rule 6c–11, the exemption provided by this order will be available regardless of whether the ETF is actively managed [16] and without regard to the number of ETF shares in the ETF's creation or redemption baskets or the value of those creation and redemption baskets.[17]

B. Minimum Diversification Requirement

The exemption provided by this order from Exchange Act section 11(d)(1) and Exchange Act rules 10b–10, 15c1–5, and 15c1–6 is available only with respect to transactions involving an ETF that meets the diversification requirement applicable to a regulated investment company in Internal Revenue Code (''IRC'') Sec. 851(b)(3)(B), 26 U.S.C. 851(b)(3)(B) (the ''IRC diversification requirement'').[18] Diversification is a consideration with respect to each requirement from which the Commission is granting exemption in this order, except for rule 14e–5. Creation and redemption transactions in diversified ETFs involve the exchange of a basket that contains numerous securities, which in turn implicates disclosure requirements, as discussed below, under rules 10b–10, 15c1–5, and 15c1–6. At the same time, the composite nature of a diversified basket means that the securities of any one issuer will account for a relatively small share of the basket. Diversification thus should mitigate any conflicts that a broker-dealer would otherwise be required to disclose under rules 15c1–5 and 15c–6, and minimize the incentive for a broker-dealer to seek to use an ETF to evade the new issue lending restriction in Exchange Act section 11(d)(1).[19]

Diversification, together with the conditions discussed below, forms the basis for the Commission's conclusion that relief from section 11(d)(1) and rules 10b–10, 15c1–5, and 15c1–6 is necessary and appropriate in the public interest and consistent with investor protection.

C. Exemption From Exchange Act Rule 10b–10

Exchange Act rule 10b–10 generally requires a broker or dealer that effects a securities transaction for a customer to send to the customer, at or before the completion of the transaction, a written notification (''confirmation'') disclosing certain information, including among other items, the identity, price, and number of share or units (or principal amount) of the security purchased or sold by the customer. The confirmation requirement provides basic investor protections by conveying information that allows investors to verify the terms of their transactions; alerting investors to potential conflicts of interest with their broker-dealers; acting as a safeguard against fraud; and providing investors a means to evaluate the costs of their transactions and the quality of their broker-dealer's execution.[20] When an authorized participant that is a registered broker-dealer (''Broker-Dealer AP'') engages in creation and redemption transactions for its customers, each tender or receipt of a component security as part of a basket is a purchase [21] or sale [22] of a security, and each purchase or sale requires confirmation pursuant to Exchange Act rule 10b–10.

The Commission is granting an exemption from Exchange Act rule 10b–10 that will allow a broker-dealer that is effecting an in-kind creation or redemption transaction on behalf of a customer to confirm the transaction without providing a contemporaneous statement of the identity, price or number of shares or units (or principal amount) of each component security tendered to or delivered by the ETF, subject to the following conditions:

1. Confirmation statements of issuance and redemption transactions in ETF shares will contain all of the information specified in paragraph (a) of rule 10b–10 other than identity, price, and number of shares or units (or principal amount) of each component security tendered or received by the customer in the transaction.

2. Any confirmation statement of an issuance or redemption transaction in ETF shares that omits the identity, price, or number of shares or units (or principal amount) of component securities will contain a statement that such omitted information will be provided to the customer upon request; and

3. All such requests will be fulfilled in a timely manner in accordance with paragraph (c) of rule 10b–10.

The requirement that confirmation statements include all of the information specified in paragraph (a) of rule 10b–10 other than the identity, price, and number of shares or units (or principal amount) of each component security tendered or received in the transaction preserves a customer's right to receive other important information from the confirmation about the terms of the customer's transaction at or before the completion of the transaction. The statement that the omitted information will be provided upon request informs the customer of the right to receive the omitted information. The requirement for a broker-dealer to fulfill such requests in a timely manner in accordance with paragraph (c) of rule 10b–10 clarifies that a broker-dealer

[16] Rule 6c–11 Adopting Release, sec. II.A.2.

[17] *Id.* at sec. II.C.1.

[18] IRC Section 851(b)(3)(B) provides that a ''regulated investment company'' must have:

not more than 25 percent of the value of its total assets is invested in—(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, (ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary [of the Treasury], to be engaged in the same or similar trades or businesses or related trades or businesses, or (iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).

[19] A commenter on proposed Rule 6c–11 also noted that ETFs generally must comply with the IRC diversification requirement, which imposes a practical limit on the concentration of an ETF's portfolio. Dechert Comment Letter at 12–13. The commenter stated that it would be impractical and inefficient for a broker-dealer to utilize an ETF as a mechanism for distribution of a particular security or for accumulating substantial positions in one or more of an ETF's underlying securities in a magnitude that would trigger disclosure. *Id.*

[20] Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612, 59613 (November 17, 1994).

[21] Exchange Act Sec. 3(a)(13).

[22] Exchange Act Sec. 3(a)(14).

must fulfill the request within a prescribed period (*i.e.,* within five business days of receipt of the request, or within 15 business days of a request pertaining to a transaction effected more than 30 days prior to the receipt of the request) so that customers can be assured that they receive the requested information in a timely manner.

The Commission also believes that, in general, information regarding ETFs is accessible through a variety of sources, including the NSCC, intermediaries and the ETFs themselves. The Commission believes that the conditions above will allow any customers who would like additional information regarding identity, price, or number of shares or units (or principal amount) to receive the information in a timely manner. This exemption reduces the burden that may otherwise be associated with creation and redemption transactions while preserving a customer's ability to access the omitted information upon request.

D. Exemption From Exchange Act Rules 15c1–5 and 15c1–6

Exchange Act rule 15c1–5 requires a broker-dealer effecting a transaction to disclose any control relationship with an issuer of a security that it purchases for or sells to a customer. Similarly, Rule 15c1–6 requires a broker-dealer to disclose its participation or interest in a primary or secondary distribution of a security that it purchases for or sells to a customer. The Commission is granting a conditional exemption from Exchange Act rules 15c1–5 and 15c1–6 that will allow a broker-dealer that is effecting an in-kind creation or redemption transaction on behalf of a customer to effect that transaction without providing disclosure regarding a control relationship with an issuer or participation in a distribution of a component security tendered to or delivered by the ETF.

As discussed above, the composite nature of diversified ETF portfolios and the relatively small proportionate share of any component security in a basket mean that any individual ETF portfolio security that would be subject to disclosure under rules 15c1–5 or 15c1–6 will be a small portion of the portfolio. This diversification should reduce the impact that any potential conflicts of interest involving a component security that a broker-dealer may have and mitigate the concern that a broker-dealer could use an ETF to avoid disclosure of a conflict of interest that would otherwise be required to be disclosed under rules 15c1–5 and 15c–6.

Rule 6c–11 provides ETFs with flexibility to use custom baskets that contain a non-representative selection of the ETFs' portfolio securities.[23] To the extent the contents of custom creation or redemption baskets are negotiated between an authorized participant and the ETF, the customer, via the authorized participant, should have visibility into the contents of the basket. This visibility should provide a customer seeking to engage in creation or redemption transactions an opportunity to identify or otherwise inquire about control relationships with the issuer or interest in a distribution of a component security that a broker-dealer would otherwise be required to disclose pursuant to these rules.

The exemption from rules 15c1–5 and 15c1–6 is subject to a further condition that requires the broker-dealer to provide any information to which a customer is entitled under rule 15c1–5 or 15c1–6 upon request and to fulfill such requests in a timely manner. The Commission believes that this condition will ensure that any customers who would like to access this information for any of the investor protections needs described above will be able to receive it.

Similar to rule 10b–10 above, the Commission believes that the general availability of information regarding ETFs through a variety of sources, including the NSCC, intermediaries and the ETFs themselves, supports this exemption. This access allows market participants that use basket information to obtain information regarding securities they will exchange in a creation or redemption transaction. The Commission believes that this information also should provide market participants seeking to engage in creation or redemption transactions an opportunity to identify or otherwise inquire about the control relationships or interest in a distribution that a broker-dealer would otherwise be required to disclose pursuant to these rules.

E. Exemption From Section 11(d)(1)

Exchange Act section 11(d)(1) generally prohibits a person that is both a broker and a dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, to or for a customer on any security (other than an exempted security) which was part of a distribution of a new issue of securities in which the broker-dealer participated. Because ETFs are in continuous distribution, broker-dealers effecting creation and redemption transactions on behalf of customers are participating in the distribution of new issue securities with respect to shares of ETFs, and thus are continuously subject to the restrictions of section 11(d)(1). Section 11(d)(1) issues arise both with Broker-Dealer APs and with broker-dealers who effect only secondary market transactions (''Non-AP Broker-Dealers'').

1. Conditions for Broker-Dealer Authorized Participants

As noted in section II above, a Broker-Dealer AP is a registered broker-dealer that has entered into a contractual arrangement with an ETF or one of its service providers that allows the Broker-Dealer AP to place orders for the purchase or redemption of creation units, but Broker-Dealer APs are not compensated by ETFs in connection with the creation or redemption of ETF shares. Broker-Dealers may have different reasons for becoming authorized participants, including for their own proprietary trading, to facilitate customer trades, to hedge or otherwise manage their own risk, or to arbitrage differences between the ETF's market price and its NAV.

The Commission is granting an exemption from the new issue lending restriction in section 11(d)(1) for a Broker-Dealer AP that extends or maintains credit, or arranges for the extension or maintenance of credit, on ETF shares subject to the following two conditions:

1. Neither the Broker-Dealer AP, nor any natural person associated with such Broker-Dealer AP, directly or indirectly (including through any affiliate of such Broker-Dealer AP), receives from the ''Fund Complex'' [24] any payment, compensation, or other economic incentive to promote or sell the shares of the ETF to persons outside the fund complex, other than non-cash compensation currently permitted under Financial Industry and Regulatory Authority (''FINRA'') rule 2341(l)(5)(A), (B), or (C) (''non-cash compensation'').[25]

[23] If different baskets are used in transactions on the same business day, each basket after the initial representative basket would constitute a custom basket. *See* Rule 6c–11 Adopting Release, sec. II.C.5.

[24] For purposes of this order, a ''Fund Complex'' is the issuer of the ETF shares, any other issuer of ETF shares that holds itself out to investors as a related company for purposes of investment or investor services; any investment adviser, distributor, sponsor, or depositor of any such issuer; or any ''affiliated person'' (as defined in the Investment Company Act section 2(a)(3)) of any such issuer or any such investment adviser, distributor, sponsor, or depositor.

[25] Non-cash compensation currently permitted under FINRA rule 2341(l)(5)(A), (B), or (C) is limited to:

(A) Gifts that do not exceed an annual amount per person fixed periodically by FINRA and are not preconditioned on achievement of a sales target;

2. The Broker-Dealer AP does not extend, maintain or arrange for the extension or maintenance of credit to or for a customer on shares of the ETF before thirty days have passed from the date that the ETF's shares initially commence trading (except to the extent that such extension, maintenance, or arranging of credit is otherwise permitted pursuant to rule 11d1–1).

The exemption permits a Broker-Dealer AP to accept only limited forms of non-cash compensation that do not present broker-dealers with the types of potential conflicts of interest in their sale of securities that section 11(d)(1) addresses.[26] This absence of any special compensation to distribute shares mitigates the potential conflicts of interest that section 11(d)(1) addresses. In addition, requiring a Broker-Dealer AP to wait thirty days before margining its customers' ETF shares is consistent with the section 11(d)(1) prohibition against a broker-dealer extending credit on securities that were part of a new issue, if the broker-dealer participated in the distribution of the new issue securities within the preceding thirty days. Thus, this condition ensures that Broker-Dealer APs do not use credit to induce customers to buy ETF shares for at least a 30-day period following launch of the ETF, similar to the prohibition against extending credit that applies to other types of new issue securities under section 11(d)(1).

2. Conditions for Non-AP Broker-Dealers

Many broker-dealers effect ETF securities transactions solely on the secondary market, whether for themselves or as agent for their customers. They do not enter contractual arrangements to effect creation or redemption transactions with the ETF or one of its service providers. Thus, these Non-AP Broker-Dealers have not undertaken to distribute ETF shares and generally do not receive any compensation for selling ETF shares, other than, in some cases, limited forms of non-cash compensation. Non-AP Broker-Dealers may reasonably be considered not to be participating in the distribution of new issue securities within the meaning of section 11(d)(1). However, to remove any ambiguity about the circumstances when Non-AP Broker-Dealers may offer margin on ETF securities the Commission is granting this exemption from section 11(d)(1).

The Commission believes this relief is appropriate because, as stated above, Non-AP Broker-Dealers do not engage in creation and redemption transactions with ETFs and, thus, may reasonably be considered not to be participating in the distribution of the ETFs' securities. In addition, this relief is subject to the condition that Non-AP Broker-Dealers do not (and their associated persons who are natural persons do not), directly or indirectly (including through any affiliate of such Non-AP Broker-Dealer), receive from the Fund Complex any payment, compensation or other economic incentive to promote or sell the shares of the ETF to persons outside the Fund Complex, other than non-cash compensation. For the foregoing reasons, the Commission believes it is necessary and appropriate and in the public interest and consistent with investor protection to grant this exemption.

F. Exemption From Rule 14e–5

Exchange Act rule 14e–5 prohibits ''covered persons'' from directly or indirectly purchasing or arranging to purchase any securities that are the subject of a tender offer (''subject securities'')[27] or any securities that are immediately convertible into, exchangeable for, or exercisable for subject securities (''related securities'')[28] except as part of such tender offer. The term ''covered person'' includes, among others, a dealer-manager of a tender offer and any person acting, directly or indirectly, in concert with other covered persons in connection with any purchase or arrangement to purchase any subject securities or any related securities.[29] Therefore, the prohibitions of rule 14e–5 may apply to authorized participants who are broker-dealers and acting as dealer-managers in tender offers, the ETF, and any legal entity of which the ETF is a series.

The Commission is granting a conditional exemption from rule 14e–5 to an ETF, the legal entity of which the ETF is a series, and authorized participants and any other persons who create and redeem shares of the ETF in creation units pursuant to contractual arrangements pertaining to such legal entity and the ETF, and who are covered persons with respect to a tender offer involving an ETF's component securities. The conditional exemption will allow such persons (i) to redeem ETF shares in creation unit sizes for a redemption basket that may include a subject security or related security, (ii) to engage in secondary market transactions with respect to the ETF shares after the first public announcement of the tender offer and during such tender offer given that such transactions could include, or be deemed to include, purchases of, or arrangements to purchase, subject securities or related securities, and (iii) make purchases of, or arrangements to purchase, subject securities or related securities in the secondary market for the purpose of transferring such securities to purchase one or more creation units of ETF shares. The exemption from rule 14e–5 is subject to the following conditions:

1. No purchases of subject securities or related securities made by broker-dealers acting as dealer-managers of a tender offer would be effected for the purpose of facilitating a tender offer;

2. If there is a change in the composition of a ETF's portfolio of component securities and a broker-dealer acting as a dealer-manager of a tender offer is unable to rely on the exception found in rule 14e–5(b)(5) for basket transactions because (i) the basket of subject securities or related securities contains fewer than 20 securities or (ii) the subject securities and related securities make up more than 5% of the value of the basket, then any purchases of an ETF component security by such dealer-manager during a tender offer will be effected for the purpose of adjusting a basket of securities in the ordinary course of its business and not for the purpose of facilitating a tender offer; and

3. Except for the relief specifically granted herein, any broker-dealer acting as a dealer-manager of a tender offer will comply with rule 14e–5.

The Commission believes this exemption will facilitate the ability of authorized participants and others to engage in creation or redemption transactions between the public announcement of a tender offer and its expiration, thereby permitting the ETF to operate as intended for the benefit of its holders and as disclosed in publicly filed documents. The conditions applicable to the relief will ensure that authorized participants and other recipients of the relief do not effect creation or redemption transactions

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target; [and]

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, subject to certain conditions.

[26] *See* Exchange Act Release No. 21557 (Dec. 18, 1984), 49 FR 50172 at 50173–74 (Dec. 27, 1984) (available at: *https://cdn.loc.gov/service/ll/fedreg/fr049/fr049250/fr049250.pdf*).

[27] Exchange Act rule 14e–5(c)(7).

[28] Exchange Act rule 14e–5(c)(6).

[29] Exchange Act rule 14e–5(c)(3).

during the relevant tender offer period in an effort to facilitate the tender offer. For the foregoing reasons, the Commission believes it is necessary and appropriate and in the public interest and consistent with investor protection to grant this exemption.

IV. Conclusion

In light of the above, and in accordance with Exchange Act Section 36, the Commission finds that conditionally exempting broker-dealers that engage in certain transactions in securities of ETFs that can rely on Investment Company Act rule 6c–11 from the requirements of section 11(d)(1) of the Exchange Act and Exchange Act rules 10b–10, 15c1–5, 15c1–6, and 14e–5 necessary and appropriate in the public interest, and consistent with the protection of investors.

Therefore, it is hereby ordered, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III.A, B, and C above, that a broker or dealer is exempt from Exchange Act rule 10b–10 with respect to creation or redemption transactions on behalf of customers in securities issued by ETFs relying on Investment Company Act rule 6c–11.

It is further ordered, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III.A, B, and D above, that a broker or dealer is exempt from Exchange Act rule 15c1–5 with respect to creation or redemption transactions on behalf of customers in securities issued by ETFs relying on Investment Company Act rule 6c–11.

It is further ordered, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III.A, B, and D above, that a broker or dealer is exempt from Exchange Act rule 15c1–6 with respect to creation or redemption transactions on behalf of customers in securities issued by ETFs relying on Investment Company Act rule 6c–11.

It is further ordered, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III.A, B, and E.1. above, that an AP Broker-Dealer in a particular ETF relying on Investment Company Act rule 6c–11 is exempt from section 11(d)(1) of the Exchange Act with respect to the extension or maintenance of credit, or the arranging of the extension or maintenance of credit, on securities issued by such ETF.

It is further ordered, pursuant to section 36 of the Exchange Act, subject to the conditions described in Section III.A, B, and E.2 above, that a Non-AP Broker-Dealer that effects transactions in shares of an ETF relying on Investment Company Act rule 6c–11, exclusively in the secondary market, is exempt from section 11(d)(1) when it extends or maintains, or arranges for the extension or maintenance of credit to or for customers on such ETF shares.

It is further ordered, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III.A and F above, the ETF and other persons described in Section III.F are exempt from Exchange Act rule 14e–5 with respect to the transactions described in Section III.F above.

This exemption is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly section 10(b) of the Exchange Act and rule 10b–5 thereunder.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–21515 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87355; File No. SR–NYSEARCA–2019–75]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10–E

October 18, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 16, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10–E (Clearly Erroneous Executions) to the close of business on April 20, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10–E (Clearly Erroneous Executions) to the close of business on April 20, 2020. The pilot program is currently due to expire on October 18, 2019.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10–E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEArca–2010–58).

[5] *See* Securities Exchange Act Release No. 68809 (Feb. 1, 2013), 78 FR 9081 (Feb. 7, 2013) (SR–NYSEArca–2013–12).

resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Rule 7.10–E to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10]

The Exchange now proposes to amend Rule 7.10–E to extend the pilot's effectiveness for a further six months until the close of business on April 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[11] In such an event, the remaining sections of Rule 7.10–E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10–E.

The Exchange does not propose any additional changes to Rule 7.10–E. Extending the effectiveness of Rule 7.10–E for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10–E for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes,

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSEArca–2014–48).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71807 (March 26, 2014), 79 FR 18087 (March 31, 2014) (SR–NYSEArca–2014–32).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85532 (April 5, 2019), 84 FR 14708 (April 11, 2019) (SR–NYSEArca–2019–21).

[11] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2019–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2019–75. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2019–75 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23162 Filed 10–23–19; 8:45 am]

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[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87348; File No. SR–C2–2019–021]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Permanent Certain Options Market Rules That Are Linked to the Equity Market Plan To Address Extraordinary Market Volatility

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2019, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (''C2'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') to make permanent certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make permanent certain options market rules in connection with the equity market Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan''). This change is being proposed in connection with the recently approved amendment to the Limit Up-Limit Down Plan that allows the Plan to continue to operate on a permanent basis (''Amendment 18'').[5]

In an attempt to address extraordinary market volatility in NMS Stocks, and, in particular, events like the severe volatility on May 6, 2010, U.S. national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

NMS under the Act.[6] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[7] Though the Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rules 6.39 and Interpretation and Policy .01 to Rule 6.29 to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rules on a pilot basis that has coincided with the pilot period for the Plan (collectively, the ''Options Pilots'').[8] Rule 6.39 essentially serves as a roadmap for the Exchange's universal changes due to the implementation of the Plan and Rule 6.29.01 provides that transactions executed during a limit or straddle state are not subject to the obvious and catastrophic error rules. A limit or straddle state occurs when at least one side of the National Best Bid (''NBB'') or Offer (''NBO'') bid/ask is priced at a non-tradable level. Specifically, a straddle state exists when the NBB is below the lower price band while the NBO is inside the prices band or when the NBO is above the upper price band and the NBB is within the band, while a limit state occurs when the NBO equals the lower price band (without crossing the NBB), or the NBB equals the upper price band (without crossing the NBO). The Exchange adopted the Options Pilots to protect investors because when an underlying security is in a limit or straddle state, there will not be a reliable price for the security to serve as a benchmark for the price of the option. Specifically, the Exchange adopted Rule 6.29.01 because the application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during limit and straddle states. When adjusting or busting a trade pursuant to the obvious error rule, the determination of theoretical value of a trade generally references the NBB (for erroneous sell transactions) or NBO (for erroneous buy transactions) just prior to the trade in question, and is therefore not reliable when at least one side of the NBBO is priced at a non-tradeable level, as is the case in limit and straddle states. In such a situation, determining theoretical value may often times be a very subjective rather than an objective determination and could give rise to additional uncertainty and confusion for investors. As a result, application of the obvious and catastrophic error rules would be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and may produce undesirable effects or unanticipated consequences. The Exchange adopted additional measures via other Options Pilot rules that are designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders[9] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Furthermore, the Exchange believes that eliminating the application of obvious error rules during a limit or straddle state eliminates the re-evaluation of a transaction executed during such a state that could potentially create an unreasonable adverse selection opportunity due to lack of a reliable reference price on one side of the market or another and discourage participants from providing liquidity during limit and straddle states, which is contrary to the goal in limiting participants' adverse selection with the application of the obvious error rule during normal trading states. For these reasons, the Exchange believes the Options Pilots are designed to add certainty on the options markets, which encourages more investors to participate in light of the changes associated with the Plan. The Plan was originally implemented on a pilot-basis in order to allow the public, the participating exchanges, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis. As stated, the Exchange adopted the Option Pilots to coincide with this pilot; to continue the protections therein while the industry gains further experience operating the Plan.

In connection with the order approving the establishment of the obvious error pilot, as well as the extensions of the obvious error pilot, the Exchange committed to submit monthly data regarding the program and to submit an overall analysis of the obvious error pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission. Pursuant to a rule filing, approved on April 3, 2014, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.[10] The Exchange has continued to provide the Commission with this data on a monthly basis from October 2015. For each trade on the Exchange, the Exchange provides (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state. In addition, to help evaluate the impact of the pilot program, the Exchange has provided to the Commission, and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. The Exchange has concluded that the obvious error pilot does not negatively impact market quality during normal market conditions,[11] and that there has been

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[7] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[8] *See* Securities Exchange Act Release Nos. 69345 (April 8, 2013), 78 FR 21985 (April 12, 2013) (SR–C2–2013–013) (amending certain options rules to coincide with the pilot period for the Plan, including Rule 6.39 and Interpretation and Policy .08 to Rule 6.15, which was later renumbered to Interpretation and Policy .01 to Rule 6.29); and 85624 (April 11, 2019), 84 FR 16130 (April 17, 2019) (SR–C2–2019–008) (proposal to extend the pilot for certain options pilots).

[9] This includes rules in connection with special handling for market orders, market-on-close orders, and stop orders, as well as for certain electronic order handling features in a Limit Up-Limit Down state, the obvious error rules, and providing that the Exchange will not require Market-Makers to quote in series of options when the underlying security is in a Limit Up-Limit Down state.

[10] *See* Securities Exchange Act Release No. 71856 (April 3, 2014), 79 FR 19676 (April 9, 2014) (SR–C2–2014–008); *see also* Cboe Global Markets, LULD Limit and Straddle Reports, available at *http://markets.cboe.com/us/options/market_statistics/luld_reports/?mkt=opt.*

[11] *See also* Cboe Global Markets, LULD Limit and Straddle Reports, available at *http://markets.cboe.com/us/options/market_statistics/*

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insufficient data to assess whether a lack of obvious error rules is problematic, however, the Exchange believes the continuation of Rule 6.29.01 functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets.

The Commission recently approved the Plan on a permanent basis (Amendment 18).[12] In connection with this approval, the Exchange now proposes to amend Exchange Rules 6.39 and Interpretation and Policy .01 to Rule 6.29 that currently implement the provisions of the Plan on a pilot basis to eliminate the pilot basis, which effectiveness expires on October 18, 2019, and to make such rules permanent. In its approval order to make the Plan permanent, the Commission recognized that, as a result of the Participants' and industry analysis of the Plan's operation, the Limit Up-Limit Down mechanism effectively addresses extraordinary market volatility. Indeed, the Plan benefits markets and market participants by helping to ensure orderly markets, but also, the Exchange believes, based on the data made available to the public and the Commission during the pilot period, that the obvious error pilot does not negatively impact market quality during normal market conditions.[13] Rather, the Exchange believes the obvious error pilot functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. The Exchange also believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders[14] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. This removes impediments to and perfects the mechanism of a free and open market and national market system by encouraging more investors to participate in light of the changes associated with the Plan. The Exchange believes that if approved on a permanent basis, the Options Pilots would permanently provide investors with the above-described additional certainty of market prices and mitigation of unanticipated consequences and unreasonable adverse selection risk during limit and straddle states.

The Exchange notes that the Commission recently approved to make permanent substantively identical options pilots within the rules of the Exchange's affiliated exchange, Cboe Options Exchange, Inc. (''Cboe Options)[15], and understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs. Since the Commission's approval of Amendment 18 allowing the Plan to operate on a permanent basis, the Exchange and other national securities exchanges have determined that no further amendments should be made to the Options Pilots;[16] the current Options Pilots effectively address extraordinary market volatility, are reasonably designed to comply with the requirements of the Plan, facilitate compliance with the Plan and should now operate on a permanent basis, consistent with the Plan. The Exchange does not propose any substantive or additional changes to Exchange Rules 6.39 or Interpretation and Policy .01 to Rule 6.29.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. As stated, the Commission recently approved to make permanent substantively identical options pilots within the rules of the Exchange's affiliated exchange, Cboe Options, and the Exchange now proposes the same. The Exchange believes that eliminating the pilot basis for the Options Pilots and making such rules permanent facilitates compliance with the Plan by adding certainty to the markets during periods of market volatility, which has been approved and found by the Commission to be reasonably designed to prevent potentially harmful price volatility in NMS Stocks. It has been determined by the Commission that the Plan benefits markets and market participants by helping to ensure orderly markets, and, based on the data made available to the public and the Commission during the pilot period for Rule 6.29.01, the Plan does not negatively impact options market quality during normal market conditions. Rather, the Plan, as it is implemented under the obvious error pilot, functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. During a limit or straddle state, determining theoretical value of an option may be a subjective rather than an objective determination given the lack of a reliable NBBO, which may create an unreasonable adverse selection opportunity and discourage participants from providing liquidity during limit and straddle states. Therefore, the Exchange believes eliminating obvious error review in such states would, in turn, eliminate uncertainty and confusion for investors and benefit investors by encouraging more participation in light of the changes associated with the Plan. As

luld_reports/?mkt=opt. During the most recent Review Period the Exchange did not receive any obvious error review requests for Limit-Up-Limit Down trades, and Limit Up-Limit Down trade volume accounted for nominal overall trade volume.

[12] *See supra* note 5.

[13] *See supra* note 11.

[14] *See supra* note 9.

[15] *See* Securities and Exchange Act Release No. 87311 (October 15, 2019) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Make Permanent Certain Options Market Rules That Are Linked to the Equity Market Plan to Address Extraordinary Market Volatility) (SR–CBOE–2019–049).

[16] *See* Securities Exchange Act Release No. 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (proposal to extend the pilot for certain options market rules linked to the Plan).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

stated, the Exchange believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders [20] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Accordingly, the Exchange believes that making the Options Pilots permanent will further the goals of investor protection and fair and orderly markets as the rules effectively address extraordinary market volatility pursuant to the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is necessary to reflect that the Plan no longer operates as a pilot and has been approved to operate on a permanent basis by the Commission. As such, Exchange Rules 6.39 or Interpretation and Policy .01 to Rule 6.29, which implement protections in connection with the Plan, should be amended to operate on a permanent basis. The Exchange understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs, and, as stated above, notes that the Commission recently approved to make permanent substantively the same options pilot rules on Cboe Options. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6) [23] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [24] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current Options Pilots to continue on a permanent basis without any changes, prior to the pilot expiration on October 18, 2019. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2019–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2019–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2019–021 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23169 Filed 10–23–19; 8:45 am]

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[20] *See supra* note 9.

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87360 ; File No. SR–ICEEU–2019–017]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to Amendments to the ICE Clear Europe CDS Clearing Back-Testing Policy

October 18, 2019.

I. Introduction

On August 19, 2019, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise its CDS Clearing Back-Testing Policy (''Back-Testing Policy''). On August 27, 2019, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on September 4, 2019.[4] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereafter referred to as the ''proposed rule change'').

II. Description of the Proposed Rule Change

The proposed rule change would amend the Back-Testing Policy to update the description of ICE Clear Europe's back-testing process, including the level at which ICE Clear Europe performs back-testing, and the back-testing of ICE Clear Europe's special strategy portfolios and Monte Carlo (''MC'') model.[5] The proposed rule change would also update the reporting requirements of back-testing results, including the frequency of reporting of exceedance summaries. Finally, the proposed rule change would make technical corrections and updates to the Back-Testing Policy.

A. Back-Testing Process

The proposed rule change would amend the Back-Testing Policy to state that ICE Clear Europe performs back-testing at the Clearing Member account level, rather than at the portfolio level, on a daily basis. The proposed rule change would move the section on Detailed Daily Portfolio Back-Testing Results from section 3.4 into a new section numbered 3.1 and update the description in that section to reflect back-testing at the Clearing Member account level. This proposed change is intended to make the description of ICE Clear Europe's back-testing more precise and consistent with ICE Clear Europe's current practice.

The proposed rule change would also update the description of ICE Clear Europe's performance of back-testing using special strategy portfolios. As explained in the Back-Testing Policy, ICE Clear Europe performs daily back-testing for the model using a specific set of special strategy portfolios at 99.5% and 99.75% quantiles. The proposed rule change would add to this set of special strategy portfolios an additional strategy, iTraxx Senior Financial 5Y.OTR Arb. This new strategy would be constructed in the same manner as the existing strategies but would relate only to the iTraxx Senior Financials 5Y index. Because ICE Clear Europe regularly back tests using this strategy, ICE Clear Europe is adding this strategy to the Back-Testing Policy to reflect its current practice.

The proposed rule change would also amend the description of the other special strategies to better reflect ICE Clear Europe's practices in employing the special strategies. For example, the proposed rule change would update the names of the special strategies; change the use of the terms ''short'' and ''long'' to ''bought'' and ''sold''; and specify that, for the sake of completeness, ICE Clear Europe also considers the opposite strategy when back-testing a special strategy (*e.g.,* for one sold protection position in the on-the-run iTraxx Europe Main 5Y index, the opposite strategy would be one bought protection position in each of the single name constituents of the index, weighted by notional).

The proposed rule change would amend the description of the back-testing of ICE Clear Europe's MC model to make a number of clarifications. This amendment is intended only to clarify what is meant in the policy by ''Monte Carlo back-testing'', which is back-testing only the MC model and not the stress-based model. There would be no change to the current practice with respect to MC model back testing. First, the proposed rule change would clarify that back-tests are performed daily on the Spread Response component of the Initial Margin using ICE Clear Europe's MC model and is specific to that model, rather than the combined Spread Response approach which uses the worst loss estimated between either the scenario-based approach or the Monte Carlo approach. Second, the proposed rule change would clarify that ICE Clear Europe performs the MC back-test on individual Clearing Member accounts using the risk approach for the Spread Response Initial Margin, rather than at the portfolio level. As part of this change, the proposed rule change would remove specific references to the risk quantiles. Third, the proposed rule change would clarify that the back-tested risk measure includes the sum of the following quantities: MC value-at-risk, interest rate, recovery rate, and basis risk. The current Back-Testing Policy does not include a specific reference to ''basis risk'', but rather to the ''portfolio'' quantity. This would clarify that the basis risk initial margin component is part of the back-tested initial margin components. Fourth, the proposed rule change would remove an unnecessary distinction depending on whether the indices are decomposed, which is not applicable using the MC approach. In ICE Clear Europe's view, these changes would improve the readability of the policy and better reflect current ICE Clear Europe practices, but would not alter such practices.

ICE Clear Europe represents that these changes, as a whole, clarify that, with respect to MC back-testing, ICE Clear Europe is back-testing only the MC model and not the stress-based model.

B. Reporting

With respect to reporting of back-testing results, the proposed rule change would require that the Clearing Risk department report the CDS back testing results and analysis to the CDS Product Risk Committee and the Model Oversight Committee on a monthly basis. Currently, the Back-Testing Policy only requires reporting to the CDS Product Risk Committee (on a monthly basis). Similarly, the proposed rule change would require that the Clearing Risk department provide an exceedance summary to the CDS Product Risk Committee and the Model Oversight Committee monthly, while currently the Back-Testing Policy only requires that the Clearing Risk department provide an exceedance summary to the CDS

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Partial Amendment No. 1 corrected an inaccurate statement in the initial proposed rule change but did not make any changes to the substance of the filing or the text of the proposed rule change.

[4] Securities Exchange Act Release No. 34–86782 (August 28, 2019), 84 FR 46573 (September 4, 2019) (SR–ICEEU–2019–017) (''Notice'').

[5] This description is substantially excerpted from the Notice, 84 FR at 46573. Capitalized terms not otherwise defined have the meanings assigned to them in the Back-Testing Policy or ICE Clear Europe rulebook.

Product Risk Committee. Finally, the proposed rule change would clarify that the Clearing Risk Department reviews back-testing results on a daily basis, consistent with current practice.

With respect to the Basel Traffic Light System (''BTLS'') Exceedance Summaries, the proposed rule change would move the description of the exceedance summary from Section [**] into new Section 3.2, which is labeled Back-Testing the Production Model with Clearing Members Accounts. Additionally, in Section 3.5, the proposed rule change would clarify that BTLS Exceedance Summaries are provided for back-testing at the Clearing Member account level, as discussed above. The proposed rule change also would revise the frequency of reporting to state that, at least monthly, BTLS Exceedance Summaries are reported using the production model for each Clearing Member's account, special-strategies, and the MC model. Currently the CDS Clearing Back-Testing Policy specifies that BTLS Exceedance Summaries are reported [insert current frequency]. ICE Clear Europe represents that this would align the frequency of the reporting to the relevant regulatory requirement under Commission Rule 17Ad–22(b)(2).

C. Technical Amendments

The proposed rule change would remove specific references to testing quantiles of 99% and 99.25%, because ICE Clear Europe no longer tests at those specific quantiles given that they are lower than the minimum 99.5% quantile used by ICE Clear Europe and prescribed by the European Market Infrastructure Regulation.

Finally, the proposed rule change would correct typographical errors and update defined terms and references as needed.

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[6] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[7] and Rules 17Ad–22(e)(2)(i) and (v), and (e)(6)(vi) thereunder.[8]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible, and, in general, to protect investors and the public interest.[9]

As discussed in detail below, the Commission believes that the changes described above, taken as a whole, would help to improve ICE Clear Europe's back-testing, which in turn would help improve ICE Clear Europe's ability to avoid losses that could disrupt ICE Clear Europe's ability to promptly and accurately clear security based swap transactions, and therefore would help promote the prompt and accurate clearance and settlement of securities transactions.

First, in providing that ICE Clear Europe conducts back-testing at the Clearing Member account level, rather than at the portfolio level, the Commission believes that the proposed rule change would help to improve ICE Clear Europe's back-testing by making the description of ICE Clear Europe's process more precise and ensuring that the description is consistent with ICE Clear Europe's current practice. Moreover, by adding a new special strategy portfolio for iTraxx Senior Financial 5Y.OTR Arb, the Commission believes that the proposed rule change would help ensure that ICE Clear Europe back-tests using this strategy, which could offer ICE Clear Europe additional insight and data by providing a new strategy to test. Similarly, the Commission believes that the proposed rule change, in amending the description of the other strategies to better reflect ICE Clear Europe's practices in employing the strategies, would help to ensure that ICE Clear Europe's back-testing of the special strategies is consistent with ICE Clear Europe's current practices and uniform among different back-tests. In making the changes described above to the MC back-testing, to clarify that ICE Clear Europe is back-testing only the MC model and not the stress based model, the Commission similarly believes that the proposed rule change would help to ensure that ICE Clear Europe's back-testing of the MC Model is consistent with ICE Clear Europe's current practices and uniform among different back-tests. Finally, in removing references to testing quantiles that ICE Clear Europe no longer employs, and correcting typographical errors and updating defined terms and references, the Commission believes that the proposed rule change would eliminate unnecessary terms and errors in the Back-Testing Policy which could lead to erroneous application of ICE Clear Europe's back-testing process. The Commission believes that all of these changes, taken as a whole, would help to improve the quality of ICE Clear Europe's back-testing.

Moreover, the Commission believes that the changes described above with respect to reporting of back-testing results would help improve ICE Clear Europe's use of the information generated by back-testing. Specifically, in requiring that the Clearing Risk department report back-testing results and an exceedance summary to the Model Oversight Committee, in addition to the Product Risk Committee, the Commission believes that the proposed rule change would help to ensure that the Model Oversight Committee has back-testing information which it could use to help improve ICE Clear Europe's margin model. Similarly, in requiring that the Clearing Risk Department review back-testing results on a daily basis, the Commission believes that the proposed rule change would help to ensure that any deficiencies or problems revealed by back-testing are taken into consideration without delay. Finally, in amending the reporting of the BTLS Exceedance Summaries, the Commission believes that the proposed rule change would help to provide a better representation of the results of back-testing against the BTLS.

Finally, because back-testing can help reveal inadequacies in ICE Clear Europe's margin requirements and the models that support those requirements, the Commission believes that the proposed rule change would help to ensure that ICE Clear Europe maintains effective margin requirements. Given that an effective margin system is necessary to manage ICE Clear Europe's credit exposures to its Clearing Members and the risks associated with clearing security based swap-related portfolios, the Commission believes that the proposed rule change would help improve ICE Clear Europe's ability to avoid losses that could result from the mismanagement of such credit exposures and risks. Because such losses could disrupt ICE Clear Europe's ability to promptly and accurately clear

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(e)(2)(i) and (v), and (e)(6)(vi).

[9] 15 U.S.C. 78q–1(b)(3)(F).

security based swap transactions, by making the above-described improvements to ICE Clear Europe's back-testing, the Commission believes that the proposed rule change would help promote the prompt and accurate clearance and settlement of securities transactions. Similarly, given that such losses could threaten ICE Clear Europe's access to securities and funds in ICE Clear Europe's control, by making the above-described improvements to ICE Clear Europe's back-testing, the Commission believes that the proposed rule change would help assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. Finally, for both of these reasons, the Commission believes the proposed rule change is consistent with protecting investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[10]

B. Consistency With Rules 17Ad–22(e)(2)(i) and (v)

Rules 17Ad–22(e)(2)(i) and (v) require that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.[11]

As discussed above, the proposed rule change would revise the Back-Testing Policy by requiring that that the Clearing Risk department report the CDS back-testing results and analysis and provide an exceedance summary to the Model Oversight Committee as well as to the CDS Product Risk Committee. The Commission believes that this change would improve the transparency of ICE Clear Europe's governance arrangements by clarifying the role played by the Model Oversight Committee in reviewing the results of back-testing. Similarly, in requiring that the Clearing Risk Department review back-testing results on a daily basis, the Commission believes that the proposed rule change would help clearly define the responsibility of the Clearing Risk Department in reviewing the results of back-testing.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rules 17Ad–22(e)(2)(i) and (v).[12]

C. Consistency With Rule 17Ad–22(e)(6)(vi)

Rule 17Ad–22(e)(6)(vi) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum is monitored by management on an ongoing basis and is regularly reviewed, tested, and verified by, among other things, conducting back-tests of its margin model at least once each day using standard predetermined parameters and assumptions.[13]

As discussed above, the proposed rule change would amend the Back-Testing Policy to state that ICE Clear Europe performs back-testing at the Clearing Member account level on a daily basis. The proposed rule change also would require that the Clearing Risk Department review back-testing results on a daily basis. The Commission believes that both of these changes would to ensure that ICE Clear Europe conducts back-testing at least once each day.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(6)(vi).[14]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[15] and Rules 17Ad–22(e)(2)(i) and (v), and (e)(6)(vi) thereunder.[16]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[17] that the proposed rule change (SR–ICEEU–2019–017) be, and hereby is, approved.[18]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23157 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[12] *Id.*

[13] 17 CFR 240.17Ad–22(e)(6)(vi).

[14] *Id.*

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(2)(i) and (v), and (e)(6)(vi).

[17] 15 U.S.C. 78s(b)(2).

[18] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87342; File No. SR–C2–2019–022]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period Related to the Market-Wide Circuit Breaker in Rule 6.32.01

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2019, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to extend the pilot period related to the market-wide circuit breaker in Rule 6.32.01. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 6.32.01 describes the methodology for determining when to halt trading in all stock options due to extraordinary market volatility, *i.e.,* market-wide circuit breakers (''MWCB''). The MWCB mechanism was approved by the Securities and Exchange Commission (the ''Commission'') to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan. Though the LULD Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rule 6.32.01 (as well as other options pilot rules) to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rule on a pilot basis that has coincided with the pilot period for the Plan.[6] The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[7] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 6.32.01 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[8]

The Exchange now proposes to amend Rule 6.32.01 to extend the pilot to the close of business on October 18, 2020. This filing does not propose any substantive or additional changes to Rule 6.32.01. The Exchange will use the extension period to develop with the other SROs rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The market-wide circuit breaker under Rule 6.32.01 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. As stated above, because all U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity, the Exchange, too, adopted a MWCB mechanism on a pilot basis pursuant to Rule 6.32.01[sic] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 6.32.01, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading until the primary listing market opens the next trading day.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The MWCB mechanism under Rule 6.32.01 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the MWCB pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, which would include industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 6.32.01 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] *See* Securities Exchange Act Release Nos. 68769 (January 30, 2013), 78 FR 8213 (February 5, 2013) (SR–C2–2013–006) (amending Rule 6.32.03, which was later renumbered to Rule 6.32.01, to delay the operative date of the pilot to coincide with the initial date of operations of the Plan); and 85624 (April 11, 2019), 84 FR 16130 (April 17, 2019) (SR–C2–2019–008) (proposal to extend the pilot for certain options pilots, including Rule 6.32.01).

[7] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[8] *See* Securities Exchange Act Release No. 85624 (April 11, 2019), 84 FR 16130 (April 17, 2019) (SR–C2–2019–008) (proposal to extend the pilot for certain options pilots, including Rule 6.32.01).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism. In addition, as noted above, the extension will permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process. Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot to halt trading across the U.S. markets. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2019–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2019–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–C2–2019–022 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23175 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the pre-filing requirement.

[14] *Id.*

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87343; File No. SR–CboeBYX–2019–017]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 11.18

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 2019, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposal to extend the pilot related to the market-wide circuit breaker in Rule 11.18. The text of the proposed rule change is enclosed as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BYX Rules 11.18(a) through (d), (f) and (g) describe the methodology for determining when to halt trading in all stocks due to extraordinary market volatility, *i.e.,* market-wide circuit breakers. The market-wide circuit breaker (''MWCB'') mechanism was approved by the Commission to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan. The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[6] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.18 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[7]

The Exchange now proposes to amend Rule 11.18 to extend the pilot to the close of business on October 18, 2020. This filing does not propose any substantive or additional changes to Rule 11.18. The Exchange will use the extension period to develop with the other SROs rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The market-wide circuit breaker under Rule 11.18 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity. Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 11.18, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading until the primary listing market opens the next trading day.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 11.18 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, which would include industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.18 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[7] *See* Securities Exchange Act Release No. 85665 (April 16, 2019), 84 FR 16749 (April 22, 2019) (SR–CboeBYX–2019–004).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

conjunction with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism. In addition, as noted above, the extension will permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process. Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot to halt trading across the U.S. markets. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2019–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2019–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CboeBYX–2019–017 and should be submittedon or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23174 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *Id.*

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87350; File No. SR–NYSEArca–2019–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent the Retail Liquidity Program Pilot, Rule 7.44–E, Which Is Set To Expire on October 31, 2019, Notice of Filing of Amendment No. 1, and Order Granting Limited Exemption Pursuant to Rule 612(c) of Regulation NMS

October 18, 2019.

I. Introduction

On September 4, 2019, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent Exchange Rule 7.44–E governing the Exchange's Retail Liquidity Program Pilot (''Program''). The proposed rule change was published for comment in the **Federal Register** on September 10, 2019.[3] The Commission received one comment letter on the proposed rule change.[4] On October 11, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which supersedes and replaces

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86870 (September 10, 2019), 84 FR 47575 (''Notice'').

[4] *See* Letter from Bahram Kasmai, dated September 4, 2019 (stating ''Thank you very much. I would incresing [sic] my information about Exchange.'').

the original filing in its entirety.[5] In connection with the proposed rule change, the Exchange requests exemptive relief from Rule 612 of Regulation NMS,[6] which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01.[7] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, issuing this order approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, and issuing this order granting to the Exchange a limited exemptive relief pursuant to Rule 612(c) of Regulation NMS.

II. Description of the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item V below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent Rule 7.44–E, which sets forth the Exchange's pilot Retail Liquidity Program (the ''Program''). In support of the proposal to make the pilot Program permanent, the Exchange believes it is appropriate to provide background on the Program and an analysis of the economic benefits for retail investors and the marketplace flowing from operation of the Program.

Background

In December 2013, the Commission approved the Program on a pilot basis.[8] The purpose of the pilot was to analyze data and assess the impact of the Program on the marketplace. The pilot period was originally scheduled to end on April 14, 2015. The Exchange filed to extend the operation of the pilot on several occasions in order to prepare this rule filing. The pilot is currently set to expire on October 31, 2019.[9]

The Exchange established the Program to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement.[10] The Program is currently limited to trades occurring at prices equal to or greater than $1.00 a share. The Program includes NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges (''UTP''), but excluding NYSE-listed (Tape A) securities.

As described in greater detail below, under Rule 7.44–E, a new class of market participant called Retail Liquidity Providers (''RLPs'') [11] and non-RLP Equity Trading Permit (''ETP'') Holders [12] are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer (''PBBO''), called a Retail Price Improvement Order (''RPI''). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier (''RLI''), that such interest exists. Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI and then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order's instructions. The segmentation in the Program allows retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers.[13]

In approving the pilot, the Commission concluded that the Program was reasonably designed to benefit retail investors by providing price improvement opportunities to retail order flow. Further, while the Commission noted that the Program would treat retail order flow differently from order flow submitted by other market participants, such segmentation would not be inconsistent with Section 6(b)(5) of the Act,[14] which requires that the rules of an exchange are not designed to permit unfair discrimination. As the Commission recognized, retail order segmentation was designed to create additional competition for retail order flow, leading to additional retail order flow to the exchange environment and ensuring that retail investors benefit from the

[5] *See infra* Section V.

[6] 17 CFR 242.612(c).

[7] *See* Letter from Martha Redding, Associate General Counsel and Assistant Secretary, New York Stock Exchange, dated September 12, 2019.

[8] *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107) (''RLP Approval Order''). In addition to approving the Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612 (''Sub-Penny Rule''), which among other things prohibits a national securities exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01. *See id.*

In 2013, the Program's rules were set forth in NYSE Arca Equities Rule 7.44. In connection with the Exchange's implantation of Pillar, an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC and NYSE American LLC, NYSE Arca Equities Rule 7.44 was replaced by NYSE Arca Equities Rule 7.44P. *See* Securities Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR–NYSEArca–2015–56) (order approving equity trading rules relating to the implementation of Pillar, including, among others, NYSE Arca Equities Rule 7.44P); Securities Exchange Act Release No. 79078 (October 11, 2016), 81 FR 71559 (October 17, 2016) (SR–NYSEArca–2015–135) (deleting obsolete rules following migration to Pillar, including NYSE Arca Equities 7.44, and removing ''P'' modifier in NYSE Arca Equities Rule 7.44P). At the time, NYSE Arca Equities was a wholly owned subsidiary of the Exchange. In 2017, NYSE Arca Equities was merged with and into the Exchange and the NYSE Arca Equities rules were integrated into the NYSE Arca rules in order to create a single rulebook. The Program's rules were accordingly relocated to NYSE Arca Rule 7.44–E. *See* Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR–NYSEArca–2017–40) (Approval Order).

[9] *See* Securities Exchange Act Release No. 87153 (September 30, 2019), 84 FR 53188 (October 4, 2019) (SR–NYSEArca–2019–67) (extending pilot to October 31, 2019). *See also* Securities Exchange Act Release No. 86198 (June 26, 2019), 84 FR 31648 (July 2, 2019) (SR–NYSEArca–2019–45) (extending pilot to September 30, 2019); Securities Exchange Act Release No. 84773 (December 10, 2018), 83 FR 64419 (December 14, 2018) (SR–NYSEArca–2018–89) (extending pilot to June 30, 2019); Securities Exchange Act Release No. 83538 (June 28, 2018), 83 FR 31210 (July 3, 2018) (SR–NYSEArca–2018–46) (extending pilot to December 31, 2018); Securities Exchange Act Release No. 82289 (December 11, 2017), 82 FR 59677 (December 15, 2017) (SR–NYSEArca–2017–137) (extending pilot to June 30, 2018); Securities Exchange Act Release No. 80851 (June 2, 2017), 82 FR 26722 (June 8, 2017) (SR–NYSEArca–2017–63) (extending pilot to December 31, 2017); Securities Exchange Act Release No. 79495 (December 7, 2016), 81 FR 90033 (December 13, 2016) (SR–NYSEArca–2016–157) (extending pilot to June 30, 2017); Securities Exchange Act Release No. 78601 (August 17, 2016), 81 FR 57632 (August 23, 2016) (SR–NYSEArca–2016–113) (extending pilot to December 31, 2016) *as corrected by* Securities Exchange Act Release No. 78601 (August 17, 2016), 81 FR 63243 (September 14, 2016) (SR–NYSEArca–2016–113); Securities Exchange Act Release No. 77424 (March 23, 2016), 81 FR 17523 (March 29, 2016) (SR–NYSEArca–2016–47) (extending pilot to August 31, 2016); Securities Exchange Act Release No. 75994 (September 28, 2015), 80 FR 59834 (October 2, 2015) (SR–NYSEArca–2015–84) (extending pilot to March 31, 2016); and Securities Exchange Act Release No. 74572 (March 24, 2015), 80 FR 16705 (March 30, 2015) (SR–NYSEArca–2015–22) (extending pilot to September 30, 2015).

[10] RLP Approval Order, 78 FR at 79525.

[11] The Program also allows for RLPs to register with the Exchange. However, any firm can enter RPI orders into the system. Currently, no ETP Holders are registered as an RLP.

[12] NYSE Arca refers to its members as ETP Holders. *See* RLP Approval Order, 78 FR at 79525, n.9.

[13] RLP Approval Order, 78 FR at 79528.

[14] 15 U.S.C. 78f(b)(5).

better price that liquidity providers are willing to give their orders.[15]

As discussed below, the Exchange believes that the Program data supports these conclusions and that it is therefore appropriate to make the pilot Program permanent.[16] The Exchange notes that the Commission recently approved on a permanent basis the substantially similar retail liquidity programs operated on a pilot basis by New York Stock Exchange LLC (''NYSE'') and Nasdaq BX, Inc. (''Nasdaq BX'').[17] The Commission also recently approved a third exchange's retail liquidity program that had not been previously approved on a pilot basis.[18]

Description of Pilot Rule 7.44–E That Would Become Permanent

Definitions

Rule 7.44–E(a) contains the following definitions:

• First, the term ''Retail Liquidity Provider'' (''RLP'') is defined as a ETP Holder that is approved by the Exchange under the Rule to act as such and to submit Retail Price Improvement Orders in accordance with the Rule.[19]

• Second, the term ''Retail Member Organization'' (''RMO'') is defined as an ETP Holder that has been approved by the Exchange to submit Retail Orders.[20]

• Third, the term ''Retail Order'' means an agency order or a riskless principal order meeting the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Order may be an odd lot, round lot, or mixed lot.[21]

• Finally, the term ''Retail Price Improvement Order'' means non-displayed interest in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that would trade at prices better than the best protected bid (''PBB'') or best protected offer (''PBO'') by at least $0.001 and that is identified as a Retail Price Improvement Order in a manner prescribed by the Exchange.[22] The price of an RPI would be determined by an ETP Holder's entry of RPI buy or sell interest into Exchange systems. RPIs would remain undisplayed. An RPI that was not priced within the PBBO would be rejected upon entry. A previously entered RPI that became priced at or inferior to the PBBO would not be eligible to interact with incoming Retail Orders, and such an RPI would cancel if a Retail Order executed against all displayed interest ranked ahead of the RPI and then attempted to execute against the RPI. If not cancelled, an RPI that was no longer priced at or inferior to the PBBO would again be eligible to interact with incoming Retail Orders. An RPI must be designated as either a PL or MPL Order, and an order so designated would interact with only Retail Orders.

RLPs and other liquidity providers[23] and RMOs could enter odd lots, round lots or mixed lots as RPIs and as Retail Orders, respectively. As discussed below, RPIs would be ranked and allocated according to price and time of entry into Exchange systems and therefore without regard to whether the size entered was an odd lot, round lot or mixed lot. Similarly, Retail Orders would interact with RPIs according to the priority and allocation rules of the Program and without regard to whether they were odd lots, round lots or mixed lots. Finally, Retail Orders could be designated as Type 1 or Type 2 without regard to the size of the lot. RPIs would interact with Retail Orders as follows; a more detailed priority and order allocation discussion is below. An RPI would interact with Retail Orders at the level at which the RPI was priced as long as the minimum required price improvement was produced. Accordingly, if RPI sell interest was entered with a $10.098 offer while the PBO was $10.11, the RPI could interact with the Retail Order at $10.098, producing $0.012 of price improvement.

RMO Qualifications and Application Process

Under Rule 7.44–E(b), any ETP Holder[24] can qualify as an RMO if it conducts a retail business or routes[25] retail orders on behalf of another broker-dealer. For purposes of Rule 7.44–E(b), conducting a retail business includes carrying retail customer accounts on a fully disclosed basis. To become an RMO, an ETP Holder must submit: (1) An application form; (2) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow;[26] and (3) an

[15] RLP Approval Order, 78 FR at 79528.

[16] *See* note 8, *supra*. Rule 7.44–E has been amended several additional times. *See* Securities Exchange Act Release No. 71780 (March 24, 2014), 79 FR 17623 (March 28, 2014) (SR–NYSEArca–2014–21) (amending rule to provide that odd-lot interest priced between the PBBO will trade together with other undisplayed interest according to price-time priority); Securities Exchange Act Release No. 73329 (October 9, 2014), 79 FR 62227 (October 16, 2014) (SR–NYSEArca–2014–115) (amending rule to provide that RPI that are not priced better than the PBB or PBBO will not be rejected upon entry); Securities Exchange Act Release No. 73529 (November 5, 2014), 79 FR 67210 (November 12, 2014) (SR–NYSEArca–2014–128) (amending rule to delete reference to proprietary data feed in Rule 7.44E(j)); Securities Exchange Act Release No. 76549 (December 3, 2015), 80 FR 76595 (December 9, 2015) (SR–NYSEArca–2015–115) (''Release No. 76549'') (amending rule to distinguish between orders routed on behalf of other broker-dealers and orders routed on behalf of introduced retail accounts that are carried on a fully disclosed basis); Securities Exchange Act Release No. 77236 (February 25, 2016), 81 FR 10943 (March 2, 2016) (SR–NYSEArca–2016–30) (amending rule to clarify that Retail Orders may not be designated with a minimum trade size).

[17] *See* Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754 (February 22, 2019) (SR–NYSE–2018–28) (''Release No. 85160'') (approving the New York Stock Exchange's Retail Liquidity Program on a permanent basis and granting a limited exemption to the Sub-Penny Rule); Securities Exchange Act Release No. 86194 (June 25, 2019), 84 FR 31385 (July 1, 2019) (SR–NYSEArca–2019–11) (approving Nasdaq BX's Retail Price Improvement Program on a permanent basis and granting a limited exemption to the Sub-Penny Rule).

[18] *See* Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR–IEX–2019–05).

[19] *See* Rule 7.44–E(a)(1).

[20] *Id.* at (a)(2).

[21] *Id.* at (a)(3).

[22] *Id.* at (a)(4). An RPI remains non-displayed in its entirety, is ranked Priority 3—Non-Display Orders. *See id.* at (a)(4)(A). Exchange systems will monitor whether RPI buy or sell interest is eligible to trade with incoming Retail Orders. An RPI to buy (sell) with a limit price at or below (above) the PBB (PBO) or at or above (below) the PBO (PBB) will not be eligible to trade with incoming Retail Orders to sell (buy), and such an RPI will cancel if a Retail Order to sell (buy) trades with all displayed liquidity at the PBB (PBO) and then attempts to trade with the RPI. If not cancelled, an RPI to buy (sell) with a limit price that is no longer at or below (above) the PBB (PBO) or at or above (below) the PBO (PBB) will again be eligible to trade with incoming Retail Orders. *See id.* at (a)(4)(B). For securities to which it is assigned, an RLP may only enter an RPI in its RLP capacity. An RLP is permitted, but not required, to submit RPIs for securities to which it is not assigned, and will be treated as a non-RLP ETP Holder for those particular securities. Additionally, ETP Holders other than RLPs are permitted, but not required, to submit RPIs. *See id.* at (a)(4)(C). Finally, an RPI may be an odd lot, round lot, or mixed lot. An RPI must be designated as either a Limit Non-Displayed Order or MPL Order, and an order so designated will interact with incoming Retail Orders only and will not interact with either a Type 2-Retail Order Day or Type 2-Retail Order Market that is resting on the NYSE Arca Book. *See id.* at (a)(4)(D).

[23] A Market Maker (''MM'') or Lead Market Maker (''LMM'') would be permitted to enter RPIs for securities in which they were not registered as an MM or LMM; however, the MM or LMM would not be eligible for execution fees that are lower than non-RLP rates for such securities.

[24] An RLP may also act as an RMO for securities to which it is not assigned, subject to the qualification and approval process established by the proposed rule.

[25] *See* Release No. 76549, 80 FR at 76595.

[26] The supporting documentation may include sample marketing literature, website screenshots, other publicly disclosed materials describing the member organization's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition. *See* Rule 7.44–E(b)(2)(B).

attestation, in a form prescribed by the Exchange, that any order submitted by the member organization as a Retail Order would meet the qualifications for such orders under Rule 7.44–E.[27]

An RMO must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the ETP Holder to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of Rule 7.44–E, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.[28]

Following submission of the required materials, the Exchange provides written notice of its decision to the member organization.[29] A disapproved applicant can appeal the disapproval by the Exchange as provided in Rule 7.44–E(i), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. An RMO can also voluntarily withdraw from such status at any time by giving written notice to the Exchange.[30]

RLP Qualifications

To qualify as an RLP under Rule 7.44–E(c), an ETP Holder must: (1) Already be registered as a MM or LMM; (2) demonstrate an ability to meet the requirements of an RLP; (3) have the ability to accommodate Exchange-supplied designations that identify to the Exchange RLP trading activity in assigned RLP securities; and (4) have adequate trading infrastructure and technology to support electronic trading.[31]

RLP Application

Under Rule 7.44–E(d), to become an RLP, an ETP Holder must submit an RLP application form with all supporting documentation to the Exchange. The Exchange would determine whether an applicant was qualified to become an RLP as set forth above.[32] After an applicant submitted an RLP application to the Exchange with supporting documentation, the Exchange would notify the applicant ETP Holder of its decision. The Exchange could approve one or more ETP Holders to act as an RLP for a particular security. The Exchange could also approve a particular ETP Holder to act as an RLP for one or more securities. Approved RLPs would be assigned securities according to requests made to, and approved by, the Exchange.[33]

If an applicant was approved by the Exchange to act as an RLP, the applicant would be required to establish connectivity with relevant Exchange systems before the applicant would be permitted to trade as an RLP on the Exchange.[34] If the Exchange disapproves the application, the Exchange would provide a written notice to the ETP Holder. The disapproved applicant could appeal the disapproval by the Exchange as provided in Rule 7.44–E(i) and/or reapply for RLP status 90 days after the disapproval notice was issued by the Exchange.[35]

Voluntary Withdrawal of RLP Status

An RLP would be permitted to withdraw its status as an RLP by giving notice to the Exchange under Rule 7.44–E(e). The withdrawal would become effective when those securities assigned to the withdrawing RLP were reassigned to another RLP. After the Exchange received the notice of withdrawal from the withdrawing RLP, the Exchange would reassign such securities as soon as practicable, but no later than 30 days after the date the notice was received by the Exchange. If the reassignment of securities took longer than the 30-day period, the withdrawing RLP would have no further obligations and would not be held responsible for any matters concerning its previously assigned RLP securities.[36]

RLP Requirements

Under Rule 7.44–E(f), an RLP would only be permitted to enter RPIs electronically and directly into Exchange systems and facilities designated for this purpose and could only submit RPIs in their role as an RLP for the securities to which it is assigned as RLP. An RLP entering Retail Price Improvement Orders in securities to which it is not assigned is not required to satisfy these requirements.[37] In order to be eligible for execution fees that are lower than non-RLP rates, an RLP would be required to maintain (1) an RPI that was better than the PBB at least five percent of the trading day for each assigned security; and (2) an RPI that was better than the PBO at least five percent of the trading day for each assigned security.[38]

An RLP's five-percent requirements would be calculated by determining the average percentage of time the RLP maintained an RPI in each of its RLP securities during the regular trading day, on a daily and monthly basis.[39] The Exchange would determine whether an RLP met this requirement by calculating the following:

- The ''Daily Bid Percentage,'' calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBB during each trading day for a calendar month;
- The ''Daily Offer Percentage,'' calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBO during each trading day for a calendar month;
- The ''Monthly Average Bid Percentage,'' calculated for each RLP security by summing the security's ''Daily Bid Percentages'' for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month; and
- The ''Monthly Average Offer Percentage,'' calculated for each RLP security by summing the security's ''Daily Offer Percentage'' for each trading day in a calendar month and

[27] *See id.* at (b)(2)(A)–(C).

[28] *Id.* at (b)(6).

[29] *Id.* at (b)(3).

[30] *Id.* at (b)(5).

[31] *Id.* at (c)(1)–(4). Because an RLP would only be permitted to trade electronically, an ETP Holder's technology must be fully automated to accommodate the Exchange's trading and reporting systems that are relevant to operating as an RLP. If an ETP Holder was unable to support the relevant electronic trading and reporting systems of the Exchange for RLP trading activity, it would not qualify as an RLP. An RLP may not use the Exchange supplied designations for non-RLP trading activity at the Exchange. Additionally, an ETP Holder will not receive credit for its RLP trading activity for which it does not use its designation.

[32] *Id.* at (d)(1).

[33] *Id.* at (d)(2).

[34] *Id.* at (d)(3).

[35] *Id.* at (d)(4).

[36] *See id.* at (e).

[37] *Id.* at (f)(1).

[38] An ETP Holder acting as an RLP for a security entering RPIs into Exchange systems and facilities for securities to which it was not assigned would not be eligible for execution fees that are lower than non-RLP rates for securities to which it was not assigned.

[39] *Id.* at (f)(2).

then dividing the resulting sum by the total number of trading days in such calendar month.

Finally, only RPIs would be used when calculating whether an RLP is in compliance with its five-percent requirements.[40]

The five-percent requirement is not applicable in the first two calendar months a member organization operates as an RLP and takes effect on the first day of the third consecutive calendar month the member organization operates as an RLP.[41]

Failure of RLP To Meet Requirements

Rule 7.44–E(g) addresses the consequences of an RLP's failure to meet its requirements. If, after the first two months an RLP acted as an RLP, an RLP fails to meet any of the requirements set forth in Rule 7.44–E(f) for an assigned RLP security for three consecutive months, the Exchange could, in its discretion, take one or more of the following actions:

- Revoke the assignment of any or all of the affected securities from the RLP;
- revoke the assignment of unaffected securities from the RLP; or
- disqualify the member organization from its status as an RLP.[42]

The Exchange will determine if and when an ETP Holder is disqualified from its status as an RLP. One calendar month prior to any such determination, the Exchange notifies an RLP of such impending disqualification in writing. When disqualification determinations are made, the Exchange provides a written disqualification notice to the member organization.[43] A disqualified RLP could appeal the disqualification as provided in proposed Rule 7.44–E(i) and/or reapply for RLP status 90 days after the disqualification notice is issued by the Exchange.[44]

Failure of RMO To Abide by Retail Order Requirements

Rule 7.44–E(h) addresses an RMO's failure to abide by Retail Order requirements. If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the Exchange may disqualify a member organization from its status as an RMO.[45] When disqualification determinations are made, the Exchange will provide a written disqualification notice to the ETP Holder.[46] A disqualified RMO could appeal the disqualification as provided in proposed Rule 7.44–E(i) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.[47]

Appeal of Disapproval or Disqualification

Rule 7.44–E(i) describes the appeal rights of ETP Holders. An ETP Holder that disputes the Exchange's decision to disapprove it under Rule 7.44–E(b) or (d) or disqualify it under Rule 7.44–E(g) or (h) may request, within five business days after notice of the decision is issued by the Exchange, that a Retail Liquidity Program Panel (''RLP Panel'') review the decision to determine if it was correct.[48] The RLP Panel would consist of the Chief Regulatory Officer (''CRO''), or a designee of the CRO, and qualified Exchange employees.[49] The RLP Panel will review the facts and render a decision within the time frame prescribed by the Exchange.[50] The RLP Panel may overturn or modify an action taken by the Exchange under the Rule. A determination by the RLP Panel would constitute final action by the Exchange on the matter at issue.[51]

Retail Liquidity Identifier

Under Rule 7.44–E(j), the Exchange disseminates an identifier through the Consolidated Quotation System or the UTP Quote Data Feed, as applicable, when RPI interest priced at least $0.001 better than the PBB or PBO for a particular security is available in Exchange systems (''Retail Liquidity Identifier''). The Retail Liquidity Identifier shall reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but shall not include the price or size of the RPI interest.[52]

Retail Order Designations

Under Rule 7.44–E(k), a Retail Order may not be designated with a ''No Midpoint Execution'' Modifier or with a minimum trade size. Under subsection (k), an RMO can designate how a Retail Order would interact with available contra-side interest as follows:

- A Type 1-Retail Order to buy (sell) is a Limit IOC Order that will trade only with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book and will not route. The quantity of a Type 1-Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be immediately and automatically cancelled. A Type-1 designated Retail Order will be rejected on arrival if the PBBO is locked or crossed.[53]
- A Type 2-Retail Order may be a Limit Order designated IOC or Day or a Market Order, and will function as follows:
  - A Type 2-Retail Order IOC to buy (sell) is a Limit IOC Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order will trade with orders to sell (buy) on the NYSE Arca Book at prices equal to or above (below) the PBO (PBB) and will be traded as a Limit IOC Order and will not route.[54]
  - A Type 2-Retail Order Day to buy (sell) is a Limit Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order, if marketable, will trade with orders to sell (buy) on the NYSE Arca Book or route, and if non-marketable, will be ranked in the NYSE Arca Book as a Limit Order.[55]
  - A Type 2-Retail Order Market to buy (sell) is a Market Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the NBO (NBB). Any remaining quantity of the Retail Order will function as a Market Order.[56]

Priority and Order Allocation

Under Rule 7.44–E(l), RPI in the same security will be ranked together with all other interest ranked as Priority 3—Non-Display Orders. Odd-lot orders ranked as Priority 2—Display Orders will have priority over orders ranked Priority 3—Non-Display Orders at each price. Any remaining unexecuted RPI interest will remain available to trade with other

[40] *Id.* at (f)(2)(A)–(E).

[41] *Id.* at (f)(3).

[42] *Id.* at (g)(1)(A)–(C).

[43] *Id.* at (2).

[44] *Id.* at (3).

[45] *Id.* at (h)(1).

[46] *Id.* at (2).

[47] *Id.* at (3).

[48] *Id.* at (i)(1). In the event a member organization is disqualified from its status as an RLP pursuant to proposed Rule 107C(g), the Exchange would not reassign the appellant's securities to a different RLP until the RLP Panel has informed the appellant of its ruling. *Id.* at (i)(1)(A).

[49] *Id.* at (i)(2).

[50] *Id.* at (3).

[51] *Id.* at (4).

[52] *Id.* at (j).

[53] *Id.* at (k)(1).

[54] *Id.* at (k)(2)(A).

[55] *Id.* at (k)(2)(B).

[56] *Id.* at (k)(2)(C).

incoming Retail Orders. Any remaining unfilled quantity of the Retail Order will cancel, execute, or post to the NYSE Arca Book in accordance with Rule 7.44–E(k).

Examples of priority and order allocation are as follows:

PBBO for security ABC is $10.00 – $10.05.
RLP 1 enters a Retail Price Improvement Order to buy ABC at $10.01 for 500.
RLP 2 then enters a Retail Price Improvement Order to buy ABC at $10.02 for 50.
RLP 3 then enters a Retail Price Improvement Order to buy ABC at $10.03 for 500.

An incoming Type 1-Retail Order to sell ABC for 1,000 would trade first with RLP 3's bid for 500 at $10.03, because it is the best-priced bid, then with RLP 2's bid for 500 at $10.02, because it is the next best-priced bid. RLP 1 would not be filled because the entire size of the Retail Order to sell 1,000 would be depleted. The Retail Order trades with RPI Orders in price/time priority.

However, assume the same facts above, except that RLP 2's Retail Price Improvement Order to buy ABC at $10.02 was for 100. The incoming Retail Order to sell 1,000 would trade first with RLP 3's bid for 500 at $10.03, because it is the best-priced bid, then with RLP 2's bid for 100 at $10.02, because it is the next best-priced bid. RLP 1 would then receive an execution for 400 of its bid for 500 at $10.01, at which point the entire size of the Retail Order to sell 1,000 would be depleted.

Assume the same facts as above, except that RLP 3's order was not an RPI Order to buy ABC at $10.03, but rather, a non-displayed order to buy ABC at $10.03. The result will be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 trades first with RLP 3's non-displayed bid for 500 at $10.03, because it is the best-priced bid, then with RLP 2's bid for 100 at $10.02, because it is the next best-priced bid. RLP 1 then receives an execution for 400 of its bid for 500 at $10.01, at which point the entire size of the Retail Order to sell 1,000 is depleted.

As a final example, assume the original facts, except that LMT 1 enters a displayed odd lot limit order to buy ABC at $10.02 for 60. The incoming Retail Order to sell for 1,000 trades first with RLP 3's bid for 500 at $10.03, because it is the best-priced bid, then with LMT 1's bid for 60 at $10.02 because it is the next best-priced bid and is ranked Priority 2—Display Orders and has priority over same-priced RPIs. The incoming Retail Order would then trade 440 shares with RLP 2's bid for 500 at $10.02 because it is the next priority category at that price, at which point the entire size of the Retail Order to sell 1,000 is depleted. The balance of RLP 2's bid would remain on the NYSE Arca Book and be eligible to trade with the next incoming Retail Order to sell.

To demonstrate how the different types of Retail Orders would trade with available Exchange interest, assume the following facts:

PBBO for security DEF is $19.99 – $20.01 (100 × 100).
LMT 1 enters a Limit Order to buy DEF at $20.00 for 100.
RLP 1 then enters a Retail Price Improvement Order to buy DEF at $20.003 for 100,
MPL 1 then enters a Midpoint Passive Liquidity Order to buy DEF at $21.00 for 100.

An incoming Type 2-Retail Order IOC to sell DEF for 300 at $20.00 would trade first with MPL 1's bid for 100 at $20.005, because it is the best-priced bid, then with RLP 1's bid for 100 at $20.003, because it is the next best-priced bid, and then with LMT 1's bid for 100 at $20.00 because it is the next best-priced bid, at which point the entire size of the Retail Order to sell 300 is depleted.

Assume the same facts as above except the incoming order is a Type 2-Retail Order Day to sell DEF for 500 at $20.00. The Retail Order would trade first with MPL 1's bid for 100 at $20.005, because it is the best-priced bid, then with RLP 1's bid for 100 at $20.003, because it is the next best-priced bid, and then with LMT 1's bid for 100 at $20.00 because it is the next best-priced bid. The remaining balance of the Retail Order is displayed on the NYSE Arca Book at $20.00 as a Limit Order, resulting in a PBBO of $19.99–$20.00 (100 × 200).

Assume the same facts as above except the incoming order is a Type 1-Retail Order to sell DEF for 300. The Retail Order would trade first with MPL 1's bid for 100 at $20.005, because it is the best-priced bid, and then with RLP 1's bid for 100 at $20.003. The remaining balance of the Retail Order would be cancelled and not trade with LMT 1 because Type 1-designated Retail Orders do not trade with interest on the NYSE Arca Book other than non-displayed orders and odd-lot orders priced better than the PBBO on the opposite side of the Retail Order.

Finally, to demonstrate the priority of displayed interest over Retail Price Improvement Orders, assume the following facts:

PBBO for security GHI is $30.00—$30.05.
RLP 1 enters a Retail Price Improvement Order to buy GHI at $30.02 for 100.
LMT 1 then enters a Limit Order to buy GHI at $30.02 for 100.
New PBBO of $30.02 – $30.05.
RLP 2 then enters a Retail Price Improvement Order at $30.03 for 100.

An incoming Type 2-Retail Order IOC to sell GHI for 300 at $30.01 would trade first with RLP 2's bid for 100 at $30.03, because it is the best-priced bid, then with LMT 1 for 100 at $30.02 because it is the next best-priced bid. The Retail Order would then attempt to trade with RLP 1, but because RLP 1 was priced at the PBBO and no longer price improving, RLP 1 will cancel. At that point, the remaining balance of the Retail Order will cancel because there are no remaining orders within its limit price.

Assume the same facts as above except the incoming Retail Order is for 200. The Retail Order would trade with RLP 2's bid for 100 at $30.03, because it is the best-priced bid, then with LMT 1 for 100 at $30.02 because it is the next best-priced bid. RLP 1 does not cancel because the incoming Retail Order was depleted before attempting to trade with RLP 1. RLP 1 would be eligible to trade with another incoming Retail Order because it would be priced better than the PBBO.[57]

Rationale for Making Pilot Permanent

In approving the Program on a pilot basis, the Commission required the Exchange to ''monitor the scope and operation of the Program and study the data produced during that time with respect to such issues, and will propose any modifications to the Program that may be necessary or appropriate.'' [58] As part of its assessment of the Program's potential impact, the Exchange posted core weekly and daily summary data on the Exchanges' website for public investors to review,[59] and provided additional data to the Commission regarding potential investor benefits, including the level of price improvement provided by the Program. This data included statistics about participation, frequency and level of price improvement.

In the RLP Approval Order, the Commission observed that the Program could promote competition for retail order flow among execution venues, and that this could benefit retail investors by creating additional price improvement opportunities for marketable retail order flow, most of which is currently executed in the Over-the-Counter (''OTC'') markets without ever reaching

[57] *Id.* at (l).

[58] RLP Approval Order, 78 FR at 79529.

[59] *See https://www.nyse.com/markets/liquidity-programs#nyse-nyse-mkt-rlp.*

a public exchange.[60] The Exchange sought, and believes it has achieved, the Program's goal of attracting retail order flow to the Exchange, and allowing such order flow to receive potential price improvement. As the Exchange's analysis of the Program data below demonstrates, the Program provided tangible price improvement to retail investors through a competitive pricing process. The data also demonstrates that the Program had an overall negligible impact on broader market structure.[61]

NYSE Arca launched the Program during April 2014. Between June and November 2014, the Program received orders totaling 4.3 billion shares, providing retail investors with price improvement of $1.6 million. As Table 1 below shows, during 2017, an average of 3.5 million shares were executed in the Program each day. During 2018, this number rose to 8.9 million shares per day but has since dropped to 3.6 million shares per day for the period May–July 2019. Total price improvement provided to retail investors for the 2017–2018 period was $6.2 million. Price improvement has been highly dependent on the mix of securities and volume sent into the Program. During the 2017–2018 period, price improvement was as low as $0.0015 and as high as $0.0055 per share. There are several high-priced securities with spreads greater than $0.01, which often received price improvement of a penny or more. Overall, fill rates have largely been in the low-to-mid 20% range, although there have been periods of fill rates north of 30% from September–November 2017, when there was a smaller share of very large orders.

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Table 1: Summary Execution and Market Quality Statistics

Date	Avg. Daily Orders	Avg. Shares Exec.	Fill Rate	Price Impr. $	Price Impr. BP
Jan-17	4,948	2,150,346.9	26.7%	$0.0024	1.52
Feb-17	4,673	2,066,753.6	19.6%	$0.0022	1.57
Mar-17	4,594	2,047,663.4	20.2%	$0.0022	1.83
Apr-17	4,274	1,770,560.5	20.8%	$0.0025	1.88
May-17	3,660	1,408,774.3	23.4%	$0.0035	2.83
Jun-17	3,565	1,355,331.4	23.0%	$0.0051	3.72
Jul-17	3,251	1,140,149.9	25.6%	$0.0053	3.72
Aug-17	3,588	1,195,305.6	23.3%	$0.0055	3.86
Sep-17	12,505	4,080,037.1	31.4%	$0.0037	3.53
Oct-17	31,483	9,701,364.8	38.3%	$0.0031	3.84
Nov-17	28,422	9,012,109.1	36.7%	$0.0028	3.00
Dec-17	30,116	6,424,724.3	27.9%	$0.0023	2.73
Jan-18	45,868	9,141,527.4	26.6%	$0.0016	1.59
Feb-18	53,970	11,137,027.6	25.8%	$0.0017	1.45
Mar-18	49,545	9,988,889.2	27.1%	$0.0016	1.53
Apr-18	42,509	8,311,330.0	29.2%	$0.0016	1.34
May-18	42,554	9,397,909.1	30.4%	$0.0015	1.61
Jun-18	50,235	9,022,306.1	26.9%	$0.0015	1.49
Jul-18	45,273	7,981,698.5	27.2%	$0.0015	1.43
Aug-18	44,531	8,510,678.8	27.1%	$0.0015	1.32
Sep-18	42,257	8,863,455.3	24.9%	$0.0016	1.40
Oct-18	45,321	8,398,662.1	22.9%	$0.0016	1.34
Nov-18	39,089	7,082,087.6	23.5%	$0.0015	1.21
Dec-18	45,208	9,306,425.4	22.7%	$0.0015	0.96

Table 2 shows the frequency of order sizes entered by RMOs. The largest plurality of order types were round lot or smaller, ranging between 35% in early 2017 to more than 50% of all RMO orders entered during the summer of 2018. Very large orders (greater than 15,000 shares) accounted for less than 1% of all orders since September 2017. However, as shown in Table 3, these typically accounted for 20–25% of shares placed into the Program, and ranged above 50% of all orders in early 2017. The composition of shares executed (Table 4) was more evenly distributed and fill rates (Table 5) were much lower for the largest order sizes.

[60] RLP Approval Order, 78 FR at 79528.

[61] *See id.* at 79529.

Table 2: Composition of Retail Taking Orders by Order Size									
Date	<= 100	101-300	301-500	501-1000	1001-2000	2001-4000	4001-7500	7500-15000	> 15000
Jan-17	35.57%	19.58%	9.67%	10.93%	7.94%	6.82%	4.96%	2.69%	1.84%
Feb-17	35.80%	18.91%	9.62%	10.75%	7.96%	6.52%	4.78%	3.04%	2.62%
Mar-17	36.62%	18.81%	8.98%	10.71%	7.80%	6.82%	4.88%	3.10%	2.27%
Apr-17	38.60%	18.86%	9.03%	10.19%	7.56%	6.46%	4.47%	2.83%	1.99%
May-17	40.30%	18.31%	8.87%	10.24%	7.48%	6.20%	4.12%	2.52%	1.97%
Jun-17	40.46%	18.00%	8.54%	9.91%	7.34%	6.57%	4.39%	3.01%	1.79%
Jul-17	43.01%	17.72%	8.54%	9.55%	7.31%	6.38%	3.88%	2.21%	1.39%
Aug-17	41.25%	17.51%	8.67%	10.16%	7.64%	6.84%	4.09%	2.35%	1.49%
Sep-17	43.67%	20.57%	8.88%	10.10%	6.50%	4.75%	2.82%	1.77%	0.94%
Oct-17	51.30%	18.58%	7.69%	8.54%	5.57%	3.86%	2.39%	1.41%	0.66%
Nov-17	52.69%	17.07%	7.54%	8.36%	5.70%	3.92%	2.49%	1.44%	0.79%
Dec-17	48.34%	18.95%	9.78%	9.23%	6.06%	4.18%	1.91%	1.01%	0.54%
Jan-18	48.69%	19.03%	9.56%	9.12%	6.05%	4.07%	1.87%	1.03%	0.58%
Feb-18	47.13%	19.62%	9.94%	9.48%	6.14%	3.98%	1.93%	1.12%	0.66%
Mar-18	46.90%	19.68%	10.08%	9.79%	6.32%	3.90%	1.76%	1.01%	0.56%
Apr-18	49.50%	19.54%	9.59%	9.63%	5.75%	3.11%	1.47%	0.90%	0.50%
May-18	48.01%	19.37%	9.82%	10.04%	6.22%	3.37%	1.61%	0.98%	0.57%
Jun-18	49.61%	19.42%	9.62%	9.58%	5.87%	3.13%	1.42%	0.85%	0.50%
Jul-18	50.10%	19.18%	9.41%	9.55%	5.91%	3.14%	1.41%	0.82%	0.48%
Aug-18	51.45%	18.14%	8.87%	9.05%	5.97%	3.41%	1.61%	0.95%	0.56%
Sep-18	47.75%	17.80%	9.15%	10.02%	7.01%	4.28%	2.08%	1.21%	0.69%
Oct-18	46.08%	19.06%	9.83%	10.23%	7.15%	4.04%	1.90%	1.04%	0.66%
Nov-18	44.43%	20.00%	10.58%	10.38%	7.29%	4.04%	1.72%	0.95%	0.61%
Dec-18	43.38%	20.42%	10.30%	10.65%	7.23%	4.11%	1.98%	1.12%	0.81%

Table 3: Composition of Retail Taking Shares Placed by Order Size									
Date	<= 100	101-300	301-500	501-1000	1001-2000	2001-4000	4001-7500	7500-15000	> 15000
Jan-17	1.09%	2.46%	2.55%	5.28%	7.39%	12.17%	16.38%	17.17%	35.50%
Feb-17	0.79%	1.73%	1.83%	3.76%	5.37%	8.42%	11.49%	13.98%	52.62%
Mar-17	0.82%	1.75%	1.75%	3.81%	5.38%	9.01%	12.11%	14.43%	50.95%
Apr-17	0.93%	1.94%	1.95%	4.02%	5.75%	9.47%	12.23%	14.53%	49.18%
May-17	1.16%	2.31%	2.32%	4.89%	6.87%	11.02%	13.60%	15.89%	41.93%
Jun-17	1.15%	2.28%	2.23%	4.70%	6.73%	11.63%	14.52%	18.99%	37.77%
Jul-17	1.48%	2.68%	2.69%	5.47%	8.08%	13.59%	15.42%	16.69%	33.90%
Aug-17	1.43%	2.54%	2.61%	5.55%	8.02%	13.95%	15.61%	16.69%	33.61%
Sep-17	2.04%	4.00%	3.62%	7.56%	9.49%	13.24%	14.71%	17.30%	28.04%
Oct-17	2.70%	4.65%	4.06%	8.27%	10.53%	13.97%	15.70%	17.65%	22.46%
Nov-17	2.54%	4.03%	3.72%	7.59%	10.08%	13.14%	15.23%	16.75%	26.92%
Dec-17	2.98%	4.97%	5.57%	9.52%	11.84%	15.35%	13.17%	13.61%	22.99%
Jan-18	3.07%	5.06%	5.50%	9.51%	11.99%	15.35%	13.31%	14.16%	22.05%
Feb-18	2.91%	4.91%	5.32%	9.22%	11.43%	14.08%	12.87%	14.63%	24.61%
Mar-18	3.20%	5.30%	5.72%	10.20%	12.64%	14.92%	12.71%	14.05%	21.25%
Apr-18	3.80%	5.75%	5.71%	10.85%	12.70%	13.34%	11.92%	13.84%	22.09%
May-18	3.43%	5.28%	5.40%	10.49%	12.75%	13.28%	12.08%	14.04%	23.25%
Jun-18	3.81%	5.74%	5.73%	10.83%	13.08%	13.42%	11.47%	13.20%	22.71%
Jul-18	3.90%	5.83%	5.76%	11.10%	13.50%	13.81%	11.74%	13.17%	21.19%
Aug-18	3.53%	5.07%	5.03%	9.71%	12.51%	13.94%	12.23%	13.88%	24.11%
Sep-18	2.87%	4.19%	4.34%	9.08%	12.48%	14.68%	13.35%	14.78%	24.24%
Oct-18	3.11%	4.67%	4.81%	9.53%	13.15%	14.38%	12.71%	13.17%	24.46%
Nov-18	3.25%	5.10%	5.39%	10.09%	13.96%	15.05%	12.03%	12.60%	22.53%
Dec-18	2.73%	4.46%	4.52%	8.77%	11.69%	13.00%	11.89%	12.72%	30.23%

Table 4: Composition of Retail Taking Shares Executed by Order Size									
Date	<= 100	101-300	301-500	501-1000	1001-2000	2001-4000	4001-7500	7500-15000	> 15000
Jan-17	4.01%	8.52%	8.01%	14.72%	15.07%	15.95%	14.77%	8.89%	10.06%
Feb-17	3.95%	8.16%	7.84%	14.42%	15.30%	15.74%	13.21%	9.86%	11.52%
Mar-17	4.00%	7.97%	7.28%	14.17%	14.81%	16.15%	14.23%	10.99%	10.40%
Apr-17	4.42%	8.67%	7.92%	14.39%	15.45%	16.39%	13.59%	10.92%	8.25%
May-17	4.86%	9.10%	8.14%	14.96%	15.25%	15.49%	12.72%	9.84%	9.64%
Jun-17	4.88%	8.96%	7.66%	13.62%	14.31%	15.56%	13.34%	12.69%	8.97%
Jul-17	5.70%	9.47%	8.21%	14.29%	14.57%	15.88%	13.33%	9.91%	8.65%
Aug-17	6.02%	9.78%	8.69%	15.23%	15.43%	16.66%	12.28%	8.22%	7.69%
Sep-17	6.23%	11.46%	9.23%	16.70%	15.26%	14.15%	10.23%	9.87%	6.88%
Oct-17	6.78%	11.09%	8.69%	15.45%	14.89%	13.31%	13.54%	10.59%	5.66%
Nov-17	6.62%	9.84%	8.11%	14.43%	14.59%	13.45%	13.98%	10.47%	8.52%
Dec-17	7.39%	10.23%	8.16%	14.09%	14.41%	14.79%	11.75%	10.56%	8.62%
Jan-18	7.33%	10.09%	8.29%	14.29%	14.66%	14.66%	11.46%	10.33%	8.89%
Feb-18	6.06%	9.48%	8.80%	15.88%	16.01%	14.88%	11.30%	9.61%	8.00%
Mar-18	5.93%	9.03%	8.60%	16.06%	16.52%	15.61%	11.73%	9.19%	7.33%
Apr-18	6.47%	9.19%	8.52%	16.52%	16.67%	14.96%	12.17%	9.40%	6.11%
May-18	5.86%	8.37%	8.02%	16.22%	16.64%	14.99%	12.20%	9.78%	7.92%
Jun-18	6.68%	9.35%	8.58%	17.21%	16.91%	15.03%	11.09%	8.20%	6.96%
Jul-18	6.68%	9.23%	8.46%	16.96%	16.69%	15.11%	11.77%	8.25%	6.85%
Aug-18	6.90%	8.84%	8.23%	16.60%	16.85%	16.16%	11.83%	8.34%	6.25%
Sep-18	5.80%	7.81%	7.53%	16.39%	17.41%	16.57%	12.69%	8.99%	6.81%
Oct-18	6.05%	8.55%	7.90%	15.97%	18.24%	17.16%	11.48%	7.86%	6.80%
Nov-18	6.03%	8.74%	8.19%	15.85%	17.76%	18.04%	11.22%	7.84%	6.33%
Dec-18	5.70%	8.78%	8.08%	15.35%	16.89%	16.72%	11.22%	8.57%	8.68%

Table 5 highlights that while the Exchange indicates when there is price improving liquidity available on CQS, UTP and proprietary feeds, not all customers necessarily read that flag. Beginning in December 2017, the Exchange believes that one customer began sending orders without checking the flag, resulting in poor fill rates, even for orders less than or equal to 100 shares. This is clearly evidenced by the sharp drop in fill rates for orders of one round lot or less.

Table 5: Fill Rates by Retail Take Order Size									
Date	<= 100	101-300	301-500	501-1000	1001-2000	2001-4000	4001-7500	7500-15000	> 15000
Jan-17	98.45%	92.36%	83.80%	74.41%	54.47%	34.99%	24.07%	13.83%	7.57%
Feb-17	98.58%	92.59%	83.94%	75.32%	55.99%	36.72%	22.58%	13.85%	4.30%
Mar-17	98.42%	92.29%	84.10%	75.18%	55.72%	36.25%	23.76%	15.40%	4.13%
Apr-17	98.48%	92.97%	84.25%	74.49%	55.89%	35.96%	23.10%	15.63%	3.49%
May-17	98.37%	92.20%	82.09%	71.78%	51.99%	32.94%	21.92%	14.51%	5.39%
Jun-17	97.95%	90.43%	79.20%	66.75%	48.97%	30.82%	21.17%	15.40%	5.47%
Jul-17	98.43%	90.70%	78.40%	67.01%	46.21%	29.96%	22.18%	15.22%	6.54%
Aug-17	98.22%	89.85%	77.73%	63.86%	44.84%	27.81%	18.33%	11.47%	5.33%
Sep-17	95.86%	90.01%	79.95%	69.31%	50.46%	33.53%	21.84%	17.90%	7.70%
Oct-17	96.18%	91.31%	82.10%	71.63%	54.18%	36.50%	33.04%	23.00%	9.66%
Nov-17	95.68%	89.61%	80.07%	69.86%	53.12%	37.58%	33.70%	22.96%	11.62%
Dec-17	69.27%	57.54%	40.88%	41.32%	33.95%	26.90%	24.90%	21.66%	10.47%
Jan-18	63.42%	53.07%	40.04%	39.95%	32.52%	25.40%	22.89%	19.41%	10.72%
Feb-18	53.62%	49.73%	42.62%	44.36%	36.09%	27.23%	22.63%	16.92%	8.38%
Mar-18	50.29%	46.24%	40.83%	42.76%	35.49%	28.39%	25.05%	17.75%	9.37%
Apr-18	49.80%	46.74%	43.61%	44.47%	38.35%	32.78%	29.84%	19.85%	8.08%
May-18	51.89%	48.14%	45.21%	47.03%	39.69%	34.32%	30.70%	21.19%	10.37%
Jun-18	47.18%	43.88%	40.34%	42.80%	34.83%	30.15%	26.04%	16.72%	8.25%
Jul-18	46.53%	43.06%	39.98%	41.52%	33.62%	29.76%	27.27%	17.04%	8.78%
Aug-18	52.83%	47.20%	44.32%	46.29%	36.47%	31.39%	26.17%	16.27%	7.02%
Sep-18	50.43%	46.44%	43.18%	44.96%	34.76%	28.11%	23.68%	15.16%	6.99%
Oct-18	44.62%	41.89%	37.59%	38.37%	31.77%	27.35%	20.68%	13.67%	6.37%
Nov-18	43.53%	40.21%	35.66%	36.87%	29.87%	28.15%	21.88%	14.61%	6.60%
Dec-18	47.49%	44.75%	40.64%	39.80%	32.83%	29.25%	21.46%	15.32%	6.53%

Table 6 details the development of order sizes received in the Program over time. Program orders taking liquidity sent to the Exchange averaged around 1,000 shares for the Program's recent history, with median order size mostly around 400 shares. Liquidity providing orders tend to be smaller, and mostly average well below 1,000 shares, with the median below 200 shares most months. Since any firm can enter a liquidity providing order, there may be multiple providers offering liquidity inside the quote, allowing for high fill rates.

Table 6: Order Size Details				
	Provide Orders		Take Orders	
Date	Average	Median	Average	Median
Jan-17	666	300	1,628	250
Feb-17	669	300	2,252	266
Mar-17	685	300	2,204	240
Apr-17	657	300	1,993	200
May-17	649	400	1,642	200
Jun-17	645	300	1,650	200
Jul-17	628	300	1,368	200
Aug-17	613	300	1,430	200
Sep-17	641	300	1,040	162
Oct-17	784	400	804	100
Nov-17	1,083	400	863	100
Dec-17	1,258	300	764	122
Jan-18	1,325	400	749	120
Feb-18	1,069	400	801	133
Mar-18	1,257	400	743	133
Apr-18	1,237	400	669	102
May-18	1,402	400	726	133
Jun-18	1,252	400	667	106
Jul-18	1,267	400	648	100
Aug-18	1,220	400	706	100
Sep-18	1,209	400	842	133
Oct-18	1,040	400	809	150
Nov-18	1,075	400	772	166
Dec-18	1,000	500	906	166

Table 7: Market Share Frequency of Retail Orders				
	Daily Results		Two Year Aggregate	
Distribution	Count	Percentage	Count	Percentage
> 50%	273	0.0109%	0	0.0000%
25-50%	1,269	0.0505%	0	0.0000%
10-25%	7,231	0.2879%	0	0.0000%
5-10%	18,222	0.7255%	0	0.0000%
1-5%	137,490	5.4744%	220	3.6975%
0.75%-1%	38,384	1.5283%	190	3.1933%
0.50%-0.75%	57,841	2.3030%	462	7.7647%
0.25%-0.50%	101,872	4.0562%	1,116	18.7563%
0.10%-0.25%	128,039	5.0981%	1,345	22.6050%
0.05%-0.10%	80,623	3.2101%	893	15.0084%
0.01%-0.05%	115,705	4.6070%	1,079	18.1345%
<0.01%	1,824,574	72.6481%	645	10.8403%

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Table 7 shows that during the two most recent years, no security maintained more than 5% of total volume in the program, and nearly two-thirds of all securities that had executions in the program averaged less than 0.25% share of consolidated trading. The Exchange notes that these

statistics largely overstate the total size of the Program, since many securities rarely or never receive an order in the Program.

Although the Program provides the opportunity to achieve significant price improvement, the Program has not generated significant activity, relative to the overall market. The Program competes with wholesalers and similar programs offered by, among others, Cboe BYX Exchange, Inc. (''Cboe BYX''), and Nasdaq BX, the latter of which has been approved on a permanent basis.[62]

Difference in Differences Analysis

The Exchange also analyzed market quality and market share impact by using the difference in differences statistical technique. Difference in differences (''DID'') requires studying the differential effect of data measured between a treatment group and a control group. The two groups are measured during two or more different time periods, usually a period before ''treatment'' and at least one time period after ''treatment'', that is, a time period after which the treatment group is impacted but the control group is not. The assumption is that the control group and the treatment group are otherwise impacted equally by extraneous factors, *i.e.,* that the other impacts are parallel. For example, when measuring average quoted spreads, if spreads increase by ten basis points in the control group, and 12 basis points in the test group, the assumption would be that the two basis point differential was caused by the treatment.

Because all Tape B and Tape C securities (all securities not listed on the NYSE) are eligible to participate in the Program, a natural control group does not exist for the securities participating in the Program. Hence, there is a possibility that the lack of activity in the Program could have been the result of factors that DID cannot measure. Nonetheless, to produce a control group, the Exchange identified the 50 most active ticker securities in the Program as measured by share of consolidated volume following launch of the Program. The Exchange then determined a matched sample, without replacement, using consolidated volume, volume weighted average price, and consolidated quoted spread in basis points. The matched sample compared the 50 most active ticker securities in the Program with all securities that had very low Program volume. The matching criteria minimized the sum of the squares of the percent difference between the top 50 active ticker securities and potential matches. The best 25 matches were then selected.

The Exchange executed two DID analyses:

1. Six months prior to launch of the Program (November 2013–April 2014) compared to six months following launch, excluding the first month of the Program (June 2014–November 2014) for securities with a consolidated average daily volume (''CADV'') of at least 500,000 during the pre-treatment and treatment periods. Note that the program launched during April 2014, but there were only six retail taking orders entered during that month.

2. Six months prior to launch of the Program (November 2013–April 2014) compared to all of 2017 and 2018 for securities with a CADV of at least 500,000 during the pre-treatment and treatment periods.

Because there was no natural control group, the Exchange employed flexible matching criteria. In addition to the CADV restrictions, the Exchange utilized a control versus treatment CADV ratio of 3:1, a volume weighted average price (''VWAP'') of 2:1, and a spread of 2:1. The Exchange also required potential control group stocks to have a share of Program trading less than 1/10th of the lowest of the top 50 securities for the first trading period. The Exchange excluded securities that were in the test groups of the Tick Size Pilot Program[63] from consideration in matching securities for the DID analysis of the 2017–2018 period. Preferred stocks, warrants and rights were excluded from the DID analysis for both periods. Finally, because the Program is only valid for stocks trading at or above $1.00, any security with a low price during the pre-treatment or the treatment period below $1.00 was also excluded. Securities could not be listed on the NYSE during the pre-treatment period or during the treatment period.

The Exchange selected the top 25 securities by minimum differences as described above.

DID Results for Period Around Program Launch

As noted above, the Program launched in April 2014. Only six orders RMO orders were entered during the month. The Exchange selected November 2013–April 2014 to represent the pre-launch period. To allow for Program adoption, the Exchange excluded May 2014 and chose June 2014–November 2014 to represent the post-launch period. Tables 8A and 8B show key attributes for the securities selected for the first matched sample.

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[62] *See* note 17, *supra. See also* Securities Exchange Act Release No. 86742 (August 23, 2019), 84 FR 45575 (August 29, 2019) (SR–CboeBYX–2019–014) (filing to make permanent Cboe BYX Rule 11.24, which sets forth that exchange's pilot Retail Price Improvement Program).

[63] The Tick Size Pilot Program is a National Market System (''NMS'') plan designed to allow the Commission, market participants and the public to assess the impact of wider minimum quoting and trading increments—or tick sizes—on the liquidity and trading of the common stocks of certain small capitalization companies.

Table 8A: NYSE Arca Retail Program Matched Sample: Nov. 2013 - Apr. 2014 vs. June 2014 - Nov. 2014							
Treatment Symbol	Pre-period CADV	Pre-Period VWAP	Pre-period Spread	Control Symbol	Pre-period CADV	Pre-Period VWAP	Pre-period Spread
AGQ	1,004,732	$30.35	7.33	BPOP	916,093	$28.40	7.61
AMLP	3,007,338	$17.60	6.00	NWSA	3,357,486	$17.26	6.05
BKLN	2,614,350	$24.83	4.00	ZION	2,352,944	$30.03	3.99
CWB	572,853	$47.70	9.93	PRXL	629,762	$47.08	10.76
DEM	795,490	$48.96	6.18	EDZ	973,181	$44.80	6.43
DGAZ	12,319,303	$4.08	24.65	FTR	11,062,445	$5.00	20.30
FAS	4,451,848	$86.49	3.28	SNDK	3,947,492	$73.36	3.25
FAZ	5,541,906	$21.99	4.63	AGNC	5,745,540	$21.09	4.87
PFF	1,568,157	$38.08	3.02	MCHP	1,989,891	$44.81	3.22
PGX	812,806	$13.84	7.63	CEF	971,072	$13.96	7.76
QID	4,541,066	$46.15	4.02	NTAP	4,558,899	$39.63	2.96
SCZ	586,080	$51.07	6.92	MCHI	591,010	$46.08	6.72
SDS	10,691,086	$30.24	3.18	FOXA	12,377,657	$32.83	3.00
SLV	7,440,219	$19.47	5.01	FITB	7,800,571	$21.24	4.82
SPXL	1,782,496	$61.03	2.94	PCAR	1,777,451	$61.20	3.29
SPXS	2,170,222	$33.73	3.28	URBN	2,158,361	$36.88	3.89
SPXU	4,455,952	$39.97	3.98	MYL	4,942,669	$47.49	3.45
SQQQ	3,675,009	$44.98	4.28	STX	3,408,889	$52.77	3.98
SRTY	900,263	$29.47	6.88	GNTX	902,148	$30.97	7.19
TAN	616,372	$41.66	19.15	NXST	677,686	$42.86	17.83
TBT	3,386,397	$72.92	2.24	DTV	3,943,830	$71.61	2.51
TWM	2,032,802	$33.47	5.28	APOL	2,290,751	$29.99	5.48
TZA	15,400,733	$17.34	5.79	AMAT	12,540,915	$18.30	5.57
UGAZ	1,841,313	$23.73	16.05	ACAD	1,866,033	$23.89	15.37
UPRO	2,185,985	$92.31	2.90	INTU	1,844,913	$75.18	2.85

Table 8B: NYSE Arca Retail Program Matched Sample: Nov. 2013 - Apr. 2014 vs. June 2014 - Nov. 2014 Comparive Statistics							
Treatment Symbol	Pre-period TRF	Post-period TRF	RTO Share of CADV	Control Symbol	Pre-period TRF	Post-period TRF	RTO Share of CADV
AGQ	38.8%	39.9%	1.25%	BPOP	31.0%	38.9%	0.02%
AMLP	56.4%	52.9%	0.98%	NWSA	31.0%	32.0%	0.00%
BKLN	56.7%	54.5%	1.00%	ZION	31.8%	31.0%	0.00%
CWB	50.1%	56.4%	1.01%	PRXL	35.7%	29.8%	0.01%
DEM	54.6%	53.0%	1.16%	EDZ	16.2%	8.3%	0.08%
DGAZ	56.0%	54.6%	1.18%	FTR	48.0%	39.7%	0.02%
FAS	19.7%	21.3%	1.15%	SNDK	34.1%	32.8%	0.03%
FAZ	26.3%	28.7%	1.92%	AGNC	39.9%	40.1%	0.03%
PFF	59.5%	60.9%	1.64%	MCHP	39.9%	36.1%	0.02%
PGX	65.8%	69.3%	2.94%	CEF	45.6%	46.4%	0.08%
QID	28.6%	32.1%	2.91%	NTAP	30.6%	28.6%	0.02%
SCZ	58.2%	66.2%	1.21%	MCHI	39.2%	41.7%	0.03%
SDS	38.7%	42.4%	3.82%	FOXA	33.3%	35.7%	0.00%
SLV	35.3%	31.3%	0.91%	FITB	30.1%	32.2%	0.00%
SPXL	31.0%	33.9%	1.39%	PCAR	26.3%	27.8%	0.02%
SPXS	28.8%	33.4%	1.78%	URBN	34.0%	32.0%	0.01%
SPXU	34.2%	26.4%	1.28%	MYL	32.7%	34.9%	0.01%
SQQQ	25.8%	31.4%	1.16%	STX	30.0%	29.7%	0.01%
SRTY	23.5%	19.8%	0.88%	GNTX	31.8%	33.0%	0.04%
TAN	45.2%	46.3%	1.99%	NXST	38.0%	31.7%	0.01%
TBT	24.5%	27.3%	1.43%	DTV	29.3%	36.8%	0.01%
TWM	33.6%	22.5%	3.18%	APOL	31.1%	27.5%	0.01%
TZA	45.5%	41.1%	3.52%	AMAT	32.6%	31.1%	0.01%
UGAZ	47.6%	50.0%	1.40%	ACAD	33.9%	33.4%	0.02%
UPRO	29.5%	32.6%	1.41%	INTU	27.8%	26.1%	0.01%

For the period 2017–2018 matched sample, we excluded securities that were part of the Tick Size Pilot Program. Inclusion of those securities could have resulted in exogenous influences skewing the analyses.

Table 9A: NYSE Arca Retail Program Matched Sample: Nov. 2013 - Apr. 2014 vs. 2017 -2018							
Treatment Symbol	Pre-period CADV	Pre-Period VWAP	Pre-period Spread	Control Symbol	Pre-period CADV	Pre-Period VWAP	Pre-period Spread
AMLP	3,007,338	$17.60	6.00	NWSA	3,357,486	$17.26	6.05
CWB	572,853	$47.70	9.93	AZPN	517,518	$42.03	10.74
ERY	524,489	$20.52	7.41	ROIC	448,710	$14.81	9.01
FAS	4,451,848	$86.49	3.28	EWW	3,131,481	$63.93	3.32
FAZ	5,541,906	$21.99	4.63	EA	5,085,415	$25.51	4.31
FDN	510,853	$58.60	5.57	CTAS	591,467	$58.07	5.74
IAU	3,598,381	$12.28	8.03	ERIC	3,997,054	$12.43	8.01
PCY	694,303	$27.36	5.30	CPRT	667,005	$34.74	6.74
PGX	812,806	$13.84	7.63	PPC	807,418	$17.63	10.15
QID	4,541,066	$46.15	4.02	NTAP	4,558,899	$39.63	2.96
SCO	1,453,969	$31.80	3.46	NDAQ	1,565,999	$37.66	4.44
SDOW	829,547	$31.18	3.82	SEIC	732,007	$33.51	5.37
SDS	10,691,086	$30.24	3.18	FOXA	12,377,657	$32.83	3.00
SH	3,437,569	$25.51	4.00	GT	4,058,482	$24.76	4.46
SPXL	1,782,496	$61.03	2.94	CHRW	2,045,513	$55.89	3.17
SPXS	2,170,222	$33.73	3.28	URBN	2,158,361	$36.88	3.89
SPXU	4,455,952	$39.97	3.98	MYL	4,942,669	$47.49	3.45
SQQQ	3,675,009	$44.98	4.28	STX	3,408,889	$52.77	3.98
SRTY	900,263	$29.47	6.88	GNTX	902,148	$30.97	7.19
SVXY	1,026,925	$77.59	4.82	CHKP	1,036,819	$64.52	5.10
TQQQ	2,393,503	$72.25	2.93	BBBY	2,517,385	$68.83	2.84
TVIX	7,701,816	$7.79	13.18	WEN	7,961,985	$8.91	11.33
TWM	2,032,802	$33.47	5.28	LKQ	2,488,574	$28.39	5.39
UPRO	2,185,985	$92.31	2.90	INTU	1,844,913	$75.18	2.85
UVXY	6,793,121	$37.77	7.71	YNDX	4,751,282	$33.26	6.21

Table 9B: NYSE Arca Retail Program Matched Sample: Nov. 2013 - Apr. 2014 vs. 2017 - 2018 Comparive Statistics							
Treatment Symbol	Pre-period TRF	Post-period TRF	RTO Share of CADV	Control Symbol	Pre-period TRF	Post-period TRF	RTO Share of CADV
AMLP	56.4%	41.8%	0.98%	NWSA	31.0%	29.6%	0.00%
CWB	50.1%	58.3%	1.01%	AZPN	33.9%	31.5%	0.03%
ERY	25.1%	34.4%	0.57%	ROIC	35.2%	27.6%	0.01%
FAS	19.7%	31.1%	1.15%	EWW	21.1%	25.1%	0.08%
FAZ	26.3%	34.0%	1.92%	EA	33.7%	33.7%	0.00%
FDN	50.1%	53.1%	0.71%	CTAS	26.0%	27.3%	0.01%
IAU	51.3%	32.6%	0.43%	ERIC	36.7%	39.1%	0.00%
PCY	57.5%	50.3%	0.34%	CPRT	33.2%	33.3%	0.03%
PGX	65.8%	68.7%	2.94%	PPC	31.7%	30.5%	0.02%
QID	28.6%	37.8%	2.91%	NTAP	30.6%	30.4%	0.02%
SCO	25.5%	37.6%	0.25%	NDAQ	31.7%	27.4%	0.01%
SDOW	31.0%	36.3%	1.12%	SEIC	28.1%	29.0%	0.02%
SDS	38.7%	36.7%	3.82%	FOXA	33.3%	35.9%	0.00%
SH	51.2%	33.9%	0.78%	GT	34.8%	31.3%	0.01%
SPXL	31.0%	46.2%	1.39%	CHRW	33.8%	29.3%	0.02%
SPXS	28.8%	41.1%	1.78%	URBN	34.0%	32.9%	0.01%
SPXU	34.2%	41.4%	1.28%	MYL	32.7%	31.4%	0.01%
SQQQ	25.8%	42.3%	1.16%	STX	30.0%	33.5%	0.01%
SRTY	23.5%	23.4%	0.88%	GNTX	31.8%	30.9%	0.04%
SVXY	24.5%	29.1%	0.12%	CHKP	33.0%	30.3%	0.02%
TQQQ	31.3%	44.8%	0.27%	BBBY	30.9%	31.4%	0.02%
TVIX	42.7%	41.9%	0.75%	WEN	37.9%	37.3%	0.02%
TWM	33.6%	27.8%	3.18%	LKQ	37.2%	33.5%	0.03%
UPRO	29.5%	39.3%	1.41%	INTU	27.8%	29.7%	0.01%
UVXY	29.1%	39.6%	0.21%	YNDX	41.1%	35.8%	0.01%

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The Exchange's DID analysis utilized the 25 treated and 25 control securities noted above for the following statistics:

- Time-weighted NYSE Arca quoted spreads in basis points.
- Time-weighted NYSE Arca quoted spreads in dollars and cents.
- Time-weighted consolidated quoted spreads in basis points.
- Time-weighted consolidated quoted spreads in dollars and cents.
- Trade Reporting Facility (''TRF'') share of volume during regular trading hours, excluding auctions.
- TRF share of volume, full day, including auctions.
- NYSE Arca share of volume during regular trading hours, excluding auctions.
- NYSE Arca share of volume, full day, including auctions.
- Trade-to-trade price change in basis points.

The Exchange calculated the DID regression for each of these statistics using the following formula:

$$Y_{it} = B_0 + B_1T + B_2I + B_3IT$$

where T equals zero during the pre-period and equals one during the treatment period, and where I is the Intervention.

As Table 10 shows, only one statistic showed any significance, and that at the weak 90% level. NYSE Arca market share during regular hours trading, excluding auctions, increased during the early comparison period.

Table 10: DiD Results (Nov. 2013 - Apr. 2014 vs. June 2014 - Nov. 2014)		
Estimated Measure	Estimate	Standard Error
Time-weighted NYSE Arca Spread^	1.6170	3.1540
Time-weighted NYSE Arca $ Spread	0.0070	0.0126
Time-weighted Consolidated Spread^	0.7520	2.0306
Time-weightedConsolidated $ Spread	0.0015	0.0069
NYSE Arca Regular Hours Share, no auctions	0.0344 .	0.0190
NYSE Arca Full Day Share	0.0132	0.0191
TRF Regular Hours Share, no auctions	0.0304	0.0439
TRF Full Day Share	0.0198	0.0435
Trade-to-trade price change	0.0458	0.7037

^ - Spreads in basis points unless otherwise noted

Significance: *** = 99.9%, ** = 99%, * = 95%, . = 90%

Table 11: DiD Results (Nov. 2013 - Apr. 2014 vs.2017 - 2018)		
Estimated Measure	Estimate	Standard Error
Time-weighted NYSE Arca Spread^	-7.6190 .	4.2070
Time-weighted NYSE Arca $ Spread	-0.0476 *	0.2097
Time-weighted Consolidated Spread^	-1.6891	1.8845
Time-weightedConsolidated $ Spread	-0.0128 .	0.0077
NYSE Arca Regular Hours Share, no auctions	0.0834***	0.0179
NYSE Arca Full Day Share	0.0093	0.0209
TRF Regular Hours Share, no auctions	0.0243	0.0431
TRF Full Day Share	0.0144	0.0426
Trade-to-trade price change	-0.0915	2.5654

^ - Spreads in basis points unless otherwise noted

Significance: *** = 99.9%, ** = 99%, * = 95%, . = 90%

Table 12: Share of Volume Based on Daily VWAP*						
	<$5.00	$5-$10	$10-$25	$25-$50	$50-$100	. $100
TRF Share	52.23%	43.47%	38.98%	34.95%	34.29%	36.86%
NYSE Arca RLP % of CADV	0.14%	0.33%	0.26%	0.15%	0.14%	0.14%

* - Includes all Tape B and Tape C Symbols

Table 11 details results for the DID analysis comparing the pre-Program period during 2013–2014 with trading in 2017 and 2018. The DID regression shows, in all spread cases, that spreads, adjusted for control group versus treatment group, resulted in favorable spread changes. With a 90% confidence level, NYSE Arca basis point spreads fell relative to the treatment group and NYSE Arca dollar-spreads fell with 95% confidence levels. Consolidated spreads in basis points also fell according to the regression, but were not statistically significant. Dollar consolidated spreads did drop, but with a 90% confidence level. NYSE Arca regular hours share showed an increase in share at the 99.9% confidence level. This is not surprising since, as noted earlier, the Program achieved about 8% share of NYSE Arca trading during 2017. As discussed below, the more significant drops in dollar-based spreads were expected as the nature of our matching effort, resulting in the selection of stocks that saw price decreases, impacted the spread calculations, and also may have impacted the NYSE Arca regular hours share.

As Table 12 shows, lower priced stocks tend to more likely trade on the TRF as well as in the Program. Even with the large share increase in NYSE Arca, TRF share also rose, highlighting the impact of the out-of-sample matching criteria. As noted in the analysis of the NYSE Retail Program, the matching criteria used tends to focus on stocks with price drops, so the Exchange expected to see a fall in currency-based spreads.[64] Unlike the NYSE's experience, however, the price differences were more muted from this

[64] *See* Release No. 85160, 84 FR at 5768.

matching exercise, which allowed for a small regression-calculated drop in in basis points spreads as well. Average spreads in basis points did increase slightly, both for treatment and control securities, but the DID analysis resulted in a favorable regression for Treatment stocks compared to Control stocks. The impact of the matching criteria is still present. Dollar spreads for treatment stocks fell from $0.018 to $0.017 as VWAP dropped to $34.48 from $40.05. Control stock VWAPS rose to $4.25 from $38.32, resulting in dollar spreads rising to $0.030 from $0.019. Basis points spreads increased for control stocks (5.59 to 5.69) and for treatment stocks (5.70 versus 5.38), but the basis point increase was due to stocks being tick constrained as prices fell during the post-period. In any event, the regression implicated better performance for Treatment stocks than control group securities.

All Tape B and Tape C Exchange-traded securities were eligible to participate in the program when it launched in 2014. Because of this factor, there was not a true control group for the Exchange to employ in its DID analysis. Instead, for purposes of making the Program permanent, the Exchange created an artificial control group and treatment group by identifying a matched sample based on the securities with the highest share of consolidated volume in the Program and matching these securities based on volume weighted average price, time-weighted quoted spread and CADV during the pre-treatment period (subject to the criteria noted above). By necessity, however, the percentage of activity in the Program itself had to be based on the post-treatment period.

This methodology provided several insights and permitted the Exchange to offer a more thorough analysis of the Program's impact. However, the Exchange believes that selection of securities with the highest share of consolidated volume in the Program for the treatment group created a biased treatment group. Securities with lower prices tend to trade more actively in the TRF as well as in the Program (Table 12). The percentage value of on low-price stocks provides greater savings to investors. For example, $0.0010 price improvement per share for a $5.00 stock saves an investor $2.00 per $10,000 invested. The same per share price improvement on a $50 stock is worth just $0.20. Table 12 shows this relationship for the 2017–2018 treatment period used in the analysis for securities eligible for the Program.

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Table 13: Time-weighted Consolidated Spread and VWAP Comparison of 2013-2014 Sample								
Treatment Securities								
Symbol	Pre-VWAP	Post-VWAP	Pre-$ Spread	Post-$ Spread	Pre BP Spread	Post BP Spread	VWAP Pre/Post	BP Post/Pre
AGQ	$30.35	$56.48	$0.035	$0.095	7.33	18.08	0.5	2.5
AMLP	$17.60	$18.59	$0.010	$0.010	6.00	5.42	0.9	0.9
BKLN	$24.83	$24.52	$0.010	$0.010	4.00	4.01	1.0	1.0
CWB	$47.70	$49.36	$0.047	$0.046	9.93	9.21	1.0	0.9
DEM	$48.96	$49.62	$0.030	$0.033	6.18	6.52	1.0	1.1
DGAZ	$4.08	$3.65	$0.014	$0.010	24.65	26.72	1.1	1.1
FAS	$86.49	$101.73	$0.028	$0.051	3.28	4.95	0.9	1.5
FAZ	$21.99	$17.07	$0.010	$0.010	4.63	6.12	1.3	1.3
PFF	$38.08	$39.59	$0.011	$0.010	3.02	3.02	1.0	1.0
PGX	$13.84	$14.53	$0.011	$0.011	7.63	7.38	1.0	1.0
QID	$46.15	$46.74	$0.010	$0.010	4.02	2.06	1.0	0.5
SCZ	$51.07	$49.87	$0.035	$0.032	6.92	6.40	1.0	0.9
SDS	$30.24	$25.09	$0.010	$0.010	3.18	4.04	1.2	1.3
SLV	$19.47	$17.67	$0.010	$0.010	5.01	5.52	1.1	1.1
SPXL	$61.03	$76.50	$0.018	$0.023	2.94	3.05	0.8	1.0
SPXS	$33.73	$25.53	$0.011	$0.010	3.28	4.10	1.3	1.3
SPXU	$39.97	$46.23	$0.011	$0.010	3.98	2.21	0.9	0.6
SQQQ	$44.98	$38.20	$0.012	$0.010	4.28	2.83	1.2	0.7
SRTY	$29.47	$39.41	$0.017	$0.019	6.88	4.75	0.7	0.7
TAN	$41.66	$40.50	$0.077	$0.072	19.15	17.83	1.0	0.9
TBT	$72.92	$57.05	$0.016	$0.011	2.24	2.02	1.3	0.9
TWM	$33.47	$46.41	$0.013	$0.013	5.28	2.67	0.7	0.5
TZA	$17.34	$15.46	$0.010	$0.010	5.79	6.63	1.1	1.1
UGAZ	$23.73	$14.94	$0.040	$0.022	16.05	12.79	1.6	0.8
UPRO	$92.31	$115.12	$0.027	$0.038	2.90	3.25	0.8	1.1
Average	$38.86	$41.19	$0.021	$0.023	6.74	6.86	1.0	1.0
Control Securities								
Symbol	Pre-VWAP	Post-VWAP	Pre-$ Spread	Post-$ Spread	pre BP Spread	Post BP Spread	VWAP Pre/Post	BP Post/Pre
BPOP	$28.40	$31.76	$0.024	$0.022	7.61	7.76	0.9	1.0
NWSA	$17.26	$16.55	$0.010	$0.010	6.05	6.27	1.0	1.0
ZION	$30.03	$28.80	$0.011	$0.011	3.99	3.97	1.0	1.0
PRXL	$47.08	$56.70	$0.052	$0.052	10.76	9.12	0.8	0.8
EDZ	$44.80	$32.24	$0.015	$0.028	6.43	4.75	1.4	0.7
FTR	$5.00	$6.35	$0.010	$0.010	20.30	15.98	0.8	0.8
SNDK	$73.36	$95.64	$0.032	$0.024	3.25	3.34	0.8	1.0
AGNC	$21.09	$22.90	$0.010	$0.010	4.87	4.10	0.9	0.8
MCHP	$44.81	$44.73	$0.015	$0.014	3.22	3.39	1.0	1.1
CEF	$13.96	$12.77	$0.010	$0.011	7.76	7.71	1.1	1.0
NTAP	$39.63	$39.50	$0.011	$0.011	2.96	2.99	1.0	1.0
MCHI	$46.08	$48.83	$0.025	$0.031	6.72	5.13	0.9	0.8
FOXA	$32.83	$34.20	$0.010	$0.010	3.00	3.00	1.0	1.0

FITB	$21.24	$20.36	$0.010	$0.010	4.82	5.02	1.0	1.0
PCAR	$61.20	$62.22	$0.019	$0.020	3.29	2.98	1.0	0.9
URBN	$36.88	$34.03	$0.014	$0.014	3.89	3.94	1.1	1.0
MYL	$47.49	$49.86	$0.017	$0.016	3.45	3.44	1.0	1.0
STX	$52.77	$58.66	$0.021	$0.021	3.98	3.59	0.9	0.9
GNTX	$30.97	$29.82	$0.017	$0.022	7.19	5.59	1.0	0.8
NXST	$42.86	$45.91	$0.069	$0.080	17.83	15.20	0.9	0.9
DTV	$71.61	$85.54	$0.019	$0.018	2.51	2.23	0.8	0.9
APOL	$29.99	$27.94	$0.018	$0.016	5.48	6.38	1.1	1.2
AMAT	$18.30	$21.78	$0.010	$0.010	5.57	4.54	0.8	0.8
ACAD	$23.89	$24.65	$0.034	$0.036	15.37	13.98	1.0	0.9
INTU	$75.18	$83.85	$0.025	$0.022	2.85	2.98	0.9	1.0
Average	$38.27	$40.62	$0.020	$0.021	6.53	5.90	1.0	0.9

Table 14: Time-weighted Consolidated Spread and VWAP Comparison of 2017-2018 Sample

Treatment Securities								
Symbol	**Pre-VWAP**	**Post-VWAP**	**Pre-$ Spread**	**Post-$ Spread**	**Pre BP Spread**	**Post BP Spread**	**VWAP Pre/Post**	**BP Post/Pre**
AMLP	$17.60	$10.71	$0.010	$0.010	6.00	9.12	1.6	1.5
CWB	$47.70	$50.95	$0.047	$0.012	9.93	2.44	0.9	0.2
ERY	$20.52	$16.71	$0.015	$0.020	7.41	9.11	1.2	1.2
FAS	$86.49	$55.47	$0.028	$0.030	3.28	4.91	1.6	1.5
FAZ	$21.99	$13.65	$0.010	$0.010	4.63	7.84	1.6	1.7
FDN	$58.60	$118.02	$0.033	$0.054	5.57	4.71	0.5	0.8
IAU	$12.28	$12.17	$0.010	$0.010	8.03	8.26	1.0	1.0
PCY	$27.36	$28.22	$0.014	$0.010	5.30	3.63	1.0	0.7
PGX	$13.84	$14.56	$0.011	$0.010	7.63	6.87	1.0	0.9
QID	$46.15	$22.89	$0.010	$0.011	4.02	5.57	2.0	1.4
SCO	$31.80	$26.84	$0.011	$0.021	3.46	7.13	1.2	2.1
SDOW	$31.18	$19.29	$0.012	$0.010	3.82	4.79	1.6	1.3
SDS	$30.24	$30.91	$0.010	$0.010	3.18	3.91	1.0	1.2
SH	$25.51	$30.62	$0.010	$0.010	4.00	3.23	0.8	0.8
SPXL	$61.03	$45.88	$0.018	$0.017	2.94	3.31	1.3	1.1
SPXS	$33.73	$25.13	$0.011	$0.011	3.28	4.82	1.3	1.5
SPXU	$39.97	$18.67	$0.011	$0.011	3.98	6.19	2.1	1.6
SQQQ	$44.98	$17.33	$0.012	$0.010	4.28	5.19	2.6	1.2
SRTY	$29.47	$35.26	$0.017	$0.020	6.88	6.10	0.8	0.9
SVXY	$77.59	$52.11	$0.043	$0.030	4.82	4.88	1.5	1.0
TQQQ	$72.25	$83.70	$0.026	$0.033	2.93	3.25	0.9	1.1
TVIX	$7.79	$16.46	$0.010	$0.019	13.18	11.29	0.5	0.9
TWM	$33.47	$18.88	$0.013	$0.010	5.28	5.60	1.8	1.1
UPRO	$92.31	$79.16	$0.027	$0.028	2.90	2.89	1.2	1.0
UVXY	$37.77	$18.41	$0.039	$0.014	7.71	7.45	2.1	1.0
Average	$40.06	$34.48	$0.018	$0.017	5.38	5.70	1.3	1.1

Control Securities								
Symbol	Pre-VWAP	Post-VWAP	Pre-$ Spread	Post-$ Spread	pre BP Spread	Post BP Spread	VWAP Pre/Post	BP Post/Pre
NWSA	$17.26	$14.01	$0.010	$0.010	6.05	7.44	1.2	1.2
AZPN	$42.03	$75.83	$0.045	$0.079	10.74	10.15	0.6	0.9
ROIC	$14.81	$18.86	$0.013	$0.011	9.01	5.95	0.8	0.7
EWW	$63.93	$48.92	$0.021	$0.011	3.32	2.13	1.3	0.6
EA	$25.51	$110.31	$0.011	$0.048	4.31	4.30	0.2	1.0
CTAS	$58.07	$157.83	$0.033	$0.118	5.74	7.36	0.4	1.3
ERIC	$12.43	$7.16	$0.010	$0.010	8.01	14.47	1.7	1.8
CPRT	$34.74	$48.06	$0.024	$0.024	6.74	5.18	0.7	0.8
PPC	$17.63	$23.54	$0.018	$0.016	10.15	6.88	0.7	0.7
NTAP	$39.63	$56.64	$0.011	$0.022	2.96	3.77	0.7	1.3
NDAQ	$37.66	$79.77	$0.017	$0.039	4.44	4.81	0.5	1.1
SEIC	$33.51	$60.02	$0.018	$0.048	5.37	7.94	0.6	1.5
FOXA	$32.83	$36.96	$0.010	$0.010	3.00	3.01	0.9	1.0
GT	$24.76	$28.90	$0.011	$0.012	4.46	4.11	0.9	0.9
CHRW	$55.89	$81.93	$0.017	$0.040	3.17	4.79	0.7	1.5
URBN	$36.88	$30.01	$0.014	$0.019	3.89	6.08	1.2	1.6
MYL	$47.49	$37.66	$0.016	$0.014	3.45	3.73	1.3	1.1
STX	$52.77	$44.67	$0.021	$0.017	3.98	3.71	1.2	0.9
GNTX	$30.97	$21.06	$0.022	$0.011	7.19	5.19	1.5	0.7
CHKP	$64.52	$105.34	$0.033	$0.056	5.10	5.26	0.6	1.0
BBBY	$68.83	$22.70	$0.020	$0.012	2.84	5.18	3.0	1.8
WEN	$8.91	$16.04	$0.010	$0.010	11.33	6.56	0.6	0.6
LKQ	$28.39	$32.51	$0.016	$0.014	5.39	4.08	0.9	0.8
INTU	$75.18	$165.86	$0.022	$0.089	2.85	5.11	0.5	1.8
YNDX	$33.26	$31.71	$0.022	$0.016	6.21	5.17	1.0	0.8
Average	$38.32	$54.25	$0.019	$0.030	5.59	5.69	0.9	1.1

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Tables 13 and 14 provide details of the changes in VWAPs, dollar-based and basis points-based spreads for both the early comparison period and the late comparison period. As shown by the last two columns in Table 13, there was virtually no difference in spreads or VWAPs both pre- and post-treatment during the early comparison period. However, in the case of the treated 2017–2018 study, when compared to November 2013–April 2014 pre-treatment period, there was an average price increase in control securities of 42%, compared to a drop of 14% for the treated stocks. This resulted in a small drop in dollar spreads and an increase in spreads in basis points for the treated stocks, while control stocks saw a small increase in percentage spreads and a larger rise in dollar spreads. Additionally, several of the treatment securities had average spreads during the pre-period near $0.01, the minimum, meaning a price drop was reflected solely in the spreads calculated in basis points and these stocks were tick-constrained.

In conclusion, the Exchange believes that the Program was a positive experiment in attracting retail order flow to a public exchange. The order flow the Program attracted to the Exchange provided tangible price improvement to retail investors through a competitive pricing process unavailable in non-exchange venues. As such, despite the low volumes, the Exchange believes that the Program satisfied the twin goals of attracting retail order flow to the Exchange and allowing such order flow to receive potential price improvement. Moreover, the Exchange believes that the data collected during the Program supports the conclusion that the Program's overall impact on market quality and structure was not negative. Although the results of the Program highlight the substantial advantages that broker-dealers retain when managing the benefits of retail order flow, the Exchange believes that the level of price improvement guaranteed by the Program justifies making the Program permanent. The Exchange accordingly believes that the pilot Program's rules, as amended, should be made permanent.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that member organizations would have in complying with the proposed rule change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the

Act,[65] in general, and Section 6(b)(5) of the Act,[66] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposal is consistent with these principles because it seeks to make permanent a pilot and associated rule changes that were previously approved by the Commission as a pilot for which the Exchange has subsequently provided data and analysis to the Commission, and that this data and analysis, as well as the further analysis in this filing, shows that the Program has operated as intended and is consistent with the Act. The Exchange also believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. Furthermore, as noted, similar programs instituted by NYSE and Nasdaq BX have recently been approved by the Commission to operate on a permanent basis.[67] The Exchange believes that its analysis, as well as the analysis conducted by NYSE and Nasdaq BX in their proposals for permanent approval, show that retail price improvement programs do not negatively impact market structure, and can therefore provide benefits to retail investors without negatively impacting the broader market.

The Exchange also believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because making the Program permanent would attract retail order flow to a public exchange and allow such order flow to receive potential price improvement. The data provided by the Exchange to the Commission staff demonstrates that the Program provided tangible price improvement to retail investors through a competitive pricing process unavailable in non-exchange venues and otherwise had an insignificant impact on the marketplace. The Exchange believes that making the Program permanent would encourage the additional utilization of, and interaction with, the NYSE and provide retail customers with an additional venue for price discovery, liquidity, competitive quotes, and price improvement. For the same reasons, the Exchange believes that making the Program permanent would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market.

Additionally, the Exchange believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because the competition promoted by the Program facilitates the price discovery process and potentially generates additional investor interest in trading securities. Making the Program permanent will allow the Exchange to continue to provide the Program's benefits to retail investors on a permanent basis and maintain the improvements to public price discovery and the broader market structure. The data provided to the Commission demonstrates that the Program provided tangible price improvement and transparency to retail investors through a competitive pricing process.

For the reasons stated above, the Exchange believes that making the Program permanent would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market.

Finally, as described further below in the Exchange's statement regarding the burden on competition, the Exchange also believes that it is subject to significant competitive forces and it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors.

For all of these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that making the Program permanent would continue to promote competition for retail order flow among execution venues. The Exchange also believes that making the Program permanent will promote competition between execution venues operating their own retail liquidity programs, including competition between the Program and similar programs currently operated by NYSE and Nasdaq BX on a permanent basis pursuant to a recently approved rule changes. Such competition will lead to innovation within the marketplace, thereby increasing the quality of the national market system and allowing national securities exchanges to compete both with each other and with off-exchange venues for order flow. Such competition ultimately benefits investors, and in this case specifically retail investors by providing multiple potential trading venues for the execution of their order flow, consistent with the principles of Regulation NMS, which was premised on promoting fair competition among markets. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal, as modified by Amendment No.1, to make permanent the Retail Liquidity Program Pilot, Rule 7.44–E, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[68] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 6(b)(5)[69] and 6(b)(8)[70] of the Exchange Act. Section 6(b)(5) of the Exchange Act requires that the rules of a national securities exchange be designed, among other things, to promote just and

[65] 15 U.S.C. 78f(b).

[66] 15 U.S.C. 78f(b)(5).

[67] *See* note 17, *supra.* As also noted above, the Commission also recently approved a third exchange's retail liquidity program that had not been previously approved on a pilot basis. *See* note 18, *supra.*

[68] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[69] 15 U.S.C. 78f(b)(5).

[70] 15 U.S.C. 78f(b)(8).

equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Exchange Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

As noted above, the Commission approved the Program on a pilot basis to allow the Exchange and market participants to gain valuable practical experience with the Program during the pilot period, and to allow the Commission to determine whether modifications to the Program were necessary or appropriate prior to any Commission decision to approve the Program on a permanent basis.[71] As set forth in the RLP Approval Order, the Exchange agreed to provide the Commission with a significant amount of data to assist the Commission's evaluation of the Program prior to any permanent approval of the Program.[72] Specifically, the Exchange represented that it would ''produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.'' [73] The Commission expected the Exchange to monitor the scope and operation of the Program and study the data produced during that time with respect to such issues.[74]

Although the pilot period was originally scheduled to end on April 14, 2015, the Exchange filed to extend the operation of the pilot on several occasions.[75] The pilot is now set to expire on October 31, 2019, and the Exchange proposes to make the Program, Rule 7.44–E, permanent. In its proposal, as modified by Amendment No. 1, the Exchange provides data and analysis which it believes justifies permanent approval of the Program. More specifically, in both the Notice and Amendment No. 1, the Exchange provides data indicating that the Program has had low volume levels, but has provided tangible price improvement to retail investors while the Program's overall impact on market quality has not been negative.

To assess the Program's impact on market quality, the the Exchange undertook a DID stastical analysis. Using the methodology explained above, the Exchange produced DID analyses that the Commission believes are useful to assess the Program's impact on market quality, as measured by a variety of market quality statistics including: (1) Time-weighted NYSE Arca quoted spread in basis points; (2) time-weighted NYSE Arca quoted spread in dollars and cents; (3) time-weighted consolidated quoted spread in basis points; (4) time-weighted consolidated quoted spread in dollars and cents; (5) Trade Reporting Facilities (''TRF'') share of volume during regular trading hours, excluding auctions; (6) TRF share of volume, full day, including auctions; (7) NYSE Arca share of volume during regular trading hours, excluding auctions; (8) NYSE Arca share of volume, full day, including auctions; and (9) Trade-to-trade price changes in basis points. In its DID analyses, the Exchange studies stocks that had a CADV of at least 500,000 shares during both a pre-treatment period and a treatment period. For these stocks, the Exchange compares changes in market quality statistics between the pre-treatment period and treatment period for the treatment group and the control group stocks. The Exchange conducts this study using two different treatment periods: Examining market quality statistics for (i) the period November 2013–April 2013 compared to the period from June 2014–November 2014; and (ii) the period November 2013–April 2013, compared to the period 2017–2018.

During the first treatment period studied (June 2014–November 2014), the Exchange states that total price improvement provided to retail investors under the Program was $1.6 million. As shown in Table 10 above, for this period, the Exchange also finds that there were no statistically significant differences between treatment and control group stocks for changes in time-weighted NYSE Arca or time-weighted consolidated spreads.[76]

During the second treatment period studied (2017–2018), the Exchange states that total price improvement provided to retail investors under the Program was $6.2 million, with per share price improvement ranging from $0.0015 to $0.0055. With respect to the 2017–2018 treatment period, when comparing changes between the pre-treatment period and the 2017–2018 treatment period, the Exchange observes a slight increase in average spreads in basis points, both for the treatment and control securities, which could suggest a negative effect of the Program. The Exchange explains, however, that further analysis reveals that the treatment stocks for the 2017–2018 treatment period saw an average price increase in control securities of 42%, compared to an average drop of 14% for the treated stocks; the Exchange states that this resulted in small drop in dollar spreads and an increase in spreads in basis points for the treated stocks while the control stocks saw a small increase in percentage spreads and a larger rise in dollar spreads.

In Amendment No.1 the Exchange provides futher analysis regarding the above-mentioned increases in basis points spreads. The Exchange explains that while average spreads in basis points did increase slightly, the DID analysis resulted in a favorable regression for the treatment stocks compared to the control stocks. Referencing Table 14, the Exchange notes that dollar spreads for the treatment stocks fell from $0.018 to $0.017 as VWAP dropped to $34.48 from $40.05; control stock VWAPs rose to $4.25 from $38.32, which the Exchange believes caused dollar spreads to rise to $0.030 from $0.019. The Exchange further concludes that the

[71] *See* RLP Approval Order *supra* note 8, at 79529.

[72] *See* id.

[73] *See id.*

[74] *See id.*

[75] *See* Securities Exchange Act Release Nos. 87153 (September 30, 2019), 84 FR 53188 (October 4, 2019) (SR–NYSEArca–2019–67) (extending pilot to October 31, 2019); 86198 (June 26, 2019), 84 FR 31648 (July 2, 2019) (SR–NYSEArca–2019–45) (extending pilot to September 30, 2019); Securities Exchange Act Release No. 84773 (December 10, 2018), 83 FR 64419 (December 14, 2018) (SR–NYSEArca–2018–89) (extending pilot to June 30, 2019); Securities Exchange Act Release No. 83538 (June 28, 2018), 83 FR 31210 (July 3, 2018) (SR–NYSEArca–2018–46) (extending pilot to December 31, 2018); Securities Exchange Act Release No. 82289 (December 11, 2017), 82 FR 59677 (December 15, 2017) (SR–NYSEArca–2017–137) (extending pilot to June 30, 2018); Securities Exchange Act Release No. 80851 (June 2, 2017), 82 FR 26722 (June 8, 2017) (SR–NYSEArca–2017–63) (extending pilot to December 31, 2017); Securities Exchange Act Release No. 79495 (December 7, 2016), 81 FR 90033 (December 13, 2016) (SR–NYSEArca–2016–157) (extending pilot to June 30, 2017); Securities Exchange Act Release No. 78601 (August 17, 2016), 81 FR 57632 (August 23, 2016) (SR–NYSEArca–2016–113) (extending pilot to December 31, 2016) *as corrected by* Securities Exchange Act Release No. 78601 (August 17, 2016), 81 FR 63243 (September 14, 2016) (SR–NYSEArca–2016–113); Securities Exchange Act Release No. 77424 (March 23, 2016), 81 FR 17523 (March 29, 2016) (SR–NYSEArca–2016–47) (extending pilot to August 31, 2016); Securities Exchange Act Release No. 75994 (September 28, 2015), 80 FR 59834 (October 2, 2015) (SR–NYSEArca–2015–84) (extending pilot to March 31, 2016); and Securities Exchange Act Release No. 74572 (March 24, 2015), 80 FR 16705 (March 30, 2015) (SR–NYSEArca–2015–22) (extending pilot to September 30, 2015).

[76] The Exchange found that only one statistic—NYSE Arca Regular Hours Share, no auction—had a statistical significance; it showed that NYSE Arca market share increased during the treatment period.

increases in basis points spreads for the control stocks (5.59 to 5.69) and for the treatment stocks (5.70 versus 5.38) were due to stocks being tick constrained as prices fell during the treatment period. As such, the Exchange explains in Amendment No. 1 that the DID analysis shows better performance for treatment stocks than control group securities, in support of its conclusion that the Program has not had a negative impact on market quality.

After careful consideration, the Commission believes that the data and analyisis provided by the Exchange, including the results of the Exchange's DID analysis and additional analysis provided in Amendment No. 1, support the Exchange's conclusion that the Program provides tangible price improvement to retail investors on a regulated exchange venue and has not demonstrably caused harm to the broader market. Accordingly, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of this filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–63 and should be submitted on or before November 14, 2019.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. Amendment No. 1 supplements the proposal by providing additional data regarding retail price improvement provided by the Program and further analysis of the Program's impact on the broader market by expanding the Exchange's explanation of its DID analysis. Specifically, in Amendment No. 1, the Exchange represents that for the years 2017–2018, the Program provided retail investors with $6.2 million in price improvement. Additionally, as explained further in Section III above, the Exchange explains why despite slight increases in basis point spreads for the treatment group, the regression demonstrated in its DID analyses implicated better performance for treatment stocks than control group securities. Additionally, Amendment No. 1 provides two additional tables showing the time-weighted consolidated spreads and VWAP comparisons for the respective treatment and control securities from the years 2013–2014 and 2017–2018 samples. The additional information and analysis set forth in Amendment No. 1 assisted the Commission in evaluating the price improvement provided to retail investors by the Program and the Program's impact on the broader market. This in turn, enabled the Commission to determine that that permanent approval of the Program, Rule 7.44–E, is reasonably designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory, or impose an unnecessary or inappropriate burden on competition. Accordingly, pursuant to Section 19(b)(2) of the Exchange Act,[77] the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Limited Exemption from the Sub-Penny Rule

Pursuant to its authority under Rule 612(c) of Regulation NMS,[78] the Commission hereby grants the Exchange a limited exemption from the Sub-Penny Rule to operate the Program. For the reasons discussed below, the Commission determines that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.

When the Commission adopted the Sub-Penny Rule in 2005, the Commission identified a variety of problems caused by sub-pennies that the Sub-Penny Rule was designed to address:

- If investors' limit orders lose execution priority for a nominal amount, investors may over time decline to use them, thus depriving the markets of liquidity.
- When market participants can gain execution priority for a nominal amount, important customer protection rules such as exchange priority rules and the Manning Rule[79] could be undermined.
- Flickering quotations that can result from widespread sub-penny pricing could make it more difficult for broker-dealers to satisfy their best execution obligations and other regulatory responsibilities.
- Widespread sub-penny quoting could decrease market depth and lead to higher transaction costs.
- Decreasing depth at the inside could cause institutions to rely more on execution alternatives away from the exchanges, potentially increasing fragmentation in the securities markets.[80]

The Commission believes that the limited exemption granted today should continue to promote competition between exchanges and OTC market

[77] 15 U.S.C. 78s(b)(2).

[78] 17 CFR 242.612(c).

[79] *See* Financial Industry Regulatory Authority Rule 5320 (Prohibition Against Trading Ahead of Customer Orders).

[80] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

makers in a manner that is reasonably designed to minimize the problems that the Commission identified when adopting the Sub-Penny Rule. Under the Program, sub-penny prices will not be disseminated through the consolidated quotation data stream, which should avoid quote flickering and its reduced depth at the inside quotation.

Furthermore, the Commission does not believe that granting this limited exemption and approving the proposal would reduce incentives for market participants to display limit orders. As noted in the RLP Approval Order, the vast majority of marketable retail orders were internalized by OTC market makers that offered sub-penny executions,[81] and, as noted in Notice, the Program has attracted a small volume of overall retail market share. As a result, enabling the Exchange to continue to compete for retail order flow through the Program should not materially detract from the current incentives to display limit orders, while potentially resulting in greater order interaction and price improvement for marketable retail orders on a public national securities exchange. To the extent that the Program may raise Manning and best execution issues for broker-dealers, these issues are already presented by the existing practices of OTC market makers.

This permanent and limited exemption from the Sub-Penny Rule is limited solely to the operation of the Program by the Exchange. This exemption does *not* extend beyond the scope of Exchange Rule 7.44–E. In addition, this exemption is conditioned on the Exchange continuing to conduct the Program, in accordance with Exchange Rule 7.44–E and substantially as described in the Exchange's request for exemptive relief and the proposed rule change.[82] Any changes in Exchange Rule 7.44–E may cause the Commission to reconsider this exemption.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[83] that the proposed rule change (SR–NYSEArca–2019–63), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

It is further ordered that, pursuant to Rule 612(c) under Regulation NMS, that the Exchange shall be exempt from Rule 612(a) of Regulation NMS with respect to the operation of the Program as set forth in Exchange Rule 7.44–E as described herein.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[84]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23167 Filed 10–23–19; 8:45 am]

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[81] *See* RLP Approval Order, *supra* note 8, at 79529.

[82] *See supra* note 7.

[83] 15 U.S.C. 78s(b)(2).

[84] 17 CFR 200.30–3(a)(12) and 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87358; File No. SR–NASDAQ–2019–085]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Nasdaq Rule 11890

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Nasdaq Rule 11890, Clearly Erroneous Transactions six months, to the close of business on April 20, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 11890, Clearly Erroneous Transactions, to the close of business on April 20, 2020. This change is being proposed to allow the Exchange to further consider a permanent proposal for clearly erroneous execution reviews.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11890 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[3] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[4] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[5] These changes are currently

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NASDAQ–2010–076).

[4] *See* Securities Exchange Act Release No. 68819 (February 1, 2013), 78 FR 9438 (February 8, 2013) (SR–NASDAQ–2013–022).

[5] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NASDAQ–2014–044).

scheduled to operate for a pilot period that concludes on October 18, 2019.[6]

If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.[7] In such an event, the remaining sections of Rule 11890 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 11890.

The Exchange does not propose any additional changes to Rule 11890. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis after the current expiration date to allow the Exchange to continue to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of Rule 11890 for an additional six months should provide the Exchange, other national securities exchanges and FINRA additional time to consider further amendments to the clearly erroneous execution rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 11890 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended Clearly Erroneous Transactions rule should continue to be in effect on a pilot basis while the Exchange, other national securities exchanges and FINRA consider a permanent proposal for clearly erroneous execution reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange, other national securities exchanges and FINRA consider further amendments to these rules. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[6] *See* Securities Exchange Act Release No. 85603 (April 11, 2019), 84 FR 16064 (April 17, 2019) (SR–NASDAQ–2019–028).

[7] *See* notes 3–6, *supra.* The prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–085 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–085 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23159 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87359; File No. SR–BX–2019–037]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to BX Rule 11890

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 2019, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to BX Rule 11890, Clearly Erroneous Transactions six months, to the close of business on April 20, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 11890, Clearly Erroneous Transactions, to the close of business on April 20, 2020. This change is being proposed to allow the Exchange to further consider a permanent proposal for clearly erroneous execution reviews.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11890 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[3] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[4] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[5] These changes are currently scheduled to operate for a pilot period that concludes on October 18, 2019.[6]

If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) shall be in effect, and the

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–BX–2010–040).

[4] *See* Securities Exchange Act Release No. 68818 (February 1, 2013), 78 FR 9100 (February 7, 2013) (SR–BX–2013–010).

[5] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–BX–2014–021).

[6] *See* Securities Exchange Act Release No. 85613 (April 11, 2019), 84 FR 16077 (April 17, 2019) (SR–BX–2019–009).

provisions of paragraphs (g) through (i) shall be null and void.[7] In such an event, the remaining sections of Rule 11890 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 11890.

The Exchange does not propose any additional changes to Rule 11890. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis after the current expiration date to allow the Exchange to continue to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of Rule 11890 for an additional six months should provide the Exchange, other national securities exchanges and FINRA additional time to consider further amendments to the clearly erroneous execution rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 11890 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended Clearly Erroneous Transactions rule should continue to be in effect on a pilot basis while the Exchange, other national securities exchanges and FINRA consider a permanent proposal for clearly erroneous execution reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange, other national securities exchanges and FINRA consider further amendments to these rules. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2019–037 on the subject line.

[7] *See* notes 3—6, *supra*. The prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2019–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2019–037 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23158 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87356; File No. SR–Phlx–2019–44]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Phlx Rule 3312

October 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Phlx Rule 3312, Clearly Erroneous Transactions six months, to the close of business on April 20, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 3312, Clearly Erroneous Transactions, to the close of business on April 20, 2020. This change is being proposed to allow the Exchange to further consider a permanent proposal for clearly erroneous execution reviews.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 3312 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[3] Following this, on September 30, 2010, the Exchange adopted changes to conform its Rule 3312 to Nasdaq's and BX's rules 11890.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6] These changes are currently

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NASDAQ–2010–076).

[4] *See* Securities Exchange Act Release No. 63023 (September 30, 2010), 75 FR 61802 (October 6, 2010) (SR–Phlx–2010–125).

[5] *See* Securities Exchange Act Release No. 68820 (February 1, 2013), 78 FR 9436 (February 8, 2013) (SR–Phlx–2013–12).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–Phlx–2014–27).

scheduled to operate for a pilot period that concludes on October 18, 2019.[7]

If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.[8] In such an event, the remaining sections of Rule 3312 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 3312.

The Exchange does not propose any additional changes to Rule 3312. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis after the current expiration date to allow the Exchange to continue to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of Rule 3312 for an additional six months should provide the Exchange, other national securities exchanges and FINRA additional time to consider further amendments to the clearly erroneous execution rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[9] in general, and Section 6(b)(5) of the Act,[10] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 3312 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended Clearly Erroneous Transactions rule should continue to be in effect on a pilot basis while the Exchange, other national securities exchanges and FINRA consider a permanent proposal for clearly erroneous execution reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange, other national securities exchanges and FINRA consider further amendments to these rules. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[7] *See* Securities Exchange Act Release No. 85632 (April 11, 2019), 84 FR 16057 (April 17, 2019) (SR–Phlx–2019–14).

[8] *See* notes 3–7, *supra.* The prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2019–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–44 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23161 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87362; File No. SR–PEARL–2019–32]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors, Interpretation and Policy .01, and Exchange Rule 530, Limit Up-Limit Down

October 18, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2019, MIAX PEARL, LLC (''MIAX PEARL'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors, Interpretation and Policy .01, and Exchange Rule 530, Limit Up-Limit Down, to make permanent certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make permanent certain options market rules in connection with the equity market Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan''). This change is being proposed in connection with the recently approved amendment to the Limit Up-Limit Down Plan that allows the Plan to continue to operate on a permanent basis (''Amendment 18'').[3]

In an attempt to address extraordinary market volatility in NMS Stock, and, in particular, events like the severe volatility on May 6, 2010, U.S. national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Act.[4] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[5] Though the Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Exchange Rule 521, Interpretation and Policy .01, and Exchange Rule 530, to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rules on a pilot basis that has coincided with the pilot period for the Plan (collectively, the ''Options Pilots'').[6] Exchange Rule 530 essentially serves as a roadmap for the Exchange's universal changes due to the implementation of the Plan and provides for trading halts whenever a market-wide trading halt is initiated due to extraordinary market conditions pursuant to the Plan. Exchange Rule 521, Interpretation and Policy .01, provides that transactions executed during a limit or straddle state are not subject to the obvious and catastrophic error rules. A limit or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[4] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011)(File No. 4–631).

[5] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[6] *See* Securities Exchange Act Release Nos. 81324 (August 7, 2017), 82 FR 37618 (August 11, 2017) (SR–PEARL–2017–33); 85571 (April 9, 2019), 84 FR 15263 (April 15, 2019)(SR–PEARL–2019–14).

straddle state occurs when at least one side of the National Best Bid (''NBB'') or Offer (''NBO'') bid/ask is priced at a non-tradable level. Specifically, a straddle state exists when the NBB is below the lower price band while the NBO is inside the price band or when the NBO is above the upper price band and the NBB is within the band, while a limit state occurs when the NBO equals the lower price band (without crossing the NBB), or the NBB equals the upper price band (without crossing the NBO).

The Exchange adopted the Options Pilots to protect investors because when an underlying security is in a limit or straddle state, there will not be a reliable price for the security to serve as a benchmark for the price of the option. Specifically, the Exchange adopted Exchange Rule 521, Interpretation and Policy .01, because the application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during limit and straddle states. When adjusting or busting a trade pursuant to the obvious error rule, the determination of theoretical value of a trade generally references the NBB (for erroneous sell transactions) or NBO (for erroneous buy transactions) just prior to the trade in question, and is therefore not reliable when at least one side of the NBBO is priced at a non-tradeable level, as is the case in limit and straddle states. In such a situation, determining theoretical value may often times be a very subjective rather than an objective determination and could give rise to additional uncertainty and confusion for investors. As a result, application of the obvious and catastrophic error rules would be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and may produce undesirable effects or unanticipated consequences.

The Exchange adopted additional measures via other Options Pilot rules that are designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders [7] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Furthermore, the Exchange believes that eliminating the application of obvious error rules during a limit or straddle state eliminates the re-evaluation of a transaction executed during such a state that could potentially create an unreasonable adverse selection opportunity due to lack of a reliable reference price on one side of the market or another and discourage participants from providing liquidity during limit and straddle states, which is contrary to the goal in limiting participants' adverse selection with the application of the obvious error rule during normal trading states. For these reasons, the Exchange believes the Options Pilots are designed to add certainty on the options markets, which encourages more investors to participate in light of the changes associated with the Plan. The Plan was originally implemented on a pilot-basis in order to allow the public, the participating exchanges, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis. As stated, the Exchange adopted the Option Pilots to coincide with this pilot; to continue the protections therein while the industry gains further experience operating the Plan.

In connection with the order approving the establishment of the obvious error pilot, as well as the extensions of the obvious error pilot, the Exchange committed to submit monthly data regarding the program and to submit an overall analysis of the obvious error pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission. Pursuant to the Exchange's Form 1 Application for approval as a national securities exchange, approved by the Commission on December 13, 2016, each month since February of 2017, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.[8] The Exchange has continued to provide the Commission with this data on a monthly basis since February 2017. For each trade on the Exchange, the Exchange provides (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state. In addition, to help evaluate the impact of the pilot program, the Exchange has provided to the Commission, and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. The Exchange has concluded that the Options Pilots do not negatively impact market quality during normal market conditions,[9] and that there has been insufficient data to assess whether a lack of obvious error rules is problematic, however, the Exchange believes the continuation of Exchange Rule 521, Interpretation and Policy .01 functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets.

The Commission recently approved the Plan on a permanent basis (Amendment 18).[10] In connection with this approval, the Exchange now proposes to amend Exchange Rule 521, Interpretation and Policy .01, and Exchange Rule 530 that currently implement the provisions of the Plan on a pilot basis to eliminate the pilot basis, which effectiveness expires on October 18, 2019, and to make such rules permanent. In its approval order to make the Plan permanent, the Commission recognized that, as a result of the Participants' and industry analysis of the Plan's operation, the

[7] This includes rules in connection with special handling for market orders, market-on-close orders, stop orders, and stock-option orders, as well as for certain electronic order handling features in a Limit Up-Limit Down state, the obvious error rules, and providing that the Exchange will not require Market-Makers to quote in series of options when the underlying security is in a Limit Up-Limit Down state.

[8] *See* Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016)(In the Matter of the Application of MIAX PEARL, LLC for Registration as a National Securities Exchange); *see also* MIAX PEARL Form 1 Application, Exhibit E, Section E; MIAX PEARL, LULD Pilot Reports, available at *https://www.miaxoptions.com/pilot-reports.*

[9] *See also* MIAX PEARL, LULD Pilot Reports, available at *https://www.miaxoptions.com/pilot-reports.* During the most recent Review Period the Exchange did not receive any obvious error review requests for Limit-Up-Limit Down trades, and Limit Up-Limit Down trade volume accounted for nominal overall trade volume.

[10] *See supra* note 3.

Limit Up-Limit Down mechanism effectively addresses extraordinary market volatility. Indeed, the Plan benefits markets and market participants by helping to ensure orderly markets, but also, the Exchange believes, based on the data made available to the public and the Commission during the pilot period, that the obvious error pilot does not negatively impact market quality during normal market conditions.[11] Rather, the Exchange believes the obvious error pilot functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. The Exchange also believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders [12] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. This removes impediments to and perfects the mechanism of a free and open market and national market system by encouraging more investors to participate in light of the changes associated with the Plan. The Exchange believes that if approved on a permanent basis, the Options Pilots would permanently provide investors with the above-described additional certainty of market prices and mitigation of unanticipated consequences and unreasonable adverse selection risk during limit and straddle states.

The Exchange understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs. Since the Commission's approval of Amendment 18 allowing the Plan to operate on a permanent basis, the Exchange and other national securities exchanges have determined that no further amendments should be made to the Options Pilots; [13] the current Options Pilots effectively address extraordinary market volatility, are reasonably designed to comply with the requirements of the Plan, facilitate compliance with the Plan and should now operate on a permanent basis, consistent with the Plan. The Exchange does not propose any substantive or additional changes to Exchange Rule 521, Interpretation and Policy .01, or Exchange Rule 530.

The Exchange also proposes to amend Exchange Rule 530 to remove the following sentence from the first paragraph: ''The Exchange will provide the Commission with data and analysis during the duration of this pilot as requested.'' The purpose of this proposed change is to further align the Exchange's Limit Up-Limit Down rules with competing options exchanges that have proposed rules consistent with this proposal. For example, Cboe Exchange, Inc. (''Cboe'') removed a similar provision in a 2015 rule filing [14] and continued to provide the Commission, and the public, each month with a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.

Additionally, the proposed changes would align the Exchange's rules with the similar rule by Cboe.[15]

2. Statutory Basis

MIAX PEARL believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule changes support the objectives of perfecting the mechanism of a free and open market and the national market system because they promote transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. The Exchange believes that eliminating the pilot basis for the Options Pilots and making such rules permanent facilitates compliance with the Plan by adding certainty to the markets during periods of market volatility, which has been approved and found by the Commission to be reasonably designed to prevent potentially harmful price volatility in NMS Stocks. It has been determined by the Commission that the Plan benefits markets and market participants by helping to ensure orderly markets, and, based on the data made available to the public and the Commission during the pilot period for Exchange Rule 521, Interpretation and Policy .01, the Plan does not negatively impact options market quality during normal market conditions. Rather, the Plan, as it is implemented under the obvious error pilot, functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. During a limit or straddle state, determining theoretical value of an option may be a subjective rather than an objective determination given the lack of a reliable NBBO, which may create an unreasonable adverse selection opportunity and discourage participants from providing liquidity during limit and straddle states. Therefore, the Exchange believes eliminating obvious error review in such states would, in turn, eliminate uncertainty and confusion for investors and benefit investors by encouraging more participation in light of the changes associated with the Plan. As stated, the Exchange believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject market orders and not elect stop orders [19] during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Accordingly, the Exchange believes that making the Options Pilots permanent will further the goals of investor protection and fair and orderly

[11] *See supra* note 9.

[12] *See supra* note 7.

[13] *See* Securities Exchange Act Release No. 85571 (April 9, 2019), 84 FR 15263 (April 15, 2019) (SR–PEARL–2019–14).

[14] *See* Securities Exchange Act Release No. 74898 (May 7, 2015), 80 FR 27354 (May 13, 2015 (SR–CBOE–2015–039) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Nullification and Adjustment of Options Transactions Including Obvious Errors).

[15] *See* Securities Exchange Act Release No. 87311 (October 15, 2019)(SR–CBOE–2019–049) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Make Permanent Certain Options Market Rules That Are Linked to the Equity Market Plan to Address Extraordinary Market Volatility).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *See supra* note 7.

markets as the rules effectively address extraordinary market volatility pursuant to the Plan.

Further, the Exchange believes that the proposed rule change to remove text in the first paragraph of Exchange Rule 530 regarding the Exchange providing the Commission with data and analysis during the duration of the pilot as requested supports the objectives of perfecting the mechanism of a free and open market and the national market system because it furthers aligns the Exchange's Limit Up-Limit Down rules with competing options exchanges.[20]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is necessary to reflect that the Plan no longer operates as a pilot and has been approved to operate on a permanent basis by the Commission. As such, Exchange Rule 521, Interpretation and Policy .01 and Exchange Rule 530, which implement protections in connection with the Plan, should be amended to operate on a permanent basis. The Exchange understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and subparagraph (f)(6) of Rule 19b–4 thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[24] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current Options Pilots to continue on a permanent basis without any changes, prior to the pilot expiration on October 18, 2019. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–PEARL–2019–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2019–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2019–32 and should be submitted on or before November 14,2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23155 Filed 10–23–19; 8:45 am]

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[20] *See supra* note 14.

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87354; File No. SR–NYSEAMER–2019–44]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10E

October 18, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 16, 2019, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on April 20, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on April 20, 2020. The pilot program is currently due to expire on October 18, 2019.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Rule 7.10E to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10]

The Exchange now proposes to amend Rule 7.10E to extend the pilot's effectiveness for a further six months until the close of business on April 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[11] In such an event, the remaining sections of Rule 7.10E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10E.

The Exchange does not propose any additional changes to Rule 7.10E. Extending the effectiveness of Rule 7.10E for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10E for an additional six months

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEAmer-2010–60).

[5] *See* Securities Exchange Act Release No. 68801 (Feb. 1, 2013), 78 FR 8630 (Feb. 6, 2013) (SR–NYSEMKT–2013–11).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSEMKT–2014–37).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71820 (March 27, 2014), 79 FR 18595 (April 2, 2014) (SR–NYSEMKT–2014–28).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85563 (April 9, 2019), 84 FR 15241 (April 15, 2019) (SR–NYSEAMER–2019–11).

[11] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2019–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2019–44 and should be submitted on or before November 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23163 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16135 and #16136; Mississippi Disaster Number MS–00110]

Presidential Declaration Amendment of a Major Disaster for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of MISSISSIPPI (FEMA–4429–DR), dated 09/20/2019.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 02/22/2019 through 08/23/2019.

DATES: Issued on 10/16/2019.

Physical Loan Application Deadline Date: 11/19/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 06/22/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of MISSISSIPPI, dated 09/20/2019, is hereby amended to re-establish the incident period for this disaster as beginning 02/22/2019 and continuing through 08/23/2019.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–23194 Filed 10–23–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before December 23, 2019.

ADDRESSES: Send all comments to Mary Frias, Loan Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Frias, Loan Specialist, Office of Financial Assistance, *mary.frias@sba.gov,* 202–401–8234, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: This information collection consists of SBA Form 2233 and SBA Form 2234, Parts A, B, and C. A statutory change on December 22, 2015 in the Consolidated Appropriations Act, 2016, made debt refinance a permanent part of the 504 loan program. Slight revisions to the currently approved forms are required to reinstate the debt refinance program requirements that were previously removed due to the expiration of the authority for that program in 2012.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: PCLP Quarterly Loan Loss Reserve Report and PCLP Guarantee Request.

Description of Respondents: Small Business Lending Companies.

Form Numbers: SBA Form 2233, 2234A, 2234B, 2234C.

Total Estimated Annual Responses: 20.

Total Estimated Annual Hour Burden: 30.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–23202 Filed 10–23–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

AGENCY: Small Business Administration.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before December 23, 2019.

ADDRESSES: Send all comments to Cynthia Pitts, Director, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Director, Office of Disaster Assistance, Disaster Assistance, *Cynthia.pitts@sba.gov* 202–205–7570, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration Form 700 provides a record of interviews conducted by SBA personnel with small business owners, homeowners and renters (disaster victims) who seek financial assistance to help in the recovery from physical or economic disasters. The basic information collected helps the Agency to make preliminary eligibility assessment.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Disaster Home/Business Loan Inquiry Record.

Description of Respondents: Disaster Recovery Victims.

Form Number: SBA Form 700.

Total Estimated Annual Responses: 46,638.

Total Estimated Annual Hour Burden: 11,660.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–23199 Filed 10–23–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15944 and #15945; Mississippi Disaster Number MS–00111]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4429–DR), dated 04/23/2019.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 02/22/2019 through 08/23/2019.

DATES: Issued on 10/16/2019.

Physical Loan Application Deadline Date: 06/24/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 01/23/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Mississippi, dated 04/23/2019, is hereby amended to re-establish the incident period for this disaster as beginning 02/22/2019 and continuing through 08/23/2019.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–23193 Filed 10–23–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 10932]

60-Day Notice of Proposed Information Collection: Public Charge Questionnaire

ACTION: Notice of request for public comment.

SUMMARY: The Department of State (''Department'') is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to December 23, 2019.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2019–0037'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to Megan Herndon, who may be reached over telephone at (202) 485–7586 or email at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Public Charge Questionnaire.
- *OMB Control Number:* New Collection.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO).
- *Form Number:* DS–5540.
- *Respondents:* Immigrant visa applicants, including diversity visa applicants, and certain nonimmigrant visa applicants.
- *Estimated Number of Respondents:* 450,500.
- *Estimated Number of Responses:* 450,500.
- *Average Time per Response:* 60 minutes (10 minutes for applicants completing only questions 4 and 4A, estimated to be 500 of the 450,500 total applicants).
- *Total Estimated Burden Time:* 450,084 hours.
- *Frequency:* Once per respondent's application.
- *Obligation to respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments that assist the Department in:

- Evaluating whether the proposed information collection is necessary for the proper functions of the Department;
- Evaluating the accuracy of our estimate of the time and cost burden of this proposed collection, including the validity of the methodology and assumptions used;
- Enhancing the quality, utility, and clarity of the information to be collected; and,
- Minimizing the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Department seeks to better ensure that aliens subject to the public charge inadmissibility ground are self-sufficient and will not rely on public resources to meet their needs, but rather, will rely on their own capabilities, as well as the resources of sponsors. Through the DS–5540, the Department will collect information in a standardized format regarding applicants' ability to financially support themselves following entry into the United States, without depending on government assistance. Fields primarily pertain to the applicant's health, family status, assets, resources, financial status, education, skills, health insurance coverage, and tax history. The DS–5540 would also require applicants to provide information on whether they have received certain specified public benefits from a U.S. Federal, state, local or tribal government entity on or after October 15, 2019. Consular officers will use the completed forms in assessing whether an applicant is likely to become a public charge, and is thus ineligible for a visa under section 212(a)(4)(A) of the Immigration and Nationality Act (''INA''). This collection is consistent with the burden of proof on applicants

under section 291 of the INA to establish that they are eligible to receive a visa, including that they are not inadmissible under any provision of the INA.

Sponsors of immigrant visa applicants must currently provide information regarding their ability to financially support the applicant on an I–864, Affidavit of Support, which consular officers use in considering whether the applicant is likely to depend on certain forms of government assistance. Visa applicants provide limited optional input on the I–864 regarding their assets. The DS–5540 will be used to collect more detailed information on an applicant's ability to support himself or herself. Consular officers will use the information to assess whether the applicant is likely to become a public charge, based on the totality of the circumstances.

Applicants for immigrant visas, including diversity visas, will be required to complete the DS–5540, except for categories of applicants that are exempt from the public charge ground of inadmissibility. The exempted categories are listed in 8 CFR 212.23(a). Exempted categories include applicants seeking immigrant visas based on qualified service to the U.S. government as an interpreter in Afghanistan or Iraq, visas based on a self-petition under the Violence Against Women Act, and visas for special immigrant juveniles. Additionally, a consular officer has discretion to require a nonimmigrant visa applicant to complete the DS–5540, when the officer determines the information is needed, for example, if the officer is not satisfied, based on other available information, that the applicant would be self-sufficient during his or her period of stay. A consular officer may also request any immigrant visa applicant not subject to public charge, but subject to *The Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System* (Oct. 4, 2019), to complete questions 4 and 4A from Form DS–5540 to establish that the applicant will be covered by an approved health insurance plan within 30 days of entry into the United States, or that the applicant possesses sufficient financial resources to cover reasonably foreseeable medical costs.

Methodology

The DS–5540 will be available online in fillable PDF format. Immigrant visa applicants will download the completed form and then upload and submit the completed DS–5540 and other supporting documentation as a part of their immigrant visa application through the Consular Electronic Application Center (CEAC). Nonimmigrant visa applicants who are required to submit this form will be able to do so via email or in hard copy.

Carl C. Risch,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2019–23219 Filed 10–23–19; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 10931]

Notice of Determinations: Culturally Significant Object Imported for Exhibition—Determinations: "Raphael and the Pope's Librarian" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object to be exhibited in the exhibition ''Raphael and the Pope's Librarian'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Isabella Stewart Gardner Museum, Boston, Massachusetts, from on or about October 31, 2019, until on or about January 30, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–23218 Filed 10–23–19; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 33 (Sub–No. 342X)]

Union Pacific Railroad Company and Jackson County, Mo.—Abandonment Exemption—in Jackson County, Mo.

On October 4, 2019, Union Pacific Railroad Company (UP) and Jackson County, Mo. (the County) (collectively, Petitioners), jointly filed with the Board a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon the railroad line extending between milepost 288.3 and milepost 270.6 in Jackson County, Mo. (the Line). The Line traverses U.S. Postal Service Zip Codes 64063, 64081, 64082, 64086, 64129, 64133, 64138, and 64139.

According to Petitioners, based on information in their possession, the Line does not contain federally granted rights-of-way. Petitioners further state that any documentation in the County's or UP's possession will be made available promptly to those requesting it.

In 2016, the County received authority through the Board's class exemption process at 49 CFR 1150.31 to acquire from UP and operate the Line. Recently, however, the Board revoked the County's acquisition and operation exemption. *See Jackson Cty., Mo.—Acquis. & Operation Exemption—Union Pac. R.R.,* FD 35982 (STB served July 31, 2019). Petitioners state that, in light of that decision, to avoid doubt on how to proceed, they jointly seek an exemption to abandon the Line. Petitioners state that there are no shippers on the Line and that there has not been any rail traffic on the Line in more than 20 years.

The County and UP indicate that they intend to enter into an interim trail use/rail banking agreement pursuant to the National Trails System Act, 16 U.S.C. 1247(d). If a NITU [1] is issued, the County anticipates salvaging track and track materials.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final

[1] Although the County and UP indicate that the County will seek issuance of a certificate of interim trail use or abandonment (CITU) (Pet. 8), the Board issues CITUs in abandonment application proceedings and notices of interim trail use or abandonment (NITUs) in abandonment exemption proceedings.

decision will be issued by January 22, 2020.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner. Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by November 4, 2019, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminary financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

Following authorization for abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for interim trail use/rail banking under 49 CFR 1152.29 will be due no later than November 13, 2019.[2]

All pleadings, referring to Docket No. AB 33 (Sub–No. 342X), must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on UP's representative, Jeremy M. Berman, Union Pacific Railroad Company, 1400 Douglas St., Stop 1580, Omaha, NE 68179, and the County's representative, Carolyn G. Kraska, Hogan Lovells US LLP, 555 13th St. NW, Washington, DC 20004. Replies to the petition are due on or before November 13, 2019.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available at *www.stb.gov.*

Decided: October 18, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2019–23203 Filed 10–23–19; 8:45 am]

BILLING CODE 4915–01–P

[2] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

SURFACE TRANSPORTATION BOARD

[Docket No. EP 670 (Sub–No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to the Federal Advisory Committee Act.

DATES: The meeting will be held on Thursday, November 14, 2019, at 8:00 a.m. C.S.T.

ADDRESSES: The meeting will be held at the Paducah & Louisville Railway headquarters at 200 Clark Street, Paducah, KY 42003.

FOR FURTHER INFORMATION CONTACT: Kristen Nunnally at (202) 245–0312 or *Kristen.Nunnally@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: RETAC was formed in 2007 to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues related to the transportation of energy resources by rail, including coal, ethanol, and other biofuels. *Establishment of a Rail Energy Transp. Advisory Comm.,* EP 670 (STB served July 17, 2007). The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items for this meeting include a performance measures review, industry segment updates by RETAC members, and a roundtable discussion.

The meeting, which is open to the public, will be conducted in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2; Federal Advisory Committee Management regulations, 41 CFR pt. 102–3; RETAC's charter; and Board procedures. Further communications about this meeting may be announced through the Board's website at *www.stb.gov.*

Written Comments: Members of the public may submit written comments to RETAC at any time. Comments should be addressed to RETAC, c/o Kristen Nunnally, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001 or *Kristen.Nunnally@stb.gov.*

Authority: 49 U.S.C. 1321, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: October 18, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2019–23207 Filed 10–23–19; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2019–0005]

Procedures for Requests To Exclude Particular Products From the August 2019 Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: In a notice published on August 20, 2019, the U.S. Trade Representative announced that the Office of the U.S. Trade Representative (USTR) would establish a process by which U.S. stakeholders may request an exclusion from additional duties of particular products classified within a tariff subheading covered by the August 2019 action. This notice announces that USTR will open an electronic portal for submission of exclusion requests on October 31, 2019 for products covered by Annex A of the August 2019 action, and sets out the specific procedures for submitting requests.

DATES: *October 31, 2019 at noon EDT:* The web portal for submitting exclusion requests—*https://exclusions.USTR.gov*—will open.

January 31, 2020 at 11:59 p.m. EDT: Last day for submitting exclusion requests.

Responses to individual exclusion requests are due 14 days after USTR

posts the request on the online portal. Any replies to responses to an exclusion request are due the later of 7 days after the close of the 14-day response period, or 7 days after the posting of a response.

ADDRESSES: You must submit all requests, responses to requests, and replies to responses through the online portal: *https://exclusions.ustr.gov.*

FOR FURTHER INFORMATION CONTACT: For questions about the product exclusion process, contact Assistant General Counsels Philip Butler or Megan Grimball at (202) 395–5725. For questions on customs classification or implementation of additional duties, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. August 2019 Action

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), and 84 FR 22564 (May 17, 2019).

In a notice published on August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately $300 billion. 84 FR 43304 (August 20, 2019). The August 20 notice contains two separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, currently is scheduled to take effect on December 15, 2019. On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A and Annex C of the August 20 notice.

B. Procedures To Request the Exclusion of Particular Products

USTR invites interested persons, including trade associations, to submit requests for exclusion from the additional duties for products covered by List 1 of the August 2019 action. As explained in more detail below, each request specifically must identify a particular product, and provide supporting data and the rationale for the requested exclusion. USTR will evaluate each request on a case-by-case basis, taking into account the asserted rationale for the exclusion, whether the exclusion would undermine the objective of the Section 301 investigation, and whether the request defines the product with sufficient precision. Any exclusion will be effective for one year, starting from the September 1, 2019 effective date for Annex A of the August 20, 2019 notice. USTR will periodically announce decisions on pending requests.

To submit an exclusion request, requesters must first register on the portal at *https://exclusions.ustr.gov.* As noted above, the portal will open at noon EDT on October 31, 2019. After registration, the requester can fill out and submit one or more exclusion request forms.

Fields on the exclusion request form marked with an asterisk (*) are required fields. Fields with a green (Public) notation will be publicly available. Fields with a gray (BCI) notation are for Business Confidential Information and the information entered will not be publicly available. Additionally, parties will be able to upload documents and indicate whether the documents are BCI or public. Requesters will be able to review the public version of their submission before the submission is posted.

In order to facilitate preparation of requests prior to the October 31 opening of the web portal, a facsimile of the exclusion request form to be used on the portal is attached as an annex to this notice. Please note that the color-coding of public fields and BCI fields is not visible on the attached facsimile, but will be apparent on the actual form used on the portal.

Set out below is a summary of the information to be entered on the exclusion request form.

Each requester must provide contact information, including the full legal name of the organization making the request, whether the requester is a third party (law firm, trade association, or customs broker) submitting on behalf of an organization or industry, and the primary point of contact (requester and/or third party submitter). The requester may report whether the requester's business satisfies the Small Business Administration's size standards for a small business, which are identified by North American Industry Classification Systems Codes and are found in 13 CFR 121.201.

With regard to product identification, any request for exclusion must include the following information:

- The 10-digit subheading of the HTSUS applicable to the particular product requested for exclusion. If no 10-digit subheading is available (*i.e.,* the 8-digit subheading does not contain breakouts at the 10-digit level), requesters should use the 8-digit subheading and add ''00''. Different models classified under different 8-digit or 10-digit subheadings are considered different products and require separate exclusion requests.
- Product name and a detailed description of the product. A detailed description of the product includes, but is not limited to, its physical characteristics (*e.g.,* dimensions, weight, material composition, etc.). Requesters may submit a range of comparable goods within the product definition set out in an exclusion request. Thus, a product request may include two or more goods with similar product characteristics or attributes. Goods with different SKUs, model numbers, or sizes are not necessarily different products.
- The product's function, application (*e.g.,* whether the product is designed to function in or with a particular machine or other device), principal use, and any unique physical features that distinguish it from other products within the covered 8-digit HTSUS subheading. Requesters may submit attachments that help distinguish the product (*e.g.,* CBP rulings, photos and specification sheets, and previous import documentation). Documents submitted to support a requester's product description must be made available for public inspection and contain no BCI. USTR will not consider requests that identify the product using criteria that cannot be made available for public inspection.
- Whether the product is currently subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.

Requesters must provide their relationship to the product (Importer, U.S. Producer, Purchaser, Industry Association, Other) and provide specific data on the annual quantity and value of the Chinese-origin product, domestic product, and third-country product the requester purchased, in 2017, 2018, and the first half of 2019.

Requesters must provide information regarding their gross revenues for 2018 and the first half of 2019.

For imports sold as final products, requesters must provide the percentage of their total gross sales in 2018 that sales of the Chinese-origin product accounted for.

For imports used in the production of final products, requesters must provide the percentage of the total cost of producing the final product(s) the Chinese-origin input accounts for and the percentage of their total gross sales

in 2018 that sales of the final product(s) accounted for.

As noted in the attached facsimile, required information regarding the requester's purchases and gross sales and revenue is BCI and the information entered will not be publicly available.

With regard to the rationale for the requested exclusion, each requester will be asked to address the following:

- Whether the particular product is available only from China and whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries. The requester must provide an explanation if the product is not available outside of China or the requester is not sure of the product availability.
- Whether the requester has attempted to source the product from the United States or third countries.
- Whether the imposition of additional duties on the particular product will cause severe economic harm to the requester or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

In addressing each factor, the requester should provide support for their assertions. To provide information about the possible cumulative effects of the Section 301 tariff actions, requesters also may submit information about any exclusion requests submitted by the requester under the initial $34 billion tariff action (Docket ID: USTR–2018–0025), the additional $16 billion tariff action (Docket ID: USTR–2018–0032), or the additional $200 billion tariff action (Docket ID: USTR–2019–0005) and the value of the requester's imports covered by the previous tariff actions. Requesters also may provide any other information or data that they consider relevant to an evaluation of the request.

C. Responses to Requests for Exclusions

After a request for exclusion of a particular product is posted on USTR's online portal, interested persons will have *14 days* to respond to the request, indicating support or opposition and providing reasons for their view. A response to a product exclusion request must be submitted using USTR's online portal at *https://exclusions.ustr.gov.* To file a response, an interested party does not have to register. Responses will be publicly available.

D. Replies to Responses to Requests for Exclusions

After a response is posted on USTR's online portal, the requester will have the opportunity to reply to the response using the same portal. Any reply must be submitted within the later of *7 days* after the close of the 14-day response period, or 7 days after the posting of a response. A reply to a response must be submitted using USTR's online portal at *https://exclusions.ustr.gov.* Replies to responses will be publicly available.

E. Submission Instructions

As noted above, interested persons must submit requests for exclusions in the period between the opening of the portal on October 31, 2019, and January 31, 2020. Any responses to those requests must be submitted within 14 days after the requests are posted. Any reply to a response must be submitted within the later of 7 days after the close of the 14-day response period, or 7 days after the posting of a response. Interested persons seeking to exclude two or more products must submit a separate request for each product, *i.e.,* one product per request. As noted above, a single product may include two or more goods with similar product characteristics or attributes.

By submitting an exclusion request, a response, or a reply, the submitter certifies that the information provided is complete and correct to the best of his or her knowledge.

F. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, USTR submitted a request to the Office of Management and Budget (OMB) for emergency review and clearance of this information collection request (ICR) titled *301 Exclusion Requests.* OMB assigned control number 0350–0015, which is due to expire on December 31, 2019. USTR has submitted the information collection to OMB for review and approval of a three-year extension of the control number. 84 FR 43853 (August 22, 2019).

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

BILLING CODE 3290–F0–P

Exclusion Request Form

1. Submitter Information

Full Organization Legal Name * **(Public)**

Requestor First Name * **(BCI)**

Requestor Last Name * **(BCI)**

Requestor Mailing Address

Street Address Line 1 * **(BCI)**

Street Address Line 2 **(BCI)**

City * **(BCI)**

State * **(BCI)**

Zip Code * **(BCI)**

Country * **(BCI)**

Requestor E-mail Address * **(BCI)**

Requestor Phone Number * **(BCI)**

Does your business meet the size standards for a small business as established by the Small Business Administration? * **(Public)** YES/NO/Not Sure

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? * **(Public)** YES/NO

Note: If you are submitting on behalf of an organization/industry, the information below is required.

Third Party Firm/Association Name **(Public)**

Third Party First Name **(BCI)**

Third Party Last Name **(BCI)**

Third Party Mailing Address

Street Address Line 1 **(BCI)**

Street Address Line 2 **(BCI)**

City **(BCI)**

State **(BCI)**

Zip Code **(BCI)**

Country **(BCI)**

Third Party E-mail Address **(BCI)**

Third Party Phone Number **(BCI)**

Who will be the primary point of contact? (Select One) * **(BCI)**

- o Requestor
- o Third Party Submitter
- o Requestor and Third Party Submitter

2. **Please provide the 10-digit HTSUS item number* for the product you wish to address in this product exclusion request.** ***A 10-digit HTSUS number is required.*** * **(Public)**
Use numerical characters only with no special characters (Example: 1023456789). For help with finding the HTSUS item number associated with your product, see https://hts.usitc.gov/.

3. **Is this product subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce?** *

4. **Please provide a complete and detailed description of the particular product of concern.** (A detailed description of the product includes, but is not limited to, its physical characteristics (e.g., dimensions, weight, material composition, etc.), whether product is designed to function in or with a particular machine (application), the unit value of the product (please provide a range if necessary), and any unique physical features that distinguish it from other products within the covered 8-digit HTSUS subheading. If needed, please attach images and specification sheets, CBP rulings, court decisions, and previous import documentation below.) **Please also describe the product's principal use.**

Note: USTR will not consider requests that identify the product using criteria that cannot be made available to the public. USTR will not consider requests in which more than one unique product is identified.

Product Name * **(Public)**

Product Description (e.g. dimensions, weight, material composition, etc.) * **(Public)**

Product Function, Application, and Principal Use * **(Public)**

Please upload any relevant attachments that will help identify and distinguish your product (e.g. CBP rulings, photos and specification sheets, and previous import documentation) (Public)

5. **Requestor's relationship to the product (select all that apply)** * (Public)

- Importer
- U.S. Producer
- Purchaser
- Industry Association
- Other

6. **Is this product, or a comparable product, available from sources in the United States? (If you indicate "NO" or "NOT SURE," in the box below, you must explain why the product is unavailable or why you are unsure of the product's availability.)** * (Public)

- YES
- NO
- NOT SURE

Please explain why the product is unavailable or why you are unsure of the product's availability. (Submitter Determines BCI or Public)

7. **Is this product, or a comparable product, available from sources in third countries? (If you indicate "NO" or "NOT SURE," in the box below, you must explain why the product is unavailable or why you are unsure of the product's availability.)** * (Public)

- YES
- NO
- NOT SURE

Please explain why the product is unavailable or why you are unsure of the product's availability. (Submitter Determines BCI or Public)

8. **Please discuss any attempts to source this product from United States or third countries.** * (Public)

9. **Please provide the value in USD and quantity (with units) of the Chinese-origin product of concern that you purchased in 2017, 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable.** * (BCI)

2017 Value: 2017 Quantity:

2018 Value: 2018 Quantity:

2019 Value (Jan-Jun): 2019 Quantity (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

Are any of these purchases from a related company? * (BCI) YES/NO

Please list the name and relationship of the related company. (BCI)

10. Please provide the value in USD and quantity (with units) of the product of concern that you purchased from any third-country source in 2017, 2018, and the first half of 2019 (Jan-Jun). Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. * (BCI)

2017 Value: 2017 Quantity:

2018 Value: 2018 Quantity:

2019 Value (Jan-Jun): 2019 Quantity (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

11. Please provide the value in USD and quantity (with units) of the product of concern that you purchased from domestic sources in 2017, 2018, and the first half of 2019 (Jan-Jun). Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. * (BCI)

2017 Value: 2017 Quantity:

2018 Value: 2018 Quantity:

2019 Value (Jan-Jun): 2019 Quantity (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

12. Please provide information regarding your company's gross revenue in USD for 2018 and the first half of 2019 (Jan-Jun). * (BCI)

Fiscal Year 2018:

First Half of 2018 (Jan-Jun):

First Half of 2019 (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

13. **Is the Chinese-origin product of concern sold as a final product or as an input used in the production of a final product or products?** * (Public)

a) **For imports sold as final products, please provide:** (BCI)

% of your company's total, U.S. gross sales in 2018 that the Chinese-origin product accounted for.

b) **For imports of inputs used in the production of final products, please provide:** (BCI)

% of the total cost of producing the final product(s) the Chinese-origin input accounts for.

% of your company's total, U.S. gross sales in 2018 that sales of the final product(s) incorporating the input accounts for.

14. **Please comment on whether the imposition of additional duties on the product you are seeking to exclude will result in severe economic harm to your company or other U.S. interests. In addressing this factor, please address the number of employees in your company and the number of employees potentially affected.** * (BCI)

15. **Please provide any additional information in support of your request, taking account of the instructions provided in Section [B] of the Federal Register notice.** (Submitter Determines BCI or Public)

16. **Did you submit exclusion requests for the Section 301 $34 billion** (Docket ID: USTR-2018-0025), **the $16 billion** (Docket ID: USTR-2018-0032), **and/or the $200 billion** (Docket ID: USTR-2019-0005) **tariff actions?** * (Public) YES/NO

Please enter the total value of your company's imports applicable to the tariff action for which you submitted one or more exclusion request: (BCI)

Initial $34 Billion Tariff Action:

Additional $16 Billion Tariff Action:

Additional $200 Billion Tariff Action:

17. **Please comment on whether the particular product of concern is strategically important or related to "Made in China 2025" or other Chinese industrial programs. You must explain in the box below why you believe the product of**

concern is or is not strategically important or related to "Made in China 2025" or other Chinese industrial programs. * (Public)

18. Include any additional attachments that should be considered along with this exclusion request (e.g., customs rulings, court decisions, previous import documentation, etc.). Please do not include attachments that contain your written argument. (Submitter Determines BCI or Public)

[FR Doc. 2019–23181 Filed 10–23–19; 8:45 am]

BILLING CODE 3290–F0–C9

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2019–0018]

Applications for Inclusion on the Binational Panels Roster Under the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications.

SUMMARY: The North American Free Trade Agreement (NAFTA) provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (AD/CVD) proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the roster. The Office of the United States Trade Representative (USTR) invites applications from eligible individuals wishing to be included on the roster for the period April 1, 2020, through March 31, 2021.

DATES: USTR must receive your application by November 29, 2019.

ADDRESSES: You should submit your application through the Federal eRulemaking Portal: *http://www.regulations.gov,* using docket number USTR–2019–0018. Follow the instructions for submitting comments below. While USTR strongly prefers electronic submissions, you also may submit your application by fax, to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Philip Butler, Assistant General Counsel, *Philip.A.Butler@ustr.eop.gov,* (202) 395–5804.

SUPPLEMENTARY INFORMATION:

Binational Panel AD/CVD Reviews Under the NAFTA

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another NAFTA Party. Binational panels decide whether AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party using the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of 15 current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (GATT), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties must consult and seek to achieve a mutually satisfactory solution.

Roster and Composition of Binational Panels

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

When there is a request to establish a panel, roster members from the two involved NAFTA Parties will complete a disclosure form that is used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Roster

Section 402 of the NAFTA Implementation Act (Pub. L. 103–182, as amended (19 U.S.C. 3432)) (Section 402) provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19 roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that, to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

Adherence to the NAFTA Code of Conduct for Binational Panelists

The ''Code of Conduct for Dispute Settlement Procedures Under Chapters 19 and 20'' (*see https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Code-of-Conduct*), which was established pursuant to Article 1909 of the NAFTA, provides that current and former Chapter 19 roster members ''shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the

dispute settlement process is preserved.'' The Code of Conduct also provides that candidates to serve on chapter 19 panels, as well as those who are ultimately selected to serve as panelists, have an obligation to ''disclose any interest, relationship or matter that is likely to affect [their] impartiality or independence, or that might reasonably create an appearance of impropriety or an apprehension of bias.'' Annex 1901.2 of the NAFTA provides that roster members may engage in other business while serving as panelists, subject to the Code of Conduct and provided that such business does not interfere with the performance of the panelist's duties. In particular, Annex 1901.2 states that ''[w]hile acting as a panelist, a panelist may not appear as counsel before another panel.''

Procedures for Selection of Roster Members

Section 402 establishes procedures for the selection by USTR of the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1st of each calendar year.

Under Section 402, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, the United States Trade Representative selects the final list of individuals chosen by the United States for inclusion on the Chapter 19 roster.

Remuneration

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 800 Canadian dollars per day.

Applications

Eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2020, through March 31, 2021, are invited to submit applications. In order to be assured of consideration, USTR must receive your application by November 29, 2019. Applications may be submitted electronically to *www.regulations.gov,* using docket number USTR–2019–0018, or by fax to Sandy McKinzy at 202–395–3640.

In order to ensure the timely receipt and consideration of applications, USTR strongly encourages applicants to make on-line submissions, using the *www.regulations.gov* website. To submit an application via *regulations.gov*, enter docket number USTR–2019–0018 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the ''Comment Now!'' link. For further information on using the *www.regulations.gov* website, please consult the resources provided on the website by clicking on the ''How to Use Regulations.gov'' on the bottom of the page.

The *www.regulations.gov* website allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that applications be provided in an attached document. If a document is attached, please type ''Application for Inclusion on NAFTA Chapter 19 Roster'' in the ''Upload File'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field.

Applications must be typewritten, and should be headed ''Application for Inclusion on NAFTA Chapter 19 Roster.'' Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
10. Summary of any current and past employment by, or consulting or other work for, the Governments of the United States, Canada, or Mexico.
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.,* and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
13. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

Current Roster Members and Prior Applicants

Current members of the Chapter 19 roster who remain interested in inclusion on the Chapter 19 roster only need to indicate that they are reapplying and submit updates (if any) to their applications on file. Current members do not need to resubmit their applications. Individuals who have previously applied but have not been selected must submit new applications to reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not be resubmitted.

Public Disclosure

Applications are covered by a Privacy Act System of Records Notice and are not subject to public disclosure and will not be posted publicly on *www.regulations.gov.* They may be referred to other federal agencies and Congressional committees in the course of determining eligibility for the roster, and shared with foreign governments and the NAFTA Secretariat in the course of panel selection.

False Statements

Pursuant to section 402(c)(5) of the NAFTA Implementation Act, false statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests

that bear on the applicants' suitability for placement on the Chapter 19 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Juan Millan,

Assistant United States Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative.

[FR Doc. 2019–23190 Filed 10–23–19; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–63]

Petition for Exemption; Summary of Petition Received; Hageland Aviation Services dba RavnAir Connect

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 13, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0658 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax*: Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Lane (202) 267–7280, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 15, 2019.

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0658.

Petitioner: Hageland Aviation Services dba RavnAir Connect.

Section(s) of 14 CFR Affected: Section 135.297(b).

Description of Relief Sought: RavnAir Connect wishes to receive an exemption from section 135.297, subparagraph b, to allow the substitution of an Area Navigation (RNAV) approach with Localizer Performance with Vertical Guidance (LPV) minima for the precision approach procedure required by the rule. RavnAir Connect requests this exemption due to the limited availability of Instrument Landing System (ILS) precision approach procedures in rural Alaska and the equivalent level of safety provided by RNAV approaches with LPV minima. The petitioner contends that this exemption would be in the interest of the public by maintaining qualified pilots and therefore maintaining essential air transportation for basic necessities to rural communities.

[FR Doc. 2019–23177 Filed 10–23–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No.–2019–64

Petition for Exemption; Summary of Petition Received; Delta Air Lines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 13, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0798 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket

Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones, (202) 267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 17, 2019.

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

PETITION FOR EXEMPTION

Docket No.: FAA–2019–0798.

Petitioner: Delta Air Lines, Inc.

Section(s) of 14 CFR Affected: § 91.277(c).

Description of Relief Sought: Subsequent to Delta Air Lines taking delivery of A350 aircraft from Airbus, Delta discovered a non-compliance issue with the hybrid GPS/IRS system during taxi. Delta Air Lines requests relief from the performance requirements of § 91.227(c)(1)(i) and (c)(1)(iii), during ground taxi and runway operations of all A350 aircraft currently on Delta's FAA approved Operations Specification D085, Aircraft Listing, or added to its D085 Operations Specification prior to a certified and available remedy from Airbus.

[FR Doc. 2019–23178 Filed 10–23–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0131]

Commercial Driver's License Standards: Application for Exemption; Teupen North America, Inc. (Teupen)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Teupen North America, Inc. (Teupen) has requested an exemption from the commercial driver's license (CDL) requirement for Mr. Martin Borutta, a Lead Engineer for Teupen, who holds a valid German commercial license and wants to transport Teupen's aerial lift product to various sites in the U.S. for testing. Teupen believes the requirements for a German commercial license ensure that operation under the exemption will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption. FMCSA requests public comments on Teupen's application for exemption.

DATES: Comments must be received on or before November 25, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2019–0131 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202 366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages your participation by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0131), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2019–0131'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Teupen has applied for an exemption for Martin Borutta from 49 CFR 383.23, which prescribes licensing requirements for drivers operating commercial motor vehicles (CMVs) in interstate or intrastate commerce. Mr. Borutta, holds a valid German commercial license but is unable to obtain a CDL because he is not a U.S. resident. A copy of the application is in Docket No. FMCSA–2019–0131.

The exemption would allow Mr. Borutta to operate CMVs in interstate or intrastate commerce to transport Teupen's aerial lift product—also called a mobile elevated work platform (MEWP)—to various locations to test its operational safety. Mr. Borutta would typically drive for no more than 5 hours per day for one to two days. The driving would typically be done on interstate highways, and would consist of no more than 200 miles per day. In all cases, he would be accompanied by a U.S. CDL holder who is familiar with the routes to be traveled. Teupen requests that the exemption be allowed for a duration of six months.

Mr. Borutta holds a valid German commercial license and, as explained by Teupen in its exemption request, the requirements for that license ensure that the same level of safety would be met or exceeded as if this driver had a U.S. CDL

IV. Method To Ensure an Equivalent or Greater Level of Safety

FMCSA has determined previously that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. Since 2015, FMCSA has granted similar exemptions to drivers for Daimler, another German company: [March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410)]; July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); September 10, 2018 (83 FR 45742).]

Issued on: October 17, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23196 Filed 10–23–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0050; Notice 1]

Automobili Lamborghini, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Automobili Lamborghini has determined that certain 2019–2020 Lamborghini Urus motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less.* Automobili Lamborghini filed a noncompliance report dated April 10, 2019, and also petitioned NHTSA on May 9, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Automobili Lamborghini's petition.

DATES: The closing date for comments on the petition is November 25, 2019.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. *Overview:* Automobili Lamborghini has determined that certain 2019–2020 Lamborghini Urus motor vehicles do not fully comply with paragraph S4.4.2(a) and (c) of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less* (49 CFR 571.110). Automobili Lamborghini filed a noncompliance report dated April 10, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Automobili Lamborghini also petitioned NHTSA on May 9, 2019, for an exemption from the

notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Automobili Lamborghini's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercises of judgment concerning the merits of the petition.

II. Vehicles Involved: As originally filed, Automobili Lamborghini's petition stated that the petition applied to MY 2018–2019 Lamborghini Urus motor vehicles, however, the company has since clarified that the correct MYs are MY 2019–2020.

Accordingly, approximately 595 MY 2019–2020 Lamborghini Urus motor vehicles, manufactured between August 30, 2018, and April 10, 2019, are potentially involved.

III. Noncompliance: Automobili Lamborghini explains that the noncompliance is that the rims equipped on the subject vehicles do not fully comply with paragraph S4.4.2(a) and (c) of FMVSS No. 110. Specifically, the rims on the subject vehicles do not contain the required designation symbol or DOT certification markings.

IV. Rule Requirements: Paragraph S4.4.2(a) of FMVSS No. 110 includes the requirements relevant to this petition. Each rim or, at the option of the manufacturer in the case of a single-piece wheel, each wheel disc shall be marked with a designation that indicates the source of the rim's published nominal dimensions and the symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable FMVSS.

V. Summary of Lamborghini's Petition: Automobili Lamborghini described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Automobili Lamborghini submitted the following reasoning:

1. The ''DOT'' marking signifies that the manufacturer of the rim has certified that the rim complies with all applicable FMVSSs. So, because ''DOT'' is a ''certification,'' it is a violation of 49 U.S.C. 30115 (''Certification''), which does not require notification and remedy (see 74 FR 69377).

2. The designation symbol under S4.4.2(a) is not considered a ''certification'' and indicates the source of the rim's published nominal dimensions. Thus, because a noncompliance under (a) is not a certification issue, which would implicate 49 U.S.C. 30115, Automobili Lamborghini has submitted a report pursuant to 49 CFR part 573.

3. Automobili Lamborghini states that the subject rims contain all information required within FMVSS § 571.110 and that the omission of the correct designation symbol ''E,'' required under S4.4.2(a), and the certification symbol ''DOT,'' required under S4.4.2(c), will not prevent tires and rims from properly matching in the case of worn-out tires.

4. Automobili Lamborghini says that the owner's manual and the tire placard, both contain the correct and complete size of rims installed on the subject vehicles. Automobili Lamborghini stated their belief that this matter will not affect the ability to clearly identify the subject rims in case of a parts recall and that this matter does not have any effect on motor vehicle safety.

5. Automobili Lamborghini says that they are unaware of any accidents, injuries or customer complaints related to the lack of these markings. The missing markings do not affect the performance of the wheels or the tire and wheel assemblies.

Automobili Lamborghini concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Automobili Lamborghini no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Automobili Lamborghini notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–23189 Filed 10–23–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–14785]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Crash Report Sampling System

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on an extension of a previously-approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review, and requests comments on the ICR. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on July 12, 2019. NHTSA received one comment on the 60-day notice, stating the importance of gathering crash data, leveraging technology, and engaging in analysis to find commonalities in crashes and better protect the public. NHTSA has concluded that it is not necessary to make any changes to the information collection based on this comment.

DATES: Comments must be submitted on or before November 25, 2019.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725–17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Jonae Anderson, NHTSA, 1200 New Jersey Avenue SE, W53–470, NSA–210, Washington, DC 20590. Mrs. Anderson's telephone number is (202) 366–1028. Please identify the relevant collection of

information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with these requirements, this notice announces that the following information collection request has been forwarded to OMB.

A **Federal Register** notice with a 60-day comment period soliciting comments on the information collection was published on July 12, 2019 (84 FR 33314). NHTSA received one anonymous comment on the 60-day notice, stating the importance of gathering crash data, leveraging technology, and engaging in analysis to find commonalities in crashes and better protect the public.

NHTSA is committed to collecting and analyzing traffic safety data to identify trends and develop effective countermeasures to make our nation's roads safer for all users. The agency leverages a variety of specialized technology and personnel resources to manage its data collection systems, CRSS included, and works continually to improve its collection and analytical capabilities. Results of these efforts can be seen in the annual data files NHTSA publishes, which are critical resources for all engaged in highway safety research. Additionally, NHTSA provides analytical and statistical support to the public, as well publishing the annual Traffic Safety Facts report, which provides descriptive statistics regarding the current year's traffic crashes. Historical annual reports are also available and located here: *https://crashstats.nhtsa.dot.gov/#/DocumentTypeList/12.*

NHTSA has concluded that current crash data collection and analysis efforts adequately reflect the intent of this comment and it is not necessary to make any changes to information collection procedures based on this comment.

Title: The Crash Report Sampling System.

OMB Control Number: 2127–0714.

Type of Request: Extension of a previously-approved collection of information.

Type of Review Requested: Regular.

Affected Public: Local Police Jurisdictions and State Crash Database Owners.

Abstract: Under both the Highway Safety Act of 1966 and the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, Title 1, Sec. 106, 108, and 112) NHTSA has the responsibility to collect crash data that support the establishment and enforcement of motor vehicle regulations and highway safety programs. These regulations and programs are developed to reduce fatalities and the property damage associated with motor vehicle crashes. NHTSA's National Center for Statistics and Analysis (NCSA) maintains a multidisciplinary approach to meet our users' data needs utilizing an efficient combination of census, sample-based, investigation, and existing State files to provide timely information on traffic crashes. CRSS provides sample-based data on fatal, serious injury, and property-damage-only (PDO) crashes that helps users understand highway safety problem areas, develop countermeasures, and identify trends.

CRSS obtains data from a nationally representative probability sample selected from police-reported motor vehicle traffic crashes. Specifically, the CRSS data set includes crashes involving at least one motor vehicle in transport on a trafficway that result in property damage, injury, or a fatality. The crash reports sampled are chosen from selected areas that reflect the geography, population, miles driven, and the number of crashes in the United States. No additional data beyond the selected crash reports is collected. Additionally, the CRSS program neither collects nor publishes any personally identifiable information. Once the crash reports are received they are coded and the data is entered into the CRSS database.

CRSS acquires national information on fatalities, injuries, and property damage directly from existing State police crash reports. The user population includes Federal and State agencies, automobile manufacturers, insurance companies, and the private sector.

Frequency: Ongoing.

Estimated Number of Respondents: 320 Respondents.

Respondents include a combination of State agencies that maintain crash data report databases and local police jurisdictions that investigate crashes and complete crash reports.

Estimated Total Annual Burden Hours: 35,680 hours.

Per the below table, burden hours are calculated differently based on the data collection method. The revised burden estimates in the below table describe the burden for each data collection methods. These estimates are based upon observation and review of the individual PSU's area documentation, which describes the data collection protocols in detail.

Access method	Hours per jurisdiction	Jurisdiction (PJ/state)	Total hours
EDT (Implementation)	200	3	600
EDT (Maintenance)	5	8	40
State Website	10	14	140
Web Service	60	2	120
Manual	470	74	34,780
Grand Total			35,680

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Chou-Lin Chen,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 2019–23179 Filed 10–23–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the Carpenters Pension Trust Fund—Detroit and Vicinity Pension Plan (Fund), a multiemployer pension plan, has submitted an application to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Fund has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Fund.

DATES: Comments must be received by December 9, 2019.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Danielle Norris. Comments sent via facsimile or email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On September 23, 2019, the Board of Trustees of the Fund submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Fund's application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: October 18, 2019.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2019–23225 Filed 10–23–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; RESTORE Act Grants

AGENCY: Departmental Offices, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on revisions to an existing information collection, as required by the Paperwork Reduction Act of 1995. The Office of the Fiscal Assistant Secretary, within the Department of the Treasury, is soliciting comments concerning the application, reports, and recordkeeping for the Direct Component and the Centers of Excellence Research Grants Programs under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). Additionally, Treasury published a final rule in the **Federal Register** on December 13, 2016, effective January 12, 2017, titled Regulation Regarding Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of the Treasury, which implements Title VI of the Civil Rights Act of 1964. The final regulation provides guidance to the Department's recipients of federal financial assistance in complying with the provisions of Title VI and also promotes consistent and appropriate enforcement of Title VI by the Department's components. The information collections contained in this final rule are being added to the information collection for RESTORE Act grants.

DATES: Written comments should be received on or before December 23, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by electronic mail to *restoreact@treasury.gov* or contact Laurie McGilvray at 202–622–7340 in the Office of Gulf Coast Restoration.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Laurie McGilvray at 202–622–7340 in the Office of Gulf Coast Restoration or by electronic mail to *restoreact@treasury.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1505–0250.

Title: Application, Reports, and Recordkeeping for the Direct Component and the Centers of Excellence Research Grants Program under the RESTORE Act.

Abstract: The Department of the Treasury administers the Direct Component and the Centers of Excellence Research Grants Program authorized under the RESTORE Act. Treasury awards grants for these two programs from proceeds in connection with administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act relating to the *Deepwater Horizon* Oil Spill, and deposited into the Gulf Coast Restoration Trust Fund. Direct Component grants are awarded to the States of Alabama, Louisiana, Mississippi, and Texas, and 23 Florida counties and 20 Louisiana parishes and Centers of Excellence grants are awarded to the States of Alabama, Florida, Louisiana, Mississippi, and Texas. The information collection for both programs identifies the eligible recipients; describes proposed activities; determines an appropriate amount of funding; ensures compliance with the

RESTORE Act, Treasury's regulations, and Federal laws and policies on grants; tracks grantee progress; and reports on the effectiveness of the programs.

The revised application and reporting forms, supplemental information, and new questions from the Treasury Office of Civil Rights and Diversity concerning data collection for civil rights compliance and enforcement purposes under Title VI of the Civil Rights Act of 1964, and similar statutes applicable to Federal financial assistance, may be obtained on Treasury's RESTORE Act website at *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act.*

Type of Review: Revision of a currently approved collection.

Affected Public: State, Local, or Tribal Governments.

Estimated Number of Respondents: 52.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 383.

Estimated Total Annual Burden Hours: 6,086.

Estimated Total Cost: $292,128.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. Comments may become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: October 18, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–23151 Filed 10–23–19; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 84 Thursday,

No. 206 October 24, 2019

Part II

Securities and Exchange Commission

17 CFR Parts 210, 232, 239, et al.
Exchange-Traded Funds; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 232, 239, 270, and 274

[Release Nos. 33–10695; IC–33646; File No. S7–15–18]

RIN 3235–AJ60

Exchange-Traded Funds

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting a new rule under the Investment Company Act of 1940 (the ''Investment Company Act'' or the ''Act'') that will permit exchange-traded funds (''ETFs'') that satisfy certain conditions to operate without the expense and delay of obtaining an exemptive order. In connection with the final rule, the Commission will rescind certain exemptive relief that has been granted to ETFs and their sponsors. The Commission also is adopting certain disclosure amendments to Form N–1A and Form N–8B–2 to provide investors who purchase and sell ETF shares on the secondary market with additional information regarding ETF trading and associated costs, regardless of whether such ETFs are structured as registered open-end management investment companies (''open-end funds'') or unit investment trusts (''UITs''). Finally, the Commission is adopting related amendments to Form N–CEN. The final rule and form amendments are designed to create a consistent, transparent, and efficient regulatory framework for ETFs that are organized as open-end funds and to facilitate greater competition and innovation among ETFs. The Commission also is adopting technical amendments to Form N–CSR, Form N–1A, Form N–8B–2, Form N–PORT, and Regulation S–X.

DATES:

Effective Date: This rule is effective December 23, 2019.

Compliance Dates: The applicable compliance dates are discussed in section II.L. of this final rule.

FOR FURTHER INFORMATION CONTACT: Joel Cavanaugh (Senior Counsel), John Foley (Senior Counsel), J. Matthew DeLesDernier (Senior Counsel), Jacob D. Krawitz (Branch Chief), Melissa S. Gainor (Assistant Director), and Brian McLaughlin Johnson (Assistant Director), Investment Company Regulation Office, at (202) 551–6792, Kay-Mario Vobis (Senior Counsel), Daniele Marchesani (Assistant Chief Counsel), Chief Counsel's Office, at (202) 551–6825, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting 17 CFR 270.6c–11 (new rule 6c–11) under the Investment Company Act [15 U.S.C. 80a–1 *et seq.*]; amendments to Form N–1A [referenced in 17 CFR 274.11A] under the Investment Company Act and the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''); and amendments to Forms N–8B–2 [referenced in 17 CFR 274.12] and N–CEN [referenced in 17 CFR 274.101] under the Investment Company Act.[1] The Commission also is adopting technical amendments to Form N–CSR [referenced in § 274.128], Form N–1A, Form N–8B–2, and Form N–PORT [referenced in § 274.150] under the Investment Company Act, and 17 CFR 210.12–01 through 210.12–29 (Article 12 of Regulation S–X).

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I. Introduction

The Commission is adopting rule 6c–11 under the Investment Company Act to permit ETFs that satisfy certain conditions to operate without the

[1] Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act are to title 17, part 270 of the Code of Federal Regulations [17 CFR part 270].

expense and delay of obtaining an exemptive order from the Commission under the Act. This rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.

The Commission approved the first ETF in 1992. Since then, ETFs registered with the Commission have grown to $3.32 trillion in total net assets.[2] They now account for approximately 16% of total net assets managed by investment companies,[3] and are projected to continue to grow.[4] ETFs currently rely on exemptive orders, which permit them to operate as investment companies under the Act, subject to representations and conditions that have evolved over time.[5] We have granted over 300 of these orders over the last quarter century, resulting in differences in representations and conditions that have led to some variations in the regulatory structure for existing ETFs.[6]

On June 28, 2018, we proposed new rule 6c–11 under the Investment Company Act, which would simplify this regulatory framework by eliminating conditions included within our exemptive orders that we no longer believe are necessary for our exemptive relief and removing historical distinctions between actively managed and index-based ETFs.[7] We also proposed to rescind certain exemptive orders that have been granted to ETFs and their sponsors in order to level the playing field for ETFs that are organized as open-end funds and pursue the same or similar investment strategies.[8] In addition, the Commission proposed certain disclosure amendments to Form N–1A and Form N–8B–2 to provide investors additional information regarding ETF trading and associated costs, regardless of whether ETFs are organized as open-end funds or UITs. Finally, the Commission proposed related amendments to Form N–CEN.

We received more than 85 comment letters on the proposal.[9] As discussed in greater detail below, commenters were supportive of the adoption of an ETF rule and generally supported rule 6c–11 as proposed. Commenters did, however, recommend modifications or clarifications to certain aspects of the rule. For example, several commenters suggested expanding the scope of ETFs covered by the rule or the scope of certain exemptions.[10] Many commenters recommended modifications to the proposed rule's conditions, particularly relating to the timing and presentation of portfolio holdings information, the requirements related to custom baskets, the publication of basket information, and the availability of an intraday indicative value.[11] In addition, although commenters were largely supportive of our efforts to improve the information that ETFs disclose to investors about the trading costs of investing in ETFs, several commenters objected to the bid-ask spread disclosure requirements and the related interactive calculator.[12] Others recommended alternatives to the proposed format and placement of the trading cost disclosures.[13] Finally, commenters were largely supportive of our proposal to rescind certain exemptive orders that have been granted to ETFs and their sponsors and to replace such relief with rule 6c–11.[14]

After consideration of the comments we received, we are adopting rule 6c–11 and the proposed form amendments with several modifications that are designed to reduce the operational challenges that commenters identified, while maintaining protections for investors and providing investors with useful information regarding ETFs. As proposed, we also are rescinding the exemptive relief that we have issued to ETFs that fall within the scope of rule 6c–11, while retaining the exemptive relief granted to ETFs outside the scope of the rule. In addition, we are retaining the exemptive relief allowing ETFs to enter into fund of funds arrangements. We believe that the resulting regulatory framework will level the playing field

[2] This figure is based on data obtained from Bloomberg. As of December 2018, there were approximately 2,000 ETFs registered with the Commission.

[3] ICI, 2019 Investment Company Fact Book (59th ed., 2019) (''2019 ICI Fact Book''), *available at https://www.ici.org/pdf/2019_factbook.pdf,* at 93. When the Commission first proposed a rule for ETFs in 2008, aggregate ETF assets were less than 7% of total net assets held by mutual funds. *See* Exchange-Traded Funds, Investment Company Act Release No. 28193 (Mar. 11, 2008) [73 FR 14618 (Mar. 18, 2008)] (''2008 ETF Proposing Release'').

[4] *See* Greg Tusar, *The evolution of the ETF industry,* Pension & Investments (Jan. 31, 2017), *available at http://www.pionline.com/article/20170131/ONLINE/170139973/the-evolution-of-the-etf-industry* (describing projections that ETF assets could reach $6 trillion by 2020).

[5] As the orders are subject to the terms and conditions set forth in the applications requesting exemptive relief, references in this release to ''exemptive relief'' or ''exemptive orders'' include the terms and conditions described in the related application. *See, e.g.,* Barclays Global Fund Advisors, Investment Company Act Release Nos. 24394 (Apr. 17, 2000) [65 FR 21215 (Apr. 20, 2000)] (notice) and 24451 (May 12, 2000) (order) and related application.

[6] In addition, since 2000, our ETF exemptive orders have provided relief for future ETFs. *See id.* This relief has allowed ETF sponsors to form ETFs without filing new applications to the extent that the new ETFs meet the terms and conditions set forth in the exemptive order. Applications granted before 2000, unless subsequently amended, did not include this relief.

[7] *See* Exchange-Traded Funds, Investment Company Act Release No. 33140 (June 28, 2018) [83 FR 37332 (July 31, 2018)] (''2018 ETF Proposing Release'').

[8] Proposed rule 6c–11 did not include ETFs that: (i) Are organized as UITs; (ii) seek to exceed the performance of a market index by a specified multiple or to provide returns that have an inverse relationship to the performance of a market index, over a fixed period of time; or (iii) are structured as a share class of a fund that issues multiple classes of shares representing interests in the same portfolio (''share class ETFs''). Under the proposal, these ETFs would continue to operate pursuant to the terms of their exemptive orders. Since that time, we have granted an exemptive order permitting certain ETFs that are actively managed to operate without being subject to the daily portfolio transparency condition included in other actively managed ETF orders (''non-transparent ETFs''). *See* Precidian ETFs Trust, *et al.,* Investment Company Act Release Nos. 33440 (Apr. 8, 2019) [84 FR 14690 (Apr. 11, 2019)] (notice) and 33477 (May 20, 2019) (order) and related application (''2019 Precidian''). Because these non-transparent ETFs do not provide daily portfolio transparency, they would not meet the conditions of rule 6c–11. We use the term ''actively managed ETFs'' in this release to refer to actively managed ETFs that provide daily portfolio transparency and ''non-transparent ETFs'' to refer to actively managed ETFs that do not.

[9] The comment letters on the 2018 ETF Proposing Release (File No. S7–15–18) are available at https://www.sec.gov/comments/s7-15-18/s71518.htm.

[10] *See, e.g.,* Comment Letter of BNY Mellon (Sept. 27, 2018) (''BNY Mellon Comment Letter'') (suggesting the rule should cover all ETFs registered under the Investment Company Act); Comment Letter of Dechert LLP (Sept. 28, 2018) (''Dechert Comment Letter'') (suggesting that the Commission should provide ETFs with uniform exemptive relief from certain provisions of the Securities Exchange Act of 1934 (the ''Exchange Act'')).

[11] *See, e.g.,* Comment Letter of the Asset Management Group of the Securities Industry and Financial Markets Association (Sept. 28, 2018) (''SIFMA AMG Comment Letter I'') (relating to the timing and presentation of portfolio holdings and basket information); Comment Letter of the Investment Company Institute (Sept. 21, 2018) (''ICI Comment Letter'') (relating to custom baskets); Comment Letter of Professor James G. Angel, Georgetown University (Oct. 1, 2018) (''Angel Comment Letter'') (relating to intraday indicative values).

[12] *See, e.g.,* Comment Letter of Independent Directors Council (Sept. 27, 2018) (''IDC Comment Letter''); Comment Letter of State Street Global Advisors (Oct. 1, 2018) (''SSGA Comment Letter I'').

[13] *See e.g.,* Comment Letter of The Vanguard Group, Inc. (Sept. 28, 2018) (''Vanguard Comment Letter''); Comment Letter of BlackRock, Inc. (Sept. 26, 2018) (''BlackRock Comment Letter''); IDC Comment Letter; Comment Letter of Fidelity Investments (Sept. 28, 2018) (''Fidelity Comment Letter'').

[14] *See, e.g.,* Comment Letter of Federal Regulation of Securities Committee, Business Law Section, American Bar Association (Oct. 11, 2018) (''ABA Comment Letter''); ICI Comment Letter; Comment Letter of Invesco Ltd. (Sept. 26, 2018) (''Invesco Comment Letter''). Exemptive orders granted to ETFs and their sponsors often include relief allowing funds to invest in other funds in excess of statutory limits. We did not propose to rescind that relief. *See infra* section II.G.

for ETFs that are organized as open-end funds and pursue the same or similar investment strategies.[15] The rule also will assist the Commission with regulating ETFs, as funds covered by the rule will no longer be subject to the varying provisions of exemptive orders granted over time. Furthermore, rule 6c–11 will allow Commission staff, as well as funds and advisers seeking exemptions, to focus exemptive relief on products that do not fall within the rule's scope.

The Commission will continue to monitor this large, diverse and important market. We welcome continued engagement with ETF sponsors, investors and other market participants on matters related to the ETF market, including with regard to ETFs that do not fall within the scope of rule 6c–11 and ETFs that may not function in a manner consistent with the expectations embodied in our regulatory framework.

A. Overview of Exchange-Traded Funds

ETFs are a type of exchange-traded product (''ETP'').[16] ETFs possess characteristics of both mutual funds, which issue redeemable securities, and closed-end funds, which generally issue shares that trade at market-determined prices on a national securities exchange and are not redeemable.[17] Because ETFs have characteristics that distinguish them from the types of investment companies contemplated by the Act, they require exemptions from certain provisions of the Investment Company Act in order to operate. The Commission routinely grants exemptive orders permitting ETFs to operate as investment companies under the Investment Company Act, generally subject to the provisions of the Act applicable to open-end funds (or UITs).[18] The Commission also has approved the listing standards of national securities exchanges under which ETF shares are listed and traded.[19]

As discussed above, ETFs have become an increasingly popular investment vehicle over the last 27 years, providing investors with a diverse set of investment options.[20] They also have become a popular trading tool, making up a significant portion of secondary market equities trading. During the first quarter of 2019, for example, trading in U.S.-listed ETFs made up approximately 18.3% of U.S. equity trading by share volume and 27.2% of U.S. equity trading by dollar volume.[21]

Investors can buy and hold shares of ETFs (sometimes as a core component of a portfolio) or trade them frequently as part of an active trading or hedging strategy.[22] Because certain costs are either absent in the ETF structure or are otherwise partially externalized, many ETFs have lower operating expenses than mutual funds.[23] ETFs also may offer certain tax efficiencies compared to other pooled investment vehicles because redemptions from ETFs are often made in kind (that is, by delivering certain assets from the ETF's portfolio, rather than in cash), thereby avoiding the need for the ETF to sell assets and potentially realize capital gains that are distributed to its shareholders.

B. Operation of Exchange-Traded Funds

An ETF issues shares that can be bought or sold throughout the day in the secondary market at a market-determined price. Like other investment companies, an ETF pools the assets of multiple investors and invests those assets according to its investment objective and principal investment strategies. Each share of an ETF represents an undivided interest in the underlying assets of the ETF. Similar to mutual funds, ETFs continuously offer their shares for sale.

Unlike mutual funds, however, ETFs do not sell or redeem individual shares. Instead, ''authorized participants'' that have contractual arrangements with the ETF (or its distributor) purchase and redeem ETF shares directly from the ETF in blocks called ''creation units.''[24] An authorized participant may act as a principal for its own account when purchasing or redeeming creation units from the ETF. Authorized participants also may act as agent for others, such as market makers, proprietary trading firms, hedge funds or other institutional investors, and receive fees for processing creation units on their behalf.[25] Market makers, proprietary

[15] Additionally, as discussed below in section II.B, the Commission is issuing an order granting an exemption from certain provisions of the Exchange Act and the rules thereunder for certain transactions in securities of ETFs that can rely on rule 6c–11. *See* Order Granting a Conditional Exemption from Exchange Act Section 11(d)(1) and Exchange Act Rules 10b–10; 15c1–5; 15c1–6; and 14e–5 for Certain Exchange Traded Funds, Release No. 34–87110 (September 25, 2019) (''ETF Exchange Act Order'').

[16] ETFs are investment companies registered under the Investment Company Act. *See* 15 U.S.C. 80a–3(a)(1). Other types of ETPs are pooled investment vehicles with shares that trade on a securities exchange, but they are not ''investment companies'' under the Act because they do not invest primarily in securities. Such ETPs may invest primarily in assets other than securities, such as futures, currencies, or physical commodities (*e.g.,* precious metals). Still other ETPs are not pooled investment vehicles. For example, exchange-traded notes are senior, unsecured, unsubordinated debt securities that are linked to the performance of a market index and trade on securities exchanges.

[17] The Act defines ''redeemable security'' as any security that allows the holder to receive his or her proportionate share of the issuer's current net assets upon presentation to the issuer. 15 U.S.C. 80a–2(a)(32). While closed-end fund shares are not redeemable, certain closed-end funds may elect to repurchase their shares at periodic intervals pursuant to rule 23c–3 under the Act. Other closed-end funds may repurchase their shares in tender offers pursuant to rule 13e–4 under the Exchange Act.

[18] Historically, ETFs have been organized as open-end funds or UITs. *See* 15 U.S.C. 80a–5(a)(1) (defining the term ''open-end company'') and 15 U.S.C. 80a–4(2) (defining the term ''unit investment trust'').

[19] Additionally, ETFs regularly request relief from 17 CFR 242.101 and 242.102 (rules 101 and 102 of Regulation M); section 11(d)(1) of the Exchange Act and 17 CFR 240.11d1–2 (rule 11d1–2 under the Exchange Act); and certain other rules under the Exchange Act (*i.e.,* 17 CFR 240.10b–10, 240.10b–17, 240.14e–5, 240.15c1–5, and 240.15c1–6 (rules 10b–10, 10b–17, 14e–5, 15c1–5, and 15c1–6)). *See* Request for Comment on Exchange-Traded Products, Exchange Act Release No. 75165 (June 12, 2015) [80 FR 34729 (June 17, 2015)] (''2015 ETP Request for Comment''), at section I.D.2 (discussing the exemptive and no-action relief granted to ETPs under the Exchange Act and the listing process for ETP securities for trading on a national securities exchange).

[20] While the first ETFs held portfolios of securities that replicated the component securities of broad-based domestic stock market indexes, some ETFs now track more specialized indexes, including international equity indexes, fixed-income indexes, or indexes focused on particular industry sectors. Some ETFs seek to track highly customized or bespoke indexes, while others seek to provide a level of leveraged or inverse exposure to an index over a predetermined period of time. The Commission historically has referred to ETFs that have stated investment objectives of maintaining returns that correspond to the returns of a securities index as ''index-based'' ETFs. Investors also have the ability to invest in ETFs that do not track a particular index and are actively managed. *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.18–20.

[21] These estimates are based on trade and quote data from the New York Stock Exchange and Trade Reporting Facility data from FINRA.

[22] *See, e.g.,* Chris Dieterich, *Are You An ETF 'Trader' Or An ETF 'Investor'?,* Barrons (Aug. 8, 2017), *available at https://www.barrons.com/articles/are-you-an-etf-trader-or-an-etf-investor1470673638;* Greenwich Associates, *Institutions Find New, Increasingly Strategic Uses for ETFs* (May 2012). ETF investors also can sell ETF shares short, write options on them, and set market, limit, and stop-loss orders on them.

[23] For instance, ETFs typically do not bear distribution or shareholder servicing fees. In addition, ETFs that transact on an in-kind basis can execute changes in the ETF's portfolio without incurring brokerage costs, leading to transaction cost savings.

[24] As discussed below, rule 6c–11(a)(1) defines ''authorized participant'' as a member or participant of a clearing agency registered with the Commission, which has a written agreement with the ETF or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.

[25] *See* David J. Abner, The ETF Handbook: How to Value and Trade Exchange Traded Funds, 2nd ed. (2016) (''ETF Handbook'').

trading firms, and hedge funds provide additional liquidity to the ETF market through their trading activity. Institutional investors may engage in primary market transactions with an ETF through an authorized participant as a way to efficiently hedge a portion of their portfolio or balance sheet or to gain exposure to a strategy or asset class.[26]

An authorized participant that purchases a creation unit of ETF shares directly from the ETF deposits with the ETF a ''basket'' of securities and other assets identified by the ETF that day, and then receives the creation unit of ETF shares in return for those assets.[27] The basket is generally representative of the ETF's portfolio,[28] and together with a cash balancing amount, it is equal in value to the aggregate net asset value (''NAV'') of the ETF shares in the creation unit.[29] After purchasing a creation unit, the authorized participant may hold the individual ETF shares, or sell some or all of them in secondary market transactions.[30] Investors then purchase individual ETF shares in the secondary market. The redemption process is the reverse of the purchase process: The authorized participant redeems a creation unit of ETF shares for a basket of securities and other assets.

The combination of the creation and redemption process with secondary market trading in ETF shares and underlying securities provides arbitrage opportunities that are designed to help keep the market price of ETF shares at or close to the NAV per share of the ETF.[31] For example, if ETF shares are trading on national securities exchanges at a ''discount'' (a price below the NAV per share of the ETF), an authorized participant can purchase ETF shares in secondary market transactions and, after accumulating enough shares to compose a creation unit, redeem them from the ETF in exchange for the more valuable redemption basket. The authorized participant's purchase of an ETF's shares on the secondary market, combined with the sale of the ETF's basket assets, may create upward pressure on the price of the ETF shares, downward pressure on the price of the basket assets, or both, bringing the market price of ETF shares and the value of the ETF's portfolio holdings closer together.[32] Alternatively, if ETF shares are trading at a ''premium'' (a price above the NAV per share of the ETF), the transactions in the arbitrage process are reversed and, when arbitrage is working effectively, keep the market price of the ETF's shares close to its NAV.

Market participants also can engage in arbitrage activity without using the creation or redemption processes. For example, if a market participant believes that an ETF is overvalued relative to its underlying or reference assets (*i.e.,* trading at a premium), the market participant may sell ETF shares short and buy the underlying or reference assets, wait for the trading prices to move toward parity, and then close out the positions in both the ETF shares and the underlying or reference assets to realize a profit from the relative movement of their trading prices. Similarly, a market participant could buy ETF shares and sell the underlying or reference assets short in an attempt to profit when an ETF's shares are trading at a discount to the ETF's underlying or reference assets. As with the creation and redemption process, the trading of an ETF's shares and the ETF's underlying or reference assets may bring the prices of the ETF's shares and its portfolio assets closer together through market pressure.[33]

The arbitrage mechanism is important because it provides a means to maintain a close tie between market price and NAV per share of the ETF, thereby helping to ensure ETF investors are treated equitably when buying and selling fund shares. In granting relief under section 6(c) of the Act for ETFs to operate, the Commission has relied on this close tie between what retail investors pay (or receive) in the secondary market and the ETF's approximate NAV to find that the required exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.[34] Investors also have come to expect that an ETF's market price will maintain a close tie to the ETF's NAV per share, which may lead some investors to view ETFs or some types of ETFs more favorably than similar closed-end funds.[35] On the other hand, if the expectation of a close tie to NAV per share is not met, investors may sell or refrain from purchasing ETF shares.[36]

II. Discussion

Given the growth in the ETF market, ETFs' popularity among retail and institutional investors, and our long experience regulating this investment vehicle, we believe that it is appropriate to adopt a rule that will allow most ETFs to operate without first obtaining

[26] *Id.*

[27] An ETF may impose fees in connection with the purchase or redemption of creation units that are intended to defray operational processing and brokerage costs to prevent possible shareholder dilution (''transaction fees'').

[28] The basket might not reflect a *pro rata* slice of an ETF's portfolio holdings. Subject to the terms of the applicable exemptive relief, an ETF may substitute other securities or cash in the basket for some (or all) of the ETF's portfolio holdings. Restrictions related to flexibility in baskets have varied over time. *See infra* section II.C.4.c.

[29] An open-end fund is required by law to redeem its securities on demand from shareholders at a price approximating their proportionate share of the fund's NAV at the time of redemption. *See* 15 U.S.C. 80a–22(d). 17 CFR 270.22c–1 (''rule 22c–1'') generally requires that funds calculate their NAV per share at least once daily Monday through Friday. *See* rule 22c–1(b)(1). Today, most funds calculate NAV per share as of the time the major U.S. stock exchanges close (typically at 4:00 p.m. Eastern Time). Under rule 22c–1, an investor who submits an order before the 4:00 p.m. pricing time receives that day's price, and an investor who submits an order after the pricing time receives the next day's price. *See also* 17 CFR 270.2a–4 (''rule 2a–4'') (defining ''current net asset value'').

[30] ETFs register offerings of shares under the Securities Act, and list their shares for trading under the Exchange Act. Depending on the facts and circumstances, authorized participants that purchase a creation unit and sell the shares may be deemed to be participants in a distribution, which could render them statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. *See* 15 U.S.C. 77b(a)(11) (defining the term ''underwriter'').

[31] The arbitrage mechanism for ETFs that would be subject to rule 6c–11 has been dependent on daily portfolio transparency.

[32] As part of this arbitrage process, authorized participants are likely to hedge their intraday risk. For example, when ETF shares are trading at a discount to an estimated intraday NAV per share of the ETF, an authorized participant may short the securities composing the ETF's redemption basket. After the authorized participant returns a creation unit of ETF shares to the ETF in exchange for the ETF's basket assets, the authorized participant can then use the basket assets to cover its short positions.

[33] Some studies have found the majority of all ETF-related trading activity takes place on the secondary market. *See, e.g.,* Rochelle Antoniewicz & Jane Heinrichs, *Understanding Exchange-Traded Funds: How ETFs Work,* ICI Research Perspective 20, No. 5 (Sept. 2014) (''Antoniewicz I''), *available at https://www.ici.org/pdf/per20-05.pdf,* at 2 (''On most trading days, the vast majority of ETFs do not have any primary market activity—that is, they do not create or redeem shares.''); 2019 ICI Factbook, *supra* footnote 3 (''On average, 90 percent of the total daily activity in ETFs occurs on the secondary market.'').

[34] *See* 15 U.S.C. 80a–6(c).

[35] Scott W. Barnhart & Stuart Rosenstein, *Exchange-Traded Fund Introductions and Closed-End Fund Discounts and Volume,* 45 The Financial Review 4 (Nov. 2010) (within a year of the introduction of a similar ETF, the average discount widens significantly and volume falls significantly in U.S. domestic equity, international equity, and U.S. bond closed-end funds, which may indicate that closed-end funds lose some desirability when a substitute ETF becomes available). As of December 31, 2018, total net assets of ETFs were $3.4 trillion compared to $250 billion for closed-end funds. *See* 2019 ICI Fact Book, *supra* footnote 3.

[36] *See* Staff of the Office of Analytics and Research, Division of Trading and Markets, *Research Note: Equity Market Volatility on August 24, 2015* (Dec. 2015) (''August 24 Staff Report''), *available at https://www.sec.gov/marketstructure/research/equity_market_volatility.pdf.*

an exemptive order from the Commission under the Act. We believe, and commenters on proposed rule 6c–11 generally agreed, that such a rule will help create a consistent, transparent, and efficient regulatory framework for the regulation of most ETFs and help level the playing field for these market participants.[37]

As adopted, rule 6c–11 will exempt ETFs organized as open-end funds from certain provisions of the Act and our rules. The exemptions will permit an ETF to: (i) Redeem shares only in creation unit aggregations; (ii) permit ETF shares to be purchased and sold at market prices, rather than NAV; (iii) engage in in-kind transactions with certain affiliates; and (iv) in certain limited circumstances, pay authorized participants the proceeds from the redemption of shares in more than seven days.

These exemptions are subject to several conditions designed to address the concerns underlying the relevant statutory provisions and to support a Commission finding that the exemptions necessary to allow ETFs to operate are in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The conditions are based upon existing exemptive relief for ETFs, which we believe has served to support an efficient arbitrage mechanism, but reflect several modifications based on our experience regulating this product and commenters' input on the proposed rule.

- First, rule 6c–11 will require an ETF to disclose portfolio holdings each business day on its website before the opening of trading on the ETF's primary listing exchange in a standardized manner. The rule also will require daily website disclosure of the ETF's NAV, market price, premium or discount, and the extent and frequency of an ETF's premiums and discounts. These disclosures are designed to promote an effective arbitrage mechanism and inform investors about the risks of deviation between market price and NAV when deciding whether to invest in ETFs generally or in a particular ETF.
- In addition, the rule will require daily website disclosure of the ETF's median bid-ask spread over the last thirty calendar days. This requirement is designed to provide investors with additional information regarding potential costs associated with buying and selling ETF shares.
- With respect to baskets, the rule will require an ETF to adopt and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of baskets. The rule will allow ETFs to use ''custom baskets'' if their basket policies and procedures: (i) Set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interest of the ETF and its shareholders, including the process for any revisions to, or deviations from, those parameters; and (ii) specify the titles or roles of the employees of the ETF's investment adviser who are required to review each custom basket for compliance with those parameters. As discussed below, these conditions will provide ETFs with additional basket flexibility, which we believe could benefit investors through more efficient arbitrage and narrower bid-ask spreads, subject to protections designed to address the risks that such flexibility may present.
- Rule 6c–11 also will include a condition that excludes an ETF that seeks, directly or indirectly, to provide investment returns over a predetermined period of time that: (i) Correspond to the performance of a market index by a specified multiple; or (ii) have an inverse relationship to the performance of a market index (including by an inverse multiple) (''leveraged/inverse ETFs'').[38]
- An ETF also must retain certain records under rule 6c–11, including information regarding each basket exchanged with an authorized participant.

In order to harmonize the regulation of most ETFs, we are rescinding, one year after the effective date of rule 6c–11, those portions of our prior ETF exemptive orders that grant relief related to the formation and operation of an ETF, including certain master-feeder relief.[39] We are not rescinding the exemptive relief of UIT ETFs, leveraged/inverse ETFs, share class ETFs, and non-transparent ETFs, however, which are outside the scope of rule 6c–11. In addition, we are not rescinding the portions of our prior ETF exemptive orders allowing funds to invest in ETFs in excess of statutory limits in connection with this rulemaking and we are providing relief to allow newly formed ETFs to enter into certain fund of funds arrangements.[40]

Finally, we are adopting amendments to Forms N–1A and N–8B–2 to eliminate certain disclosures that we believe are no longer necessary and to require ETFs that do not rely on rule 6c–11 to provide secondary market investors with disclosures regarding certain ETF trading and associated costs. For example, the form amendments will require such an ETF to provide median bid-ask spread information either on its website or in its prospectus. We believe these amendments will provide investors who purchase ETF shares in secondary market transactions with information to better understand the total costs of investing in an ETF.

A. Scope of Rule 6c–11

1. Organization as Open-End Funds

As proposed, rule 6c–11 will define an ETF as a registered open-end management investment company that: (i) Issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount (if any); and (ii) issues shares that are listed on a national securities exchange and traded at market-determined prices.[41] ETFs organized as UITs (''UIT ETFs'') will continue operating pursuant to their exemptive orders, which include terms and conditions more appropriately tailored to address the unique features of a UIT.[42] Additionally, as proposed,

[37] *See, e.g.,* BlackRock Comment Letter; IDC Comment Letter; Fidelity Comment Letter; Angel Comment Letter; Comment Letter of Nasdaq, Inc. (Sept. 28, 2018) (''Nasdaq Comment Letter'').

[38] *See infra* section II.A.3.

[39] *See infra* sections II.F. and II.G. We are also amending approximately 200 ETF exemptive orders that automatically expire on the effective date of a rule permitting the operation of ETFs to give them time to make any adjustments necessary to rely on rule 6c–11.

[40] *See infra* section II.G. In December 2018, we proposed new 17 CFR 270.12d1–4 (rule 12d1–4 under the Act) to streamline and enhance the regulatory framework applicable to fund of funds arrangements. *See* Fund of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018) [84 FR 1286 (Feb. 1, 2019)] (proposing release) (''FOF Proposing Release''). In connection with proposed rule 12d1–4, we also proposed to rescind the exemptive orders granting relief for certain fund of funds arrangements, including the relief from sections 12(d)(1)(A) and (B) that has been included in our ETF exemptive orders. *See id.* at nn.236–237 and accompanying text.

[41] *See* rule 6c–11(a)(1). Under the rule, the term ''basket'' will be defined to mean the securities, assets, or other positions in exchange for which an ETF issues (or in return for which it redeems) creation units. The term ''exchange-traded fund'' thus will include ETFs that transact on an in-kind basis, on a cash basis, or both.

[42] A UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities. *See* section 4(2) of the Act [15 U.S.C. 80a–4]. By statute, a UIT is unmanaged and its portfolio is fixed. Substitution of securities may take place only under certain pre-defined circumstances. A UIT does not have a board of directors, corporate officers, or an investment adviser to render advice during the life of the trust. *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.A.1.

our form amendments will require UIT ETFs to provide disclosures similar to those provided by other ETFs that are subject to the Investment Company Act.

We understand that most ETF sponsors prefer the open-end fund structure over the UIT structure given the increased investment flexibility the open-end structure affords.[43] For example, ETFs organized as open-end funds can be actively managed or use a ''sampling'' strategy to track an index.[44] An open-end ETF also may participate in securities lending programs, has greater flexibility to reinvest dividends, and may invest in derivatives, which typically require a degree of management that is not provided for in the UIT structure.[45]

Commenters addressing this aspect of the proposal generally supported excluding UIT ETFs from the scope of rule 6c–11. These commenters stated that the structural and operational nuances associated with UIT ETFs would make their inclusion in rule 6c–11 impractical.[46] These commenters also generally agreed that existing UIT ETFs should continue to rely on their individual exemptive orders, and that the Commission should review new UIT ETFs as part of the exemptive order process. One commenter suggested, however, that the Commission consider potential updates to UIT ETFs' exemptive orders to account for certain sponsor services that were not contemplated at the time the orders were granted.[47]

After considering comments, we continue to believe that rule 6c–11 should apply only to ETFs organized as open-end funds, while UIT ETFs should continue to rely on their existing exemptive orders.[48] We acknowledge that excluding UIT ETFs will result in a segment of ETF assets outside the regulatory framework of rule 6c–11. However, we do not believe there is a need to include UIT ETFs within the scope of the rule given the limited sponsor interest in developing ETFs organized as UITs.

In addition, even if we were to include UIT ETFs within the scope of the rule, the unique structural and operational aspects of UIT ETFs noted by commenters would necessitate a regulatory framework that differs from the structure we are adopting for open-end ETFs. We believe that the unmanaged nature of the UIT structure, in particular, would require conditions that differ from the conditions applicable to open-end ETFs. For example, rule 6c–11 will allow ETFs the flexibility to use baskets that differ from a *pro rata* representation of the ETF's portfolio if certain conditions are met.[49] Because such conditions require ongoing management and board oversight, we do not believe that extending such basket flexibility to UIT ETFs would be appropriate.[50] The relief granted to UIT ETFs also includes relief from sections of the Act that govern key aspects of a UIT's operations, which differ from the relief we are providing under rule 6c–11.[51] In short, we believe including UIT ETFs within the scope of rule 6c–11 would complicate the rule significantly and would continue to result in a regulatory framework where the relief and conditions applicable to UIT ETFs and open-end ETFs differ.

To the extent that ETF sponsors develop novel UIT ETFs, we believe that the Commission should review such products as part of its exemptive process to determine whether the relief is necessary or appropriate in the public interest and consistent with the protection of investors. We also believe that the Commission's exemptive process is well-suited to handle requests to modify existing UIT ETF exemptive relief.

Consistent with the proposal, we are not rescinding existing exemptive orders that allow UIT ETFs to operate. Two commenters addressing the exclusion of UIT ETFs from the rule urged the Commission to clarify that UIT ETFs operating pursuant to their exemptive orders can nevertheless continue marketing themselves as ''ETFs.''[52] As discussed below, the Commission is not limiting use of the term ''ETF'' or ''exchange-traded fund'' to funds relying on rule 6c–11. UIT ETFs therefore may continue to use these terms in their marketing materials and otherwise hold themselves out as ''ETFs.'' Further, while UIT ETFs are excluded from the scope of rule 6c–11, we are adopting amendments to Form N–8B–2 that will require them to provide certain additional disclosures regarding ETF trading costs.[53]

2. Index-Based ETFs and Actively Managed ETFs

Consistent with the proposal, rule 6c–11 will provide exemptions for both index-based ETFs and actively managed ETFs, but will not by its terms establish different requirements based on whether an ETF's investment objective is to seek returns that correspond to the returns of an index. Index-based and actively managed ETFs that comply with the rule's conditions function similarly with respect to operational matters, despite different investment objectives or strategies. For example, both index-based and actively managed ETFs register under the Act, issue and redeem shares in creation unit sizes in exchange for baskets of assets, list on national securities exchanges, and allow investors to trade ETF shares throughout the day at market-determined prices in the secondary market.

The distinction between index-based ETFs and actively managed ETFs in our current exemptive orders is largely a product of ETFs' historical evolution.

Unlike the exemptive relief we have granted to certain ETFs organized as open-end funds (*see supra* footnote 6), the relief we have granted to ETFs organized as UITs does not provide relief for future ETFs formed pursuant to the same order.

[43] We have received very few exemptive applications for new UIT ETFs since 2002, and no new UIT ETFs have come to market in that time. *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.A.1.

[44] UIT ETFs seek to track the performance of an index by investing in the component securities of an index in the same approximate proportions as in the index (*i.e.,* ''replicating'' the index) rather than acquiring a subset of the underlying index's component securities or other financial instruments that the ETF's adviser believes will help the ETF track the underlying index (*i.e.,* ''sampling'' the index). In addition, because the exemptive relief granted to UIT ETFs does not provide relief from the portion of section 4(2) that requires UIT securities to represent an undivided interest in a unit of ''specified securities,'' the investment strategies that a UIT ETF can pursue are limited. *See id.* at n.37.

[45] *See* Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 31933 (Dec. 11, 2015) [80 FR 80883 (Dec. 28, 2015)] (''Derivatives Proposing Release''), at n.139.

[46] *See, e.g.,* Invesco Comment Letter; SSGA Comment Letter I; Comment Letter of CFA Institute (Nov. 15, 2018) (''CFA Institute Comment Letter''); Comment Letter of Cboe Global Markets, Inc. (Oct. 1, 2018) (''Cboe Comment Letter'') (stating that the ''unique issue set applicable to UITs as compared to non-UIT ETFs warrant the disparate treatment between UITs and other ETFs.'').

[47] Invesco Comment Letter (stating that these services include chief compliance officer services and ongoing trading services). UIT ETFs have obtained exemptive relief from section 26(a)(2)(C) of the Act to allow the ETF to pay certain enumerated expenses. *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.52 and accompanying text.

[48] The vast majority of ETFs currently in operation are organized as open-end funds, though the earliest ETFs were organized as UIT ETFs, and these early UIT ETFs represent a significant portion of the assets within the ETF industry. As of Dec. 31, 2018, the eight existing UIT ETFs had total assets of approximately $379 billion, representing approximately 11.3% of total assets invested in ETFs (based on data obtained from MIDAS, Bloomberg, and Morningstar Direct).

[49] *See infra* section II.C.4.c.

[50] *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.46–48 and accompanying text.

[51] *See, e.g.,* SPDR Trust, Series 1, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) [57 FR 43996 (Sept. 23, 1992)] (notice) and 19055 (Oct. 26, 1992) (order) and related application (''SPDR'').

[52] *See* SSGA Comment Letter I; SIFMA AMG Comment Letter I.

[53] *See* Form N–8B–2 disclosure requirements *infra* section II.I.

The Commission did not approve the first actively managed ETF until nearly 15 years after index-based ETFs were introduced.[54] Since 2008, however, the actively managed ETF market has grown considerably.[55] The Commission has observed how actively managed ETFs operate during this time, and has not identified any operational issues that suggest additional conditions for actively managed ETFs are warranted.

Commenters that addressed this aspect of the proposal supported the rule's elimination of the historical distinction between index-based and actively managed ETFs.[56] Specifically, commenters agreed that ETFs operate similarly irrespective of whether they are index-based or actively managed, and stated that there are no operational issues that warrant additional conditions for actively managed ETFs.[57] In addition, one commenter stated that, in its experience, deviations between market price and NAV per share are more variable across asset classes underlying ETFs than between index-based and actively managed ETFs investing in the same asset class.[58]

We continue to believe that index-based and actively managed ETFs do not present significantly different concerns under the provisions of the Act from which the rule grants relief because they function similarly with respect to operational matters. As noted below, the arbitrage mechanism for existing actively managed ETFs has worked effectively with small deviations between market price and NAV per share.[59] Permitting index-based and actively managed open-end ETFs to operate under the rule subject to the same conditions also will provide a level playing field among those market participants.

Furthermore, we believe that it would be unreasonable to create a meaningful distinction within the rule between index-based and actively managed ETFs given the proliferation of highly customized, often methodologically complicated indexes. Commenters agreed that the proliferation of these indexes has blurred the distinction between index-based and actively managed ETFs, while ETF industry practices in areas such as portfolio transparency generally do not vary between these types of funds.[60] We therefore believe that eliminating the regulatory distinction between index-based ETFs and actively managed ETFs for purposes of exemptive relief under the Act will help to provide a more consistent and transparent regulatory framework for ETFs organized as open-end funds. This approach is consistent with our regulation of other types of open-end funds, which does not distinguish between actively managed and index-based strategies.

In addition, consistent with our proposal, rule 6c–11 does not include additional conditions relating to index-based ETFs with affiliated index providers (''self-indexed ETFs''). Commenters generally agreed with the proposal's approach to self-indexed ETFs, indicating that existing securities laws adequately address any special concerns presented by these ETFs.[61] One commenter, however, noted that the concerns that were expressed by the Commission when it granted individualized exemptive relief for self-indexed ETFs remain important.[62] This commenter stated that the Commission should permit self-indexed ETFs only ''on the condition that [an information] firewall between the index provider and the asset manager exists.'' [63]

We agree with the commenters who stated that the existing federal securities laws adequately address any special concerns that self-indexed ETFs present, including the potential ability of an affiliated index provider to manipulate an underlying index to the benefit or detriment of a self-indexed ETF.[64] For

[54] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.58. Approximately 100 exemptive orders have been issued since 2008 for actively managed, transparent ETFs.

[55] Based on data obtained from MIDAS, Bloomberg and Morningstar Direct as of December 31, 2018, we estimate that there are now over 270 actively managed ETFs with approximately $72 billion in assets.

[56] *See, e.g.,* ICI Comment Letter; Invesco Comment Letter; Comment Letter of the Index Industry Association (Sept. 30, 2018); Comment Letter of the Fixed Income Market Structure Advisory Committee (Oct. 29, 2018) (''FIMSAC Comment Letter''); Comment Letter of NYSE Arca, Inc. (Oct. 10, 2018) (''NYSE Arca Comment Letter''); CFA Institute Comment Letter; Comment Letter of J.P. Morgan Asset Management (Oct. 1, 2018) (''JPMAM Comment Letter'').

[57] *See, e.g.,* NYSE Arca Comment Letter; Comment Letter of WisdomTree Asset Management, Inc. (Oct. 1, 2018) (''WisdomTree Comment Letter''). As discussed in section II.C.4. *infra,* however, some commenters opposed, or suggested alternatives to, full portfolio transparency for actively managed ETFs.

We also received 43 comment letters requesting that the Commission approve an ETP with an investment objective that seeks results that correspond to the performance of bitcoins or other digital assets. *See, e.g.,* Comment Letter of Charles Brown (July 12, 2018); Comment Letter of Lars Hoffman (July 14, 2018). Rule 6c–11, however, is based on existing relief for ETFs relating to the formation and operation of ETFs under the Investment Company Act and does not relate to specific strategies. *See* Letter from Dalia Blass, Director of Investment Management, to Paul Schott Stevens, President and CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (Jan. 18, 2018), *available at http://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm* (noting that in the staff's view ETFs and other funds that hold substantial amounts of cryptocurrencies and related products raise significant questions regarding how they would satisfy certain other requirements of the Investment Company Act and its rules). The Commission continues to welcome engagement with the public on issues related to cryptocurrency ETPs.

[58] *See* JPMAM Comment Letter (''[O]ur active ETFs trade with similar, and at times lower, deviations than our index ETFs; all of them typically trade within 50 basis points of their NAVs.'').

[59] *See supra* section II.B.2.

[60] *See* FIMSAC Comment Letter (''[I]ndustry participants note that distinctions between active and passive products . . . are increasingly blurred with the advent of 'smart beta' or factor products, or of index products with active elements . . . .); JPMAM Comment Letter (''[A]s the proposal notes, practices around portfolio transparency have converged across index-based and actively managed ETFs.'').

[61] *See* Invesco Comment Letter; BlackRock Comment Letter; IIA Comment Letter; JPMAM Comment Letter; SSGA Comment Letter (''[C]urrent regulatory requirements . . . effectively require a heightened set of requirements associated with affiliated index providers . . .''); WisdomTree Comment Letter (''Advisers are already required to adopt policies designed to prevent portfolio information from being misappropriated.'').

[62] *See* Morningstar Comment Letter. *See also* Guggenheim Funds Investment Advisors, LLC, et al., Investment Company Act Release Nos. 30560 (June 14, 2013) [78 FR 37614 (June 21, 2013)] (notice) and 30598 (July 10, 2013) (order) and related application (''Guggenheim Funds'') (discussing concerns regarding the ability of an affiliated index provider to manipulate an underlying index to the benefit or detriment of a self-indexed ETF and the potential for conflicts that may arise with respect to the personal trading activity of an affiliated index provider's personnel). Guggenheim Funds permitted a self-indexed ETF to address these concerns through full portfolio transparency, instead of certain policies and procedures that had been required in earlier exemptive orders for self-indexed ETFs. *But see, e.g.,* HealthShares Inc., *et al.,* Investment Company Act Release Nos. 27916 (July 27, 2007) [72 FR 42447 (Aug. 2, 2007)] (notice) and 27930 (Aug. 20, 2007) (order) and related application.

[63] *See* Morningstar Comment Letter.

[64] *See* 17 CFR 270.38a–1 (rule 38a–1 under the Act) (requiring funds to adopt policies and procedures reasonably designed to prevent violation of federal securities laws); 17 CFR 270.17j–1(c)(1) (rule 17j–1(c)(1) under the Investment Company Act) (requiring funds to adopt a code of ethics containing provisions designed to prevent certain fund personnel (''access persons'') from misusing information regarding fund transactions); section 204A of the Investment Advisers Act of 1940 (''Advisers Act'') (15 U.S.C. 80b–204A) (requiring an adviser to adopt policies and procedures that are reasonably designed, taking into account the nature of its business, to prevent the misuse of material, non-public information by the adviser or any associated person, in violation of the Advisers Act or the Exchange Act, or the rules or regulations thereunder); section 15(g) of the Exchange Act (15 U.S.C. 78o(f)) (requiring a registered broker or dealer to adopt policies and procedures reasonably designed, taking into account the nature of the broker's or dealer's business, to prevent the misuse of material, nonpublic information by the broker or dealer or any person associated with the broker or dealer, in violation of the Exchange Act or the rules or regulations thereunder).

Cf., e.g., Rule Commentary .02(b)(i) of NYSE American Rule 1000A (requiring a ''fire wall'' between an ETF and an affiliated index provider).

example, ETF sponsors are likely to be in a position to understand the potential circumstances and relationships that could give rise to the misuse of non-public information, and can develop appropriate measures to address them. Therefore, we continue to believe that portfolio transparency combined with existing requirements should be sufficient to protect against the abuses addressed in exemptive applications of ETF sponsors that either use affiliated index providers or create their own indexes.[65]

3. Leveraged/Inverse ETFs

As proposed, rule 6c–11 includes a condition that excludes leveraged/inverse ETFs.[66] These ETFs may not rely on the rule, and will instead continue to operate pursuant to their exemptive orders.[67] Broadly speaking, leveraged/inverse ETFs seek to amplify the returns of an underlying index by a specified multiple or to profit from a decline in the value of an underlying index over a predetermined period of time using financial derivatives. Leveraged/inverse ETFs also rebalance their portfolios on a daily or other periodic basis in order to maintain a constant leverage ratio.[68] These funds' use of leverage together with this periodic rebalancing (or ''reset''), and the resulting effects of compounding, can result in performance that differs significantly from some investors' expectations of how index investing generally works.

For example, as a result of compounding, a leveraged/inverse ETF can outperform a simple multiple of its index's returns over several days of consistently positive returns, or underperform a simple multiple of its index's returns over several days of volatile returns.[69] Investors holding shares over periods longer than the time period targeted by the ETF's investment objective may experience performance that is different, and at times substantially different, from the returns of the targeted index over the same investment period. Buy-and-hold investors with an intermediate or long-term time horizon that invest in a leveraged/inverse ETF—who may not evaluate their portfolios frequently—may experience large and unexpected losses or otherwise experience returns that are different from what they anticipated.[70] As a result, leveraged/inverse ETFs are complex products that serve a markedly different investment purpose than most other ETFs.[71]

Leveraged/inverse ETFs' use of derivatives also raises issues under section 18 of the Act, which limits a fund's ability to obtain leverage.[72] The Commission has been evaluating these section 18 issues as part of a broader consideration of derivatives use by registered funds and business development companies (''BDCs'').[73] We therefore proposed to exclude leveraged/inverse ETFs from the scope of rule 6c–11 so that the Commission could consider these concerns in a comprehensive manner with other funds that use leverage.[74] We also proposed to allow leveraged/inverse ETFs and their sponsors to continue to rely on their existing exemptive relief in order to preserve the status quo.[75]

Most commenters who addressed this aspect of the proposal agreed that leveraged/inverse ETFs present issues and concerns that should be addressed outside the context of rule 6c–11.[76] One such commenter stated that leveraged/inverse ETFs present ''highly specific and accentuated risks'' and stated that the Commission should regulate these products under tailored exemptive orders.[77] Other commenters urged the Commission to consider additional investor protection requirements for leveraged/inverse ETFs, such as requiring marketing materials to notify retail investors about the risks of investing in these instruments or other enhanced disclosure requirements.[78] Some commenters stated that the Commission should not permit

[65] *See infra* section II.C.4. (discussing requirements in rule 6c–11 regarding portfolio transparency).

[66] *See* rule 6c–11(c)(4).

[67] As of December 2018, 167 ETFs employed leveraged or inverse investment strategies. These ETFs had total net assets of $29.64 billion or approximately 1% of all ETF assets.

[68] *See* Rafferty Asset Management, LLC, *et al.,* Investment Company Act Release Nos. 28889 (Aug. 27, 2009) [74 FR 45495 (Sept. 2, 2009)] (notice) and 28905 (Sept. 22, 2009) (order) and related application (amending the applicant's prior order) (''Rafferty II'') (providing a description of maintaining a stated ratio to an underlying index as a daily investment objective).

[69] *See* Office of Investor Education and Advocacy, SEC, *Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-and-Hold Investors* Investor Alert and Bulletins (Aug. 1, 2009), *available at http://www.sec.gov/investor/pubs/leveragedetfs-alert.htm;* FINRA, *Non-Traditional ETFs: FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds,* Regulatory Notice 09–31 (June 2009), *available at http://www.finra.org/sites/default/files/NoticeDocument/p118952.pdf* (''FINRA Regulatory Notice 09–31'').

[70] *See* FINRA Regulatory Notice 09–31, *supra* footnote 69 (reminding member firms of their sales practice obligations relating to leveraged/inverse ETFs and noting that leveraged/inverse ETFs are typically not suitable for retail investors who plan to hold these products for more than one trading session).

[71] *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)] at n.39 and accompanying text (''[I]nverse or leveraged exchange-traded products that are designed primarily as short-term trading tools for sophisticated investors may not be in the best interest of a retail client absent an identified, short-term, client-specific trading objective and, to the extent that such products are in the best interest of a retail client initially, they would require daily monitoring by the adviser''). *See also* Regulation Best Interest, Exchange Act Release No. 86031 (June 5, 2019) [84 FR 33318 (July 12, 2019)] at text accompanying n.596 (stating that broker-dealers recommending leveraged or inverse exchange-traded products with a daily reset should understand that such products may not be suitable for, and as a consequence also not in the best interest of, retail customers who plan to hold them for longer than one trading session, particularly in volatile markets); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Nasdaq Rules 5705 and 5710 to Adopt a Disclosure Requirement for Certain Securities, Exchange Act Release No. 85362 (Mar. 19, 2019) [84 FR 11148 (Mar. 25, 2019)] (adopting certain disclosure requirements for leveraged/inverse ETFs).

[72] 15 U.S.C. 80a–18.

[73] *See* Derivatives Proposing Release, *supra* footnote 45 (proposing new rule 18f–4 under the Act, which was designed to address the investor protection purposes and concerns underlying section 18 of the Act and to provide an updated and more comprehensive approach to the regulation of funds' (including leveraged/inverse ETFs') use of derivatives transactions).

[74] Proposed rule 6c–11 would have provided that an ETF relying on the rule ''may not seek, directly or indirectly, to provide returns that exceed the performance of a market index by a specified multiple, or to provide returns that have an inverse relationship to the performance of a market index, over a fixed period of time.'' *See* proposed rule 6c–11(c)(4).

[75] The staff has not supported new exemptive relief for leveraged/inverse ETFs since 2009. The orders issued to current leveraged/inverse ETF sponsors, as amended over time, relate to leveraged/inverse ETFs that seek daily investment results of up to 300% of the return (or inverse of the return) of the underlying index. Rydex ETF Trust, *et al.,* Investment Company Act Release Nos. 27703 (Feb. 20, 2007) [72 FR 8810 (Feb. 27, 2007)] (notice) and 27754 (Mar. 20, 2007) (order) and related application; Rafferty Asset Management, LLC, *et al.,* Investment Company Act Release Nos. 28379 (Sept. 12, 2008) [73 FR 54179 (Sept. 18, 2008)] (notice) and 28434 (Oct. 6, 2008) (order) and related application (''Rafferty I''). *See also* ProShares Trust, *et al.,* Investment Company Act Release Nos. 28696 (Apr. 14, 2009) [74 FR 18265 Apr. 21, 2009)] (notice) and 28724 (May 12, 2009) (order) and related application (amending the applicant's prior order) (''ProShares''); Rafferty II, *supra* footnote 68.

[76] *See* BlackRock Comment Letter; Invesco Comment Letter; SSGA Comment Letter I; Comment Letter of ICE Data Services (Oct. 1, 2018) (''IDS Comment Letter''); FIMSAC Comment Letter; CFA Institute Comment Letter; *see also* Cboe Comment Letter (indicating that these ETFs should be ''treated differently'' but not specifically stating whether such ETFs should be excluded from the scope of the rule).

[77] *See* Invesco Comment Letter.

[78] *See* CFA Institute Comment Letter; Nasdaq Comment Letter (stating that there is significant investor confusion regarding existing leveraged/inverse ETFs' daily investment horizon). *See also* Comment Letter of Rafferty Asset Management, LLC (Oct. 1, 2018) (''Direxion Comment Letter'') (supporting enhanced disclosure requirements for leveraged/inverse ETFs if reliance on rule 6c–11 is allowed for the operation of leveraged/inverse ETFs).

leveraged/inverse ETFs to use the terms ''ETF'' or ''exchange-traded fund'' in their names, because investors might mistakenly assume that all products referred to as ETFs are structured and regulated like ''traditional'' ETFs.[79]

Other commenters were less specific as to whether the Commission should regulate leveraged/inverse ETFs under exemptive orders or through a separate rule, but stated that leveraged/inverse ETFs should be regulated by means other than rule 6c–11.[80] One commenter agreed that leveraged/inverse ETFs ''raise important disclosure and investor protection issues,'' but strongly encouraged the Commission to ''initiate proceedings, whether as part of its consideration of derivative usage or otherwise, to determine what its future approach'' to leveraged/inverse ETFs will be.[81]

Sponsors of leveraged/inverse ETFs, however, advocated that the rule should not exclude leveraged/inverse ETFs. They asserted that leveraged/inverse ETF investors understand the special concerns related to these products, accept the products' risks, and utilize the products appropriately.[82] One of these commenters stated that the rule's exemptive relief targets ETFs' structural and operational characteristics, and that leveraged/inverse ETFs are structured and operated in the same manner as other ETFs within the rule's scope.[83] Among other similarities, the commenter noted that leveraged/inverse ETFs are structured as open-end funds, provide full portfolio transparency, and accept creation and redemption baskets using the same operating mechanisms as other ETFs. The commenter also opined that leveraged/inverse ETFs should not be excluded from the scope of the rule because other ETFs that utilize leverage in their investment strategies are not excluded from the scope of the rule.

Another commenter did not object to excluding leveraged/inverse ETFs from rule 6c–11, but opined that the proposed rule's condition excluding leveraged/inverse ETFs was overly broad, potentially capturing ETFs that have an inverse relationship to the performance of a market index or ETFs that use other hedging strategies to reduce risk.[84] This commenter also asked the Commission to confirm that the exclusion would not, in effect, apply to every ETF that seeks to track an index that includes derivatives. Additionally, several commenters did not specifically address leveraged/inverse ETFs, but generally stated that rule 6c–11 should apply across all ETFs registered under the Investment Company Act to create an even playing field.[85]

After considering these comments, we have determined to include a condition that prevents leveraged/inverse ETFs from relying on the rule.[86] Although leveraged/inverse ETFs are structurally and operationally similar to other types of ETFs within the scope of rule 6c–11, we believe it is premature to permit sponsors to form and operate leveraged/inverse ETFs in reliance on the rule without first addressing the investor protection purposes and concerns underlying section 18 of the Act. We therefore believe that the Commission should complete its broader consideration of the use of derivatives by registered funds before considering allowing leveraged/inverse ETFs to rely on the rule.

Given that rule 6c–11 is intended to help create a consistent regulatory framework for ETFs and a level playing field among ETF sponsors, we acknowledge that excluding leveraged/inverse ETFs from the rule's scope and permitting existing leveraged/inverse ETFs to continue to operate pursuant to their exemptive orders at this time delays, in part, achieving those goals. However, because leveraged/inverse ETFs raise policy considerations that are different from those we seek to address in the rule, we believe rule 6c–11 should exclude leveraged/inverse ETFs.

As adopted, rule 6c–11 will exclude ETFs that seek to provide leveraged or inverse investment returns over a predetermined period of time. The periodic reset that such strategies necessitate distinguish leveraged/inverse ETFs from other types of ETFs that may use leverage. In the proposal we did not specify the period of time over which an ETF had to seek to deliver a leveraged or inverse return of an index to be covered by the proposed rule's leveraged/inverse ETF exclusion, and we similarly decline to specify a period of time here.[87] However, the condition relating to leveraged/inverse ETFs continues to include a temporal element (*i.e.,* ''over a predetermined period of time'') in order to specifically capture ETFs that seek to deliver the leveraged or inverse return of a market index over a set period of time, daily or otherwise.[88]

In addition, while the rule uses the term ''multiple,'' leveraged/inverse ETFs with strategies that seek directionally leveraged or inverse returns of an index present the investor protection concerns discussed above regardless of whether the amplification factor or inverse factor is evenly divisible by 100 (*e.g.,* a fund that seeks to provide a daily investment return equal to 150% of the performance of an index). Thus, to clarify the rule's use of the term ''multiple,'' leveraged/inverse ETFs are excluded from the scope of the rule regardless of whether the returns they seek over a predetermined time period are evenly divisible by 100.[89] The exclusion also includes strategies that pursue a specified range of a multiple or inverse multiple of an index's performance (*e.g.,* 200% to 300% of an index's performance or −200% to −300% of an index's performance). This approach is consistent with our existing exemptive orders and will capture those ETFs that have historically been considered ''leveraged/inverse ETFs'' in the marketplace.

[79] *See* BlackRock Comment Letter; FIMSAC Comment Letter.

[80] *See* SSGA Comment Letter I (''Leveraged ETFs . . . present issues which are appropriately addressed through means other than the Proposed ETF Rule.''); IDS Comment Letter (''IDS believes that leveraged and inverse ETFs strategies carry significantly different risk profiles than index-based ETFs. For that reason we agree that they should be excluded from the scope of funds that may rely on the proposed rule.'').

[81] Comment Letter of the Mutual Fund Directors Forum (Oct. 1, 2018) (''MFDF Comment Letter'').

[82] *See* Direxion Comment Letter (''Given [certain data findings and educational efforts by regulators, brokerage firms, and the ETFs themselves] we believe it would be hard for investors *not* to understand that our leveraged ETFs are complex products that are 'different' from other ETFs, and we have not seen any recent empirical data or other evidence to the contrary.''); Comment Letter of ProShare Advisors LLC (Oct. 1, 2018) (''ProShares Comment Letter'').

[83] *See* ProShares Comment Letter.

[84] *See* Cboe Comment Letter (stating that the exclusion should cover only those inverse ETFs that seek to provide returns that exceed the performance of a market index by a ''specified inverse multiple'').

[85] *See, e.g.,* BNY Mellon Comment Letter.

[86] *See* Rule 6c–11(c)(4).

[87] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.A.3.

[88] *See* rule 6c–11(c)(4). The current exemptive orders that allow leveraged/inverse ETFs contemplate a daily reset, because the orders relate to ETFs that pursue daily investment objectives. *See* 2018 ETF Proposing Release, *supra* footnote 7 at n.77 and related discussion. Proposed rule 6c–11 used the term ''fixed period of time'' to prevent both these ETFs and leveraged/inverse ETFs contemplating non-daily resets (*e.g.,* weekly or monthly resets) from relying on the rule. *See* proposed rule 6c–11(c)(4). Rule 6c–11 as adopted uses the term ''predetermined period of time'' to clarify that leveraged/inverse ETFs contemplating predetermined but variable resets (*e.g.,* leveraged/inverse ETFs that contemplate a range of daily-to-weekly resets) are similarly prohibited from relying on the rule.

[89] Additionally, though a strict mathematical interpretation of the term ''multiple'' may include a multiple of 100%, an ETF that simply seeks to track the performance of an index is not considered ''leveraged'' for these purposes and may rely on the rule. *But see infra* footnotes 90–91 and accompanying text.

We also continue to believe that it is important to specify that an ETF relying on the rule may not *indirectly* seek to provide investment returns that correspond to the performance of a market index by a specified multiple or to provide returns that have an inverse relationship to the performance of a market index over a predetermined period of time in order to prevent a fund from circumventing this condition, such as by embedding leverage in the underlying index.[90] For example, an ETF could not circumvent the rule's conditions and rely on the rule to track an index if the index itself tracks 300% or −100% of the performance of the S&P 500.[91] In response to commenter concerns discussed above, however, this does not mean that the exclusion would apply to every ETF that tracks an index with constituents that are derivatives.[92] Whether a particular index is ''leveraged'' would depend on the economic characteristics of the index's constituents, and not just on whether some or all of the constituents are derivatives.

Finally, we are not adopting enhanced website or other disclosure requirements for leveraged/inverse ETFs at this time as some commenters had recommended. We believe all registered funds that pursue leveraged or inverse strategies raise similar disclosure issues. We therefore believe that the Commission should address any such potential disclosure issues separately for all leveraged/inverse registered funds.

B. Exemptive Relief Under Rule 6c–11

Rule 6c–11 will provide ETFs that fall within the scope of the rule exemptive relief from certain provisions of the Act that are necessary to allow ETFs to operate. These exemptions are consistent with the relief we have given to ETFs under our exemptive orders.[93] As discussed below in section II.C., the exemptions will be subject to conditions that are designed to address the concerns underlying the relevant statutory provisions and to support a Commission finding that the exemptions are in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.[94]

1. Treatment of ETF Shares as ''Redeemable Securities''

Consistent with our proposal, ETFs relying on rule 6c–11 will be considered to issue a ''redeemable security'' within the meaning of section 2(a)(32) of the Act.[95] ETFs have features that distinguish them from both traditional open-end and closed-end funds. A defining feature of open-end funds is that they offer redeemable securities, which allow the holder to receive his or her proportionate share of the fund's NAV per share upon presentation of the security to the issuer. Although individual ETF shares cannot be redeemed, except in limited circumstances, they can be redeemed in creation unit aggregations.[96] Therefore, we believe that ETF shares are most appropriately classified under the final rule as redeemable securities within the meaning of section 2(a)(32), and that ETFs should be regulated as open-end funds within the meaning of section 5(a)(1) of the Act.[97]

Unlike our exemptive orders, which have provided exemptions from the definitions of ''redeemable security'' in section 2(a)(32) and ''open-end company'' in section 5(a)(1), rule 6c–11 will not provide exemptions from these definitions. Instead, we believe that it is more appropriate for the rule to address these questions of status by classifying ETF shares as ''redeemable securities.'' Thus, any ETF that relies on the rule's conditions and requirements will be subject to requirements imposed under the Act and our rules that apply to open-end funds.[98]

In addition, the rules under the Exchange Act that apply to transactions in redeemable securities issued by an open-end fund will apply to ETFs relying on rule 6c–11.[99] Shares issued by ETFs relying on rule 6c–11 therefore are eligible for the ''redeemable securities'' exceptions in rules 101(c)(4) and 102(d)(4) of Regulation M and rule 10b–17(c) under the Exchange Act in connection with secondary market transactions in ETF shares and the creation or redemption of creation units. ETFs relying on rule 6c–11 similarly will qualify for the ''registered open-end investment company'' exemption in rule 11d1–2 under the Exchange Act.

Many commenters supported our proposed classification of ETF shares as ''redeemable securities.''[100] Commenters also supported our view that the arbitrage mechanism that is central to the operation of an ETF (and the conditions in the final rule designed to facilitate an effective arbitrage mechanism) serves to keep the market price of ETF shares at or close to the ETF's NAV per share.[101] As a result, even though only authorized participants may redeem creation units at NAV per share, commenters agreed that investors are able to sell their ETF shares on the secondary market at or close to NAV, similar to investors in an open-end fund that redeem their shares at NAV per share.[102]

Commenters also supported the resulting eligibility for the redeemable securities exceptions and the registered open-end investment company exemption under the Exchange Act

[90] Rule 6c–11(c)(4) (emphasis added). *See also* 2018 ETF Proposing Release, *supra* footnote 7, at text following n.82.

[91] The exemptive orders that we have issued to sponsors of leveraged/inverse ETFs do not provide relief to ETFs described as seeking investment returns that correspond to the performance of a leveraged or inverse leveraged market index over a predetermined period of time. *See supra* footnote 75.

[92] *See supra* footnote 84 and following text.

[93] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.88 and related discussion. Our exemptive orders also provide relief allowing certain types of funds to invest in ETFs beyond the limits of section 12(d)(1) of the Act. *See infra* section II.F. (discussing our treatment of master-feeder relief) and section II.G. (discussing our treatment of other relief for fund investments in ETFs).

[94] *See* 15 U.S.C. 80a–6(c).

[95] Rule 6c–11(b)(1).

[96] *See* rule 6c–11(a)(1) (defining an exchange-traded fund, in part, as a registered open-end management company that issues and redeems its shares in creation units). The rule defines ''creation unit'' to mean a specified number of ETF shares that the ETF will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount (if any). *See* rule 6c–11(a)(1). *See also infra* section II.C.1. (discussing circumstances where ETF shares can be individually redeemed).

[97] 15 U.S.C. 80a–2(a)(32) (defining ''redeemable security''); 15 U.S.C. 80a–5(a)(1) (defining ''open-end company'' as ''a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer''). If ETF shares were not classified as redeemable securities within the meaning of section 2(a)(32) of the Act, an ETF that is a management company (as defined under the Act) would be subject to the provisions of the Act applicable to closed-end funds. *See* 15 U.S.C. 80a–5(a)(2) (defining a ''closed-end company'' as any management company other than an open-end company).

[98] *See, e.g.,* 15 U.S.C. 80a–22; 17 CFR 270.22c–1. ETFs that are management companies and operate in reliance on rule 6c–11 and those that operate in reliance on an exemptive order would equally be subject to the Act and our rules as open-end funds.

[99] *See, e.g.,* 17 CFR 240.15c3–1. *See also* Securities Transaction Settlement Cycle, Exchange Act Release No. 80295 (Mar. 22, 2017) [82 FR 15564 (Mar. 29, 2017)] (shortening the standard settlement cycle for most broker-dealer securities transactions to two business days).

[100] *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; Comment Letter of the Asset Management Group of the Securities Industry and Financial Markets Association (Feb. 22, 2019) (''SIFMA AMG Comment Letter II''); Vanguard Comment Letter; SSGA Comment Letter; Comment Letter of Virtu Financial, Inc. (Oct. 3, 2018) (Virtu Comment Letter''); Comment Letter of Eaton Vance Corp. (Oct. 4, 2018) (''Eaton Vance Comment Letter''); ABA Comment Letter.

[101] *See, e.g.,* ICI Comment Letter. *See also* 2018 ETF Proposing Release, *supra* footnote 7, at n.95 and related discussion.

[102] *See, e.g.,* ICI Comment Letter; Virtu Comment Letter.

rules discussed above.[103] Commenters stated that such treatment would reduce regulatory complexity and eliminate potential inconsistencies between rule 6c–11 and this Exchange Act relief.[104] Several commenters recommended extending the ''redeemable security'' classification to ETFs that are not eligible to rely on rule 6c–11, such as UIT ETFs or share class ETFs, to make them similarly eligible for the exceptions under the Exchange Act that apply to redeemable securities issued by an open-end fund.[105]

After considering comments, we are clarifying that we view securities of all ETFs, including those that do not rely on rule 6c–11, as eligible for the redeemable securities exceptions in rules 101(c)(4) and 102(d)(4) of Regulation M and rule 10b–17(c) under the Exchange Act in connection with secondary market transactions in ETF shares and the creation or redemption of creation units and the exemption in rule 11d1–2 under the Exchange Act for securities issued by a registered open-end investment company or unit investment trust. We believe that securities issued by ETFs that are exempt from the definitions of ''redeemable security'' in section 2(a)(32) and ''open-end company'' in section 5(a)(1) of the Investment Company Act pursuant to their orders do not raise different concerns with respect to these Exchange Act provisions than those issued by ETFs relying on rule 6c–11.

Several commenters recommended further harmonization between rule 6c–11 and certain other Exchange Act relief that ETFs must currently seek in order to operate.[106] Commenters expressed concern that this Exchange Act relief is duplicative or, in some cases, inconsistent with other requirements applicable to ETFs.[107] In particular, commenters noted that rule 6c–11 as proposed would not address relief for ETFs from section 11(d)(l) of the Exchange Act as well as rules 10b–10, 15c1–5, 15c1–6, and 14e–5 thereunder.[108] Commenters also recommended that the ETF generic listing standards of national securities exchanges be broadened and harmonized with any final ETF rule.[109]

We agree that complementary exemptive relief under the Exchange Act could further reduce regulatory complexity, administrative delay, and eliminate potential inconsistencies between rule 6c–11 and the related Exchange Act relief that ETFs must obtain to operate. Accordingly, the Commission is issuing an order granting exemptive relief to ETFs operating in reliance on rule 6c–11 from the requirements of section 11(d)(1) of the Exchange Act and rules 10b–10, 15c1–5, 15c1–6, and 14e–5 under the Exchange Act for ETFs, where certain conditions are met.[110]

Finally, commenters asked that we exempt ETF insiders and large shareholders from certain section 13(d) and section 16 reporting requirements under the Exchange Act beyond the conditions in several staff no-action letters.[111] The staff no-action letters stated that the staff would not recommend enforcement action to the Commission if certain insiders and large shareholders of ETFs seeking to track the performance of a benchmark index through a replication strategy did not file reports under section 13(d) and section 16(a) based on certain facts and circumstances, including that there is no material deviation between the ETF's secondary market price and NAV.[112] Commenters stated that the portfolio transparency requirements in rule 6c–11 would address the concerns underlying section 13(d) and section 16 without conditioning relief on there being no material deviation between the ETF's market price and NAV per share.[113]

As discussed above, the exemptions we are providing today under rule 6c–11 are based on the existence of a close tie between market price and NAV per share. Expanding on the existing staff no-action letters by providing exemptions from the reporting requirements in sections 13(d) and 16 even when there is a material deviation between market price and NAV would be inconsistent with the exemptions in rule 6c–11. We therefore refrain from taking additional action concerning the conditions outlined in our existing staff no-action letters.

2. Trading of ETF Shares at Market-Determined Prices

Rule 6c–11 will provide exemptions from section 22(d) and rule 22c–1 to permit secondary market trading of ETF shares at market-determined prices as proposed. Section 22(d) of the Act, among other things, prohibits investment companies, their principal underwriters, and dealers from selling a redeemable security to the public except at a current public offering price described in the prospectus.[114] Rule 22c–1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV.[115] Together, section 22(d) and rule 22c–1 are designed to: (i) Prevent dilution caused by certain riskless trading practices of principal underwriters and dealers; (ii) prevent unjust discrimination or preferential treatment among investors purchasing and redeeming fund shares; and (iii) preserve an orderly distribution of investment company shares.[116] ETFs seeking to register under the Act obtain exemptions from these provisions because investors may purchase and sell individual ETF shares from and to dealers on the secondary market at market-determined prices (*i.e.,* at prices other than those described in the prospectus or based on NAV). Consistent with our prior exemptive orders, rule 6c–11 will provide exemptions from these provisions.[117]

[103] *See, e.g.,* Dechert Comment Letter; BlackRock Comment Letter; Invesco Comment Letter I; ABA Letter.

[104] *See, e.g.,* Vanguard Comment Letter; Dechert Comment Letter; WisdomTree Comment Letter; ABA Comment Letter; SIFMA AMG Comment Letter I.

[105] *See* ICI Comment Letter; Dechert Comment Letter; SIFMA AMG Comment Letter I; Vanguard Comment Letter; SSGA Comment Letter I; ABA Comment Letter; BlackRock Comment Letter.

[106] *See, e.g.,* BlackRock Comment Letter; ICI Comment Letter; Fidelity Comment Letter; SIFMA AMG Comment Letter I; Comment Letter of John Hancock Investments (Oct. 1, 2018) (''John Hancock Comment Letter''); Comment Letter of Flow Traders US LLP (Oct. 1, 2018) (''Flow Traders Comment Letter'').

[107] *See, e.g.,* BlackRock Comment Letter. *See also, e.g.,* ICI Comment Letter (''Currently, ETFs often must satisfy multiple and sometimes conflicting requirements from different divisions within the SEC.''). Commenters also expressed concerns about the administrative delay in obtaining these additional approvals. *See, e.g.,* SIFMA AMG Comment Letter I.

[108] *See, e.g.,* Dechert Comment Letter; *see also* 2015 ETP Request for Comment, *supra* footnote 19.

[109] *See, e.g.,* Cboe Comment Letter (''Cboe encourages the Commission to evaluate exchange proposals to broaden their generic listing standards . . . in order to achieve efficiencies with exchange listing processes in a manner very similar to those which [rule 6c–11] is designed to accomplish.''). *See also, e.g.,* ABA Comment Letter, Nasdaq Comment Letter.

[110] *See* ETF Exchange Act Order, *supra* footnote 15. ETFs that do not operate in reliance on rule 6c–11 and currently have relief from the Exchange Act provisions discussed above may continue to rely on such relief.

[111] *See, e.g.,* Fidelity Comment Letter; Comment Letter of Thompson Hine LLP (Oct. 1, 2018) (''Thompson Hine Comment Letter'').

[112] *See PDR Services Corporation,* SEC Staff No-Action Letter (pub. avail. December 14, 1998) (''PDR Services Letter''); *Select Sector SPDR Trust,* SEC Staff No-Action Letter (pub. avail. May 6, 1999) (''Select Sector SPDR Trust Letter'').

[113] *See, e.g.,* Thompson Hine Comment Letter.

[114] 15 U.S.C. 80a–22(d).

[115] *See* 17 CFR 270.22c–1.

[116] *See generally* Mutual Fund Distribution Fees; Confirmations, Investment Company Act Release No. 29367 (July 21, 2010) [75 FR 47064 (Aug. 4, 2010)] (discussing legislative history of section 22(d)).

[117] *See* rule 6c–11(b)(2). The reference in the rule to ''repurchases . . . at market-determined prices'' refers to secondary market transactions with dealers. Thus, the rule will not allow an ETF to

As discussed above, only authorized participants can purchase and redeem shares directly from an ETF at NAV per share and only in creation unit aggregations. Because authorized participants (and other market participants transacting through an authorized participant) can take advantage of disparities between the market price of ETF shares and NAV per share, they may be in a different position than investors who buy and sell individual ETF shares only on the secondary market.[118] However, if the arbitrage mechanism is functioning effectively, entities taking advantage of these disparities in market price and NAV per share move the market price to a level at or close to the NAV per share of the ETF. The final rule will provide exemptions from section 22(d) and rule 22c–1 because we believe this arbitrage mechanism—and the conditions in this rule designed to promote a properly functioning arbitrage mechanism—have adequately addressed, over the significant operating history of ETFs, the potential concerns regarding shareholder dilution and unjust discrimination that these provisions were designed to address.

The arbitrage mechanism is the foundation for why retail and other secondary market investors generally can buy and sell ETF shares at prices that are at or close to the prices at which authorized participants are able to buy and redeem shares directly from the ETF at NAV. In the Commission's experience, the deviation between the market price of ETFs and NAV per share has generally been relatively small.[119] However, we recognize that under certain circumstances, including during periods of market stress, the arbitrage mechanism may work less effectively.[120] We also recognize that secondary market investors who trade in ETF shares during these periods may be harmed by trading at a price that is not close to the NAV per share of the ETF (or the contemporaneous value of the ETF's portfolio). On balance, however, we continue to believe these investors are more likely to weigh the potential benefits of ETFs (*e.g.,* low cost and intraday trading) against any potential for market price deviations when deciding whether to utilize ETFs.[121] Further, we believe that the conditions we are adopting as part of rule 6c–11, along with other recent actions that are designed to promote an effective arbitrage mechanism, will continue to result in a sufficiently close alignment between an ETF's market price and NAV per share in most circumstances, and provide an appropriate basis for the exemptive relief we are granting.[122] We particularly find this to be the case given the benefits ETFs offer investors as discussed above.

Moreover, to the extent that there are instances where bid-ask spreads widen, or premiums and discounts persist, the final rule and disclosure amendments will require ETFs to disclose certain information on their website.[123] These disclosure requirements are designed to increase investor awareness of these risks. We continue to believe that it is important for investors to be informed where costs may increase beyond what they would reasonably expect.

Commenters generally agreed that rule 6c–11 should provide the proposed exemptions from section 22(d) and rule 22c–1.[124] These commenters highlighted the ability of investors to transact in ETF shares intraday at market-determined prices as one of the primary benefits of the ETF structure. Commenters also agreed with our observation that the arbitrage mechanism generally has kept the deviation between the ETF market price and NAV per share relatively small, and that an efficient arbitrage mechanism adequately addresses potential concerns under section 22(d) and rule 22c–1.[125] One commenter agreed that, on balance, given the historically insignificant and short duration of unusual ETF premiums and discounts, and the relatively low risks presented to investors as a result, ETF investors are likely to weigh the potential benefits of ETFs against any potential for market price deviations when selecting an investment in ETFs.[126]

3. Affiliated Transactions

As proposed, rule 6c–11 will provide exemptions from sections 17(a)(1) and (a)(2) of the Act with regard to the deposit and receipt of baskets by a person who is an affiliated person of an ETF (or who is an affiliated person of such a person) solely by reason of: (i) Holding with the power to vote 5% or more of an ETF's shares; or (ii) holding with the power to vote 5% or more of any investment company that is an affiliated person of the ETF.[127] The relief from section 17(a) in rule 6c–11 is consistent with the exemptive relief that we have granted to ETF applicants.[128]

Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from knowingly selling any security or other

repurchase shares from an investor at market-determined prices.

[118] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.113 and accompanying discussion.

[119] In an analysis of various asset classes during 2017–2018, end-of-day deviations between closing price of ETFs and NAV were relatively rare and generally not persistent. *See also id.,* at nn.119–123 and accompanying text (discussing similar staff analysis for 2016–2017 period).

[120] The Commission and its staff have observed the operation of the arbitrage mechanism during periods of market stress when the deviation between intraday market prices and the next-calculated NAV per share significantly widened for short periods of time. During periods of extraordinary volatility in the underlying ETF holdings, it may be difficult for authorized participants or market makers to confidently ascribe precise values to an ETF's holdings, thereby making it more difficult to effectively hedge their positions. These market participants may widen their quoted spreads in ETF shares or, in certain cases, may elect not to transact in or quote ETF shares, rather than risk loss. *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.124–130 and accompanying text.

[121] *See id.,* at n.131 and accompanying text. The Commission also has taken steps to address disruptions in the arbitrage mechanism. For example, the Commission approved changes to the limit up-limit down rules following the market events on August 24, 2015. *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Operation of the Regulation NMS Plan to Address Extraordinary Market Volatility, Exchange Act Release No. 78435 (July 28, 2016) [81 FR 51239 (Aug. 3, 2016)]; Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Effective Date of SR–FINRA–2016–028, Exchange Act Release No.78660 (Aug. 24, 2016) [81 FR 59676 (Aug. 30, 2016)].

[122] For example, 17 CFR 270.22e–4 (rule 22e–4) under the Act requires ETFs to consider certain additional factors that address the relationship between the liquidity of the ETF's portfolio and the arbitrage mechanism in assessing, managing, and periodically reviewing its liquidity risk. *See* Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)] (''LRM Adopting Release''). We have taken these requirements into consideration in adopting the conditions in rule 6c–11.

[123] *See infra* section II.C.6.

[124] *See, e.g.,* ICI Comment Letter; SSGA Comment Letter I; Invesco Comment Letter.

[125] *See, e.g.,* ICI Comment Letter; Invesco Comment Letter.

[126] *See* Invesco Comment Letter.

[127] *See* rule 6c–11(b)(3).

[128] ETF applicants have requested, and we have granted, exemptive relief from section 17(a) of the Act for: (i) Persons affiliated with the ETF based on their ownership of 5% or more of the ETF's outstanding securities (''first-tier affiliates''); and (ii) affiliated persons of the first-tier affiliates or persons who own 5% or more of the outstanding securities of one or more funds advised by the ETF's investment adviser (''second-tier affiliates''). In seeking this relief, applicants have stated that first- and second-tier affiliates are not treated differently from non-affiliates when engaging in purchases and redemptions of creation units. All purchases and redemptions of creation units are at an ETF's next-calculated NAV pursuant to rule 22c–1. Additionally, the securities deposited or delivered upon redemption are valued in the same manner, using the same standards, as those securities are valued for purposes of calculating the ETF's NAV per share. *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.140–141 and accompanying discussion.

property to or purchasing any security from the company.[129] Purchases and redemptions of ETF creation units are typically effected in kind, and section 17(a) would prohibit these in-kind purchases and redemptions by affiliated persons of the ETF. An affiliated person of an ETF includes, among others: (i) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the ETF; (ii) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the ETF; and (iii) any person directly or indirectly controlling, controlled by, or under common control with the ETF.[130]

Commenters expressed support for our proposed exemptions from sections 17(a)(1) and (a)(2), concurring with our view that this relief is necessary to facilitate the efficient functioning of the arbitrage mechanism.[131] Commenters noted that, without this relief, an authorized participant or other market participant that becomes an affiliated person of the ETF due to its holdings would be prevented from engaging in arbitrage using an in-kind basket, which, in turn, could have the adverse effect of limiting the pool of market participants that could engage in arbitrage.[132] Ultimately, this could result in the deviation between market price and NAV per share widening in cases where there are very few authorized participants or other market participants actively engaged in transactions with the ETF. Commenters also stated that in-kind purchases and redemptions of ETF creation units between an ETF and authorized participants, which may be affiliated persons, or affiliated persons of affiliated persons, as a result of such transactions are not the types of potentially harmful transactions that section 17(a) is designed to prevent.[133]

We continue to believe that this relief is appropriate to facilitate the efficient functioning of the arbitrage mechanism after considering comments. As noted above, all purchases and redemptions of creation units with such an affiliated person are at an ETF's next-calculated NAV, and an ETF would value the securities deposited or delivered upon redemption in the same manner, using the same standards, as the ETF values those securities for purposes of calculating the ETF's NAV. We do not believe that these transactions will give rise to the policy concerns that section 17(a) is designed to prevent.

Several commenters asked us to confirm that the section 17(a) relief in rule 6c–11 would extend to entities that are affiliated with the ETF by virtue of holding more than 25% of the ETF's shares or more than 25% of any investment company that is an affiliated person of the ETF (''25% holders''), consistent with the terms of our existing exemptive orders.[134] Our proposal was designed to provide relief from section 17(a) similar to our orders.[135] We do not believe that an express reference to 25% holders in rule 6c–11(b)(3) is necessary, however, because the rule text will capture entities that are affiliated with the ETF by virtue of share ownership greater than 5%. We confirm that 25% holders are within the scope of this exemption.

A number of commenters also recommended expanding the relief to cover additional types of affiliated relationships, such as exempting broker-dealers that are affiliated with the ETF's adviser,[136] or permitting an ETF's adviser or its affiliates to transact with the ETF to provide in-kind seed capital to the ETF.[137] These commenters noted that increasing the entities eligible to transact with an ETF could further help facilitate the arbitrage mechanism, reduce concentration risk, and lower transaction costs. These commenters also noted that a fund's policies and procedures on baskets and custom baskets, as well as the federal securities laws and regulations that prohibit manipulative practices and misuse of nonpublic information, would address potential concerns regarding overreaching and similar abusive practices by these affiliated entities.

While permitting additional types of affiliated entities to transact with the ETF could provide additional benefits to an ETF, expanding the scope of affiliated persons covered by the exemption would constitute novel section 17(a) relief. To date, our exemptive orders have been narrowly tailored to permit in-kind purchases and redemptions between an ETF and certain affiliates to facilitate efficient arbitrage. Expanding this relief would raise novel affiliation issues that would require a careful consideration of whether the current protections embedded in our relief sufficiently address any risks posed by such transactions with additional categories of affiliates. This would be especially the case if the exemption were expanded to include affiliated entities such as the ETF's sponsor and other service providers that typically have greater ability to influence an ETF. Given that rule 6c–11 is generally intended to codify existing relief for ETFs, we therefore do not believe that it is appropriate to expand the scope of affiliated persons covered by the exemption as part of this rulemaking, although such exemptions may be considered within our regular exemptive applications process.

4. Additional Time for Delivering Redemption Proceeds

We are adopting, largely as proposed, an exemption from section 22(e) to permit an ETF to delay satisfaction of a redemption request in the case of certain foreign investments for which a local market holiday or the extended delivery cycles of another jurisdiction make timely delivery unfeasible. Section 22(e) of the Act generally prohibits a registered open-end management investment company from postponing the date of satisfaction of redemption requests for more than seven days after the tender of a security for redemption.[138] This prohibition can cause operational difficulties for ETFs that hold foreign investments and exchange in-kind baskets for creation

[129] 15 U.S.C. 80a–17(a).

[130] 15 U.S.C. 80a–2(a)(3)(A), (B) and (C). A control relationship is presumed when one person owns more than 25% of another person's outstanding voting securities. 15 U.S.C. 80a–2(a)(9).

[131] *See e.g.,* Thompson Hine Comment Letter; ICI Comment Letter; JPMAM Comment Letter; SSGA Comment Letter I; Fidelity Comment Letter; SIFMA AMG Comment Letter I.

[132] *See, e.g.,* ICI Comment Letter. Newly launched ETFs could face particular challenges without this relief because every purchaser of a creation unit would be considered an affiliated person of the ETF so long as there are fewer than twenty creation units outstanding.

[133] *See, e.g.,* Thompson Hine Comment Letter; *see also* Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] (''Rule 38a–1 Adopting Release'') (''To prevent self-dealing and overreaching by persons in a position to take advantage of the fund, the Investment Company Act prohibits funds from entering into certain transactions with affiliated persons.'') (internal citations omitted).

[134] *See e.g.,* SIFMA Comment Letter I. The related exemptive application to our orders usually includes an express reference to holders of 25% or more of the ETF's shares or 25% or more of an investment company that is an affiliated person of the ETF. *See, e.g.,* Pacer Funds, *et al.,* Investment Company Act Release Nos. 33374 (Feb. 13, 2019) [84 FR 5125 (Feb. 20, 2019)] (notice) and 33397 (March 12, 2019) (order).

[135] Our 2008 proposal expressly included section 17(a) relief for 25% holders. *See* 2008 ETF Proposing Release, *supra* footnote 3. One commenter on that proposal stated that the reference to 25% holders was superfluous in light of the reference to 5% holders. *See* Comment Letter of Stradley Ronan Stevens & Young, LLP (May 19, 2008).

[136] *See* ICI Comment Letter; JPMAM Comment Letter; SSGA Comment Letter I.

[137] *See* Fidelity Comment Letter; SIFMA AMG Comment Letter I.

[138] 15 U.S.C. 80a–22(e).

units. For example, local market delivery cycles for transferring foreign investments to redeeming investors, together with local market holiday schedules, can sometimes require a delivery process in excess of seven days.[139]

Section 22(e) was designed to prevent unreasonable delays in the actual payment of redemption proceeds.[140] Rule 6c–11 will provide an exemption from section 22(e) of the Act because we believe that the limited nature of the exemption addresses the concerns underlying this section of the Act. Rule 6c–11 will grant relief from section 22(e) to permit an ETF to delay satisfaction of a redemption request for more than seven days if a local market holiday, or series of consecutive holidays, or the extended delivery cycles for transferring foreign investments to redeeming authorized participants, or the combination thereof prevents timely delivery of the foreign investment included in the ETF's basket.[141]

Under this exemption, an ETF must deliver foreign investments as soon as practicable, but in no event later than 15 days after the tender to the ETF. The exemption therefore will permit a delay only to the extent that additional time for settlement is actually required, when a local market holiday, or series of consecutive holidays, or the extended delivery cycles for transferring foreign investments to redeeming authorized participants prevents timely delivery of the foreign investment included in the ETF's basket.[142] If a foreign investment settles in less than 15 days, the rule will require an ETF to deliver it pursuant to the standard settlement time of the local market where the investment trades. To the extent that settlement times continue to shorten, the ''as soon as practicable'' language embedded in the exemption is designed to minimize any unnecessary settlement delays.[143]

Commenters generally supported our proposed exemption from section 22(e).[144] Commenters stated that the relief would provide additional assurance that an ETF could postpone payment of redemption proceeds in certain circumstances outside of its control.[145] One commenter observed that a period of 15 days, accompanied by a requirement that delivery be made as soon as practicable, is appropriate and reasonable.[146] Another commenter agreed that it was appropriate to limit the exemption to the particular foreign investment and not the entire basket.[147]

Proposed rule 6c–11 would have included a ten-year sunset provision in light of the continued movement toward shorter settlement times in markets around the world.[148] Commenters generally objected to the proposed sunset provision, citing a number of reasons for why the section 22(e) relief would likely remain necessary beyond the sunset period. Although we continue to believe that technological innovation and changes in market infrastructures and operations should lead to further shortening of settlement cycles, we recognize commenters' concerns that these developments may be gradual and difficult to predict.[149] Moreover, given that certain local market holidays may last for up to seven business days, we agree with commenters that settlement within seven days may continue to pose challenges even in light of continued technological progress and changes in market operations.[150] We therefore are not adopting a sunset provision to limit the relief from section 22(e) to ten years from the rule's effective date.

The rule will define ''foreign investment'' as any security, asset or other position of the ETF issued by a foreign issuer (as defined by rule 3b–4 under the Exchange Act), and that is traded on a trading market outside of the U.S.[151] As under the proposal, this definition is not limited to ''foreign securities,'' but also includes other investments that may not be considered securities. Although these other investments may not be securities, they may present the same challenges for timely settlement as foreign securities if they are transferred in kind. This approach is consistent with the terms of some recent exemptive orders that provide relief from section 22(e) for the delivery of foreign investments that may not be securities.[152] We received no comments on this aspect of the definition of ''foreign investment.''

Unlike our proposal, we are not defining ''foreign investment'' as an investment for which there is no ''established U.S. public trading market.'' [153] A number of commenters recommended that we modify or eliminate this aspect of the definition.[154] These commenters expressed concern that this requirement could make the exemption from section 22(e) unavailable whenever a foreign issuer has issued a security in the U.S. Commenters stated that ETFs investing in certain foreign markets typically hold the security that is traded in the foreign issuer's local trading market (''foreign-traded security'') rather than its U.S.-traded equivalent.[155] These commenters explained that this is particularly true for ETFs tracking certain international indexes because those indexes often include foreign-traded securities, which

[139] ETFs that hold foreign investments have previously requested, and we have granted, relief from section 22(e) so that they may satisfy redemptions up to a specified maximum number of days (depending upon the local markets), as disclosed in the ETF's prospectus or statement of additional information (''SAI''). Other than in the disclosed situations, these ETFs satisfy redemptions within seven days.

[140] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong., 3d Sess. 291–293 (statements of David Schenker).

[141] Rule 6c–11(b)(4). The relief from section 22(e) does not affect any obligations arising under rule 15c6–1 under the Exchange Act, which requires that most securities transactions settle within two business days of the trade date. 17 CFR 240.15c6–1.

[142] This exemption permits a delay in the delivery of foreign investments only if the foreign investment is being transferred in kind as part of the basket. While mutual funds also may invest in foreign investments that require a delivery process in excess of seven days, mutual funds typically deliver redemption proceeds in cash, rather than in kind. Mutual funds, ETFs that redeem in cash, and ETFs that substitute cash in lieu of a particular foreign investment in a basket do not require an exemption from section 22(e) of the Act.

[143] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.155 (discussing settlement cycles for various foreign markets).

[144] *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; Comment Letter of Charles Schwab Investment Management (Oct. 1, 2018) (''CSIM Comment Letter''); John Hancock Comment Letter.

[145] *See* John Hancock Comment Letter; ICI Comment Letter.

[146] *See* CSIM Comment Letter.

[147] *See* ICI Comment Letter.

[148] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.156 and accompanying text (proposing that the exemption from section 22(e) for postponement of delivering redemption proceeds expire ten years from the rule's effective date).

[149] *See, e.g.,* Dechert Comment Letter; CSIM Comment Letter; ICI Comment Letter; Invesco Comment Letter; Fidelity Comment Letter; WisdomTree Comment Letter; ABA Comment Letter.

[150] *See, e.g.,* Invesco Comment Letter (citing Taiwan market holidays); CSIM Comment Letter; Fidelity Comment Letter; ICI Comment Letter; John Hancock Comment Letter.

[151] *See* rule 6c–11(a)(1). We believe this approach is appropriate because it creates consistency with a long-accepted definition under Exchange Act rules.

[152] *See, e.g.,* Redwood Investment Management, LLC, *et al.,* Investment Company Act Release Nos. 33076A (Apr. 26, 2018) [83 FR 19367 (May 2, 2018)] (notice) and 33100 (May 21, 2018) (order) and related application.

[153] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.166 and accompanying text (proposing to define ''foreign investment'' as any security, asset or other position of the ETF issued by a foreign issuer (as defined by rule 3b–4 under the Exchange Act) for which there is no established U.S. public trading market (as that term is used in Regulation S–K)).

[154] *See* ICI Comment letter; SIFMA AMG Comment Letter I; SSGA Comment Letter I; BlackRock Comment Letter; Invesco Comment Letter.

[155] *See, e.g.,* ICI Comment Letter; SIFMA Comment Letter I.

generally have greater liquidity and trading volume than their U.S.-traded equivalents. Several commenters cited potential compliance costs, operational considerations (*e.g.,* transacting in the foreign-traded security may entail lower transaction costs for the ETF), and possible disruptions to their investment strategy (*e.g.,* tracking error) that might result due to this requirement.[156]

The proposed definition of foreign investment was designed to make relief from section 22(e) unavailable to an ETF that included a foreign issuer's U.S.-traded investment in its basket, thereby avoiding the settlement delay that is the basis for the relief.[157] It was not intended to require an ETF to buy and sell the U.S.-traded equivalent of a foreign-traded security when one is available, nor was it intended to deny section 22(e) relief to an ETF that includes a foreign-traded security in its basket because a U.S.-traded equivalent exists. In order to address commenters' concerns and potential confusion, however, we have eliminated the requirement that the foreign investment have ''no established U.S. public trading market.'' Instead, in relevant part, rule 6c–11(a)(1) will define ''foreign investment'' as an investment that ''is traded on a trading market outside of the U.S.'' [158] We believe this definition will capture the foreign investments that may experience settlement delays without creating unintended consequences for ETF portfolio management. Under rule 6c–11, a delay in settlement is permitted only to the extent that additional time for settlement is actually required due to a local market holiday or the extended delivery cycles in a foreign market. As a result, the exemption from section 22(e) already is unavailable where an ETF could readily trade an investment in its basket on a U.S. market.

C. Conditions for Reliance on Rule 6c–11

Rule 6c–11 requires ETFs to comply with certain conditions designed to protect investors and to be consistent with the purposes fairly intended by the policy and provisions of the Act in order to operate within the scope of the Act. These conditions generally are consistent with the conditions in our exemptive orders, which we believe have effectively accommodated the unique structural and operational features of ETFs while maintaining appropriate protections for ETF investors. The conditions also reflect certain modifications that, based on our experience regulating ETFs and comments we received on the proposal, we believe will improve the overall regulatory framework for these products.

1. Issuance and Redemption of Shares

As proposed, the definition of exchange-traded fund under rule 6c–11 will require that an ETF issue (and redeem) creation units to (and from) authorized participants in exchange for baskets and a cash balancing amount (if any).[159] This definition is designed to preserve the existing ETF structure, reflected in our exemptive orders, which permit only an authorized participant of an ETF to purchase creation units from (or sell creation units to) the ETF. An orderly creation unit issuance and redemption process is essential to a properly functioning arbitrage mechanism. Commenters supported the proposed definition of exchange-traded fund.[160]

Rule 6c–11 will define an authorized participant to mean a member or participant of a clearing agency registered with the Commission that has a written agreement with the ETF or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units, as proposed.[161] This definition differs from the definition of ''authorized participant'' in the Commission's exemptive orders and Form N–CEN because it does not include a specific reference to an authorized participant's participation in DTC, as DTC is itself a clearing agency.[162] We proposed to amend Form N–CEN to make the two definitions consistent. We believe the definition that we are adopting remains largely consistent with the exemptive relief we have granted to ETFs, while eliminating unnecessary terms.

Several commenters expressed support for the proposed definition of authorized participant.[163] One commenter, however, asserted that rule 6c–11 should use the existing definition of authorized participant in Form N–CEN to avoid confusion and regulatory inconsistency.[164] We believe that amending Form N–CEN to make the definition of authorized participant consistent with the definition in rule 6c–11 addresses this commenter's concern.[165]

We also received several comments on issues relating to authorized participants more generally. One commenter, for example, suggested that the Commission confirm that authorized participants who buy and sell ETF shares in creation units are not considered, for that reason alone, ''principal underwriters'' under the Investment Company Act.[166] The commenter stated that the plain language of section 2(a)(29) of the Act would exclude an authorized participant from the definition of principal underwriter when the authorized participant purchases ETF shares through a principal underwriter acting as agent for the ETF.[167] We agree that an authorized participant that purchases ETF shares from the ETF's principal underwriter is not a principal underwriter as defined in section 2(a)(29) of the Act solely because it buys and sells ETF shares in creation units.

Another commenter suggested that the Commission require an ETF to have a minimum number of authorized participants (*i.e.,* 2 or 3) to reduce the risk of anti-competitive behavior and to

[156] *See, e.g.,* BlackRock Comment Letter (stating that ''ETFs currently do not monitor whether a foreign issuer has equivalent securities that both trade on a US market and the foreign issuer's local market since our primary investment practices are to invest in the securities of the underlying index.''); Invesco Comment Letter; SSGA Comment Letter I.

[157] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.166 and accompanying discussion. As proposed, the rule will not rely on registration status because an unregistered large foreign private issuer may have an active U.S. market for its securities, in which case the ETF should be able to meet redemption requests in a timely manner. *See* Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty to File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Exchange Act Release No. 55540 (Mar. 27, 2007) [72 FR 16934 (Apr. 5, 2007)].

[158] *See, e.g.,* BlackRock Comment Letter (recommending that ''foreign investment'' be defined by reference to whether ''there is an established trading market [. . .] outside of the US''). As proposed, we also are not requiring an ETF to disclose in its registration statement the foreign holidays that it expects may prevent timely delivery of foreign securities, and the maximum number of days that it anticipates it will need to deliver the foreign securities. *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.161 and accompanying discussion. No commenters disagreed with this aspect of the proposal.

[159] *See* rule 6c–11(a)(1). *See also infra* section II.C.4.c. (discussing definitions of baskets and cash balancing amount).

[160] *See, e.g.,* Invesco Comment Letter.

[161] *See* rule 6c–11(a)(1).

[162] *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.170–171. Form N–CEN, in relevant part, defined the term as a broker-dealer that is also a member of a clearing agency registered with the Commission or a DTC Participant and has a written agreement with the ETF or one of its service providers that allows the authorized participant to place orders to purchase and redeem creation units of the ETF. *See* Form N–CEN, Item E.2.

[163] *See* SSGA Comment Letter I; ICI Comment Letter; Cboe Comment Letter.

[164] *See* Invesco Comment Letter.

[165] *See infra* section II.J.

[166] *See* ABA Comment Letter.

[167] *Id.* (noting that the definition of principal underwriter excludes ''a dealer who purchases from such company through a principal underwriter acting as agent.'').

safeguard the arbitrage mechanism.[168] This commenter, however, also pointed to data indicating that large ETFs (with more than $790 million in assets) typically have an average of nine active authorized participants, and that smaller ETFs (with less than $27 million in assets) have an average of two active authorized participants.[169] This commenter further noted that it has observed ETFs using single authorized participants in ''some markets outside of the United States'' but that this type of arrangement is ''less common within the United States.'' [170] We have not observed the types of ''excessive deviations'' between ETFs' NAV and market price that, according to this commenter, could indicate that ETFs' use of one authorized participant is a persistent problem.[171] Additionally, based upon Form N–CEN data through September 5, 2019, we found that out of 1672 funds reviewed that could rely on rule 6c–11, only 30 (approximately 1.8% of the funds reviewed) reported having fewer than 2 authorized participants. We therefore do not believe that it is appropriate at this time to prescribe a minimum number of authorized participants that an ETF may use.

As proposed, rule 6c–11 will define ''creation unit,'' to mean a specified number of ETF shares that the ETF will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount (if any).[172] Rule 6c–11 will not mandate a maximum or minimum creation unit size or otherwise place requirements on creation unit size. We continue to believe, and commenters agreed, that ETFs are incentivized to establish creation unit sizes that are appropriate for market demand pursuant to their investment strategies and objectives.[173] Thus, ETFs are not likely to set very large or very small creation unit sizes that could disrupt the arbitrage mechanism or prevent the use of in-kind baskets when in-kind baskets would otherwise be desirable for an ETF to obtain the typical efficiencies of ETFs. We also believe that the conditions in rule 6c–11, as adopted, are better suited to promote effective arbitrage than conditions related to creation unit size.[174]

An ETF generally would issue and redeem shares in creation unit size aggregations, rather than as individual shares, under the rule. We proposed to permit an ETF to sell or redeem individual shares on the day of consummation of a reorganization, merger, conversion, or liquidation.[175] In these limited circumstances, an ETF may need to issue or redeem individual shares, and may need to transact without utilizing authorized participants. Commenters that addressed this aspect of the proposal generally supported it.[176] One commenter, however, suggested that the rule should explicitly provide that an ETF may transact with investors other than authorized participants in these limited circumstances.[177] We agree and have modified rule 6c–11 to clarify that, on the day of a reorganization, merger, conversion, or liquidation, an ETF may sell or redeem individual shares and is not limited to transacting with authorized participants.[178] We believe that permitting ETFs to conduct redemptions with investors other than authorized participants in these circumstances is operationally necessary to facilitate these transactions and will allow an ETF to compensate individual shareholders exiting the reorganized, merged, converted or liquidated ETF—activities likely to involve small amounts and to be outside the scope of an authorized participant's expected role of transacting in creation units.

Commenters also addressed the Commission's proposed guidance concerning the extent to which an ETF may directly or indirectly suspend the issuance or redemption of ETF shares.[179] An ETF that suspends the issuance or redemption of creation units indefinitely could cause a breakdown of the arbitrage mechanism, resulting in significant deviations between market price and NAV per share. Such deviations may harm investors that purchase shares at market prices above NAV per share and/or sell shares at market prices below NAV per share.

With respect to redemptions, an ETF may suspend the redemption of creation units only in accordance with section 22(e) of the Act,[180] and may charge transaction fees on these redemptions only in accordance with rule 22c–2.[181] While no commenters disagreed with our statement in the 2018 ETF Proposing Release that an ETF may suspend redemptions only in compliance with section 22(e), several commenters requested that we eliminate the 2% cap on redemption fees for ETFs.[182] One commenter asserted that, unlike the mutual fund redemption fees that were the Commission's focus in adopting rule 22c–2, the transaction fees charged by an ETF on redemptions are not intended to inhibit frequent trading of the ETF's shares, but are primarily designed to protect shareholders against the costs of certain cash redemptions.[183]

[168] *See* Comment Letter of Jane Street Capital, LLC (Oct. 1, 2018) (''Jane Street Comment Letter''). Another commenter suggested that the Commission should provide guidance regarding ETF sponsors giving certain APs special treatment in the negotiation of baskets. *See* Comment Letter of Bluefin Trading, LLC (Oct. 19, 2018) (''Bluefin Comment Letter''). We address this comment in our discussion of custom basket policies and procedures, *infra,* in section II.C.5.a.

[169] *See* Jane Street Comment Letter (citing ''The Role and Activities of Authorized Participants of Exchange-Traded Funds,'' Investment Company Institute, March 2015).

[170] *See id.*

[171] *See, e.g.,* 2018 ETF Proposing Release, *supra* footnote, at section II.B.2.

[172] *See* rule 6c–11(a)(1).

[173] *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.175–176 and accompanying text (noting that an ETF tracking a narrowly focused niche strategy may establish a smaller creation unit size than an ETF tracking a broad-based index, such as the S&P 500, in order to facilitate arbitrage). *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter I; Vanguard Comment Letter. *See also* Nasdaq Comment Letter (noting that minimum creation unit size requirement can lead to wider spreads, particularly for newer, thinly-traded ETFs).

[174] One commenter also suggested that the rule should not require an ETF to define a specific creation unit size, noting that permitting variable creation unit sizes could help further facilitate market making and reduce transaction costs. *See* Nasdaq Comment Letter. The rule's definition of ''creation unit'' will require an ETF to specify a single number of ETF shares composing a creation unit. Although an ETF could not use variable creation unit sizes under this definition, an ETF could change its specified creation unit size as conditions change over time.

[175] *See* 2018 ETF Proposing Release, *supra* footnote 7, at text preceding n.82 (discussing proposed rule 6c–11(c)(5)).

[176] *See, e.g.,* BlackRock Comment Letter; Thompson Hine Comment Letter.

[177] *See* Thompson Hine Comment Letter. This commenter also suggested moving this exception to the definition of exchange-traded fund because it is not a condition to reliance on the rule. We agree and have moved this exception to rule 6c–11(a)(2).

[178] *See* rule 6c–11(a)(2).

[179] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.1.

[180] Section 22(e) of the Act permits open-end funds to suspend redemptions and postpone payment for redemptions already tendered for any period during which the New York Stock Exchange is closed (other than customary weekend and holiday closings) and in three additional situations if the Commission has made certain determinations. *See* LRM Adopting Release, *supra* footnote 123, at n.36.

[181] 17 CFR 270.22c–2 (rule 22c–2) limits redemption fees to no more than 2% of the value of shares redeemed. *See* rule 22c–2(a)(1)(i).

[182] *See, e.g.,* Dechert Comment Letter; WisdomTree Comment Letter; Invesco Comment Letter (noting that the redemption fee framework for ETFs under rule 22c–2 is ''workable'' in most circumstances, but that in certain circumstances greater flexibility to charge redemption fees in excess of 2% would benefit ETFs). Commenters did not provide any fee-related data in support of their contention that the 2% limit on redemption fees should be eliminated for ETFs.

[183] *See* Dechert Comment Letter. *See also* Invesco Comment Letter (noting that these fees include the difference between the cash in-lieu amount calculated on the trade date and the actual sale price of the security (reflecting market movement)).

This commenter further stated that an ETF's inability to pass through certain incremental costs to an authorized participant could adversely impact performance and result in dilution of the interests of the ETF's remaining shareholders.

As discussed above, we believe that ETFs should be regulated as open-end funds and that ETF shares are most appropriately classified as redeemable securities under the relevant provisions of the Act. In adopting the 2% limit on redemption fees under rule 22c–2, we stated that higher redemption fees would impose an undue restriction on the redeemability of shares.[184] Consistent with this belief, our exemptive orders permitting ETFs to operate as open-end funds have not permitted ETFs to charge transaction fees in excess of the 2% limit. We believe the 2% limit allows ETFs to pass on certain costs related to the redemption transaction to authorized participants, while preserving the redeemability of ETF shares.[185] Accordingly, we believe that ETFs may charge transaction fees on the redemption of creation units only in accordance with rule 22c–2.

We also stated in the 2018 ETF Proposing Release that we believe that an ETF generally may suspend the issuance of creation units only for a limited time and only due to extraordinary circumstances, such as when the markets on which the ETF's portfolio holdings are traded are closed for a limited period of time.[186] Some commenters agreed that an ETF may suspend creations only for a limited time and only due to extraordinary circumstances, but requested that we provide clarification regarding the specific circumstances under which an ETF may suspend creations.[187] Other commenters did not support our position on this issue. For example, one commenter stated that current ETF practices for suspending creations have proven effective and advocated against limiting or imposing restrictions on the circumstances in which ETFs may suspend creations.[188] Another commenter recommended that, rather than precluding an ETF from suspending the issuance of creation units, the Commission should require ETFs that suspend creations to add supplemental disclosures addressing the risk that the ETF's market price may deviate from NAV per share.[189]

As discussed above, however, the expected close tie between an ETF's market price and NAV per share provides a basis for our relief from section 22(d) and rule 22c–1 under rule 6c–11 (as well as our prior exemptive orders).[190] If a suspension of creations impairs the arbitrage mechanism, it could lead to significant deviations between what retail investors pay (or receive) in the secondary market and the ETF's approximate NAV. Such a result would run counter to the basis for relief from section 22(d) and rule 22c–1 and therefore would be inconsistent with rule 6c–11.

2. Listing on a National Securities Exchange

As proposed, rule 6c–11 will define an ''exchange-traded fund,'' in part, to mean a fund that issues shares that are listed on a national securities exchange and traded at market-determined prices.[191] Exchange-listing is one of the fundamental characteristics that distinguishes ETFs from other types of open-end funds (and UITs) and is one reason that ETFs need certain exemptions from the Act and the rules thereunder. Exchange-listing provides an organized and ongoing trading market for the ETF shares at market-determined prices, and therefore is important to a functioning arbitrage mechanism.[192] The Commission has premised all of its previous exemptive orders on an ETF listing its shares for trading on a national securities exchange.

Several commenters generally supported the requirement that an ETF list its shares on a national securities exchange.[193] On the other hand, one commenter stated that ETFs that are temporarily suspended from listing or engaged in an orderly delisting and liquidation process should not fall outside of the scope of the proposed rule.[194] Another commenter opined that delisted ETFs should remain within the rule to prevent a possible race to redeem the ETF's shares that could result from confusion about the ETF's regulatory status.[195] This commenter stated the definition of exchange-traded fund instead should include ETFs that have been listed within the past 90 days. Other commenters requested that we clarify the specific circumstances that constitute a ''delisting,'' citing trading suspensions and trading halts as examples of circumstances that should not disqualify an ETF from relying on rule 6c–11.[196] These commenters also urged the Commission to clarify that a temporary non-compliance notice from an exchange for failure to continuously meet the exchange's listing standards would not disqualify an ETF from relying on the rule.

As noted above, the listing requirement was designed to ensure that all ETF shares have an organized and ongoing secondary trading market to support an effective arbitrage mechanism. We therefore continue to believe that an ETF should no longer be

[184] *See* Mutual Fund Redemption Fees, Investment Company Act Release No. 26782 (March 11, 2005) [70 FR 13328 (March 18, 2005)] (noting that a goal of the Commission under the Act is to preserve the redeemability of mutual fund shares).

[185] *See id.* at text accompanying nn. 29–30. Mutual funds, particularly those that invest in foreign markets, may face similar types of costs and are subject to the 2% cap in rule 22c–2.

[186] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.185 and accompanying text. In addition, we stated that an ETF could not set transaction fees so high as to effectively suspend the issuance of creation units. *See id.* One commenter addressed this issue, stating that ETFs generally do not set transaction fees at a level that would effectively suspend creations ''in lieu of transparently informing the market that creations are halted.'' Jane Street Comment Letter.

[187] *See, e.g.,* BlackRock Comment Letter; SIFMA AMG Comment Letter I; SSGA Comment Letter I; Vanguard Comment Letter; Invesco Comment Letter.

[188] *See* Comment Letter of ETF BILD LLC (Oct. 1, 2018) (''ETF BILD Comment Letter'') (''[T]here may be a variety of reasons to suspend creations and limiting them or [restricting] certain activity will not allow for differentiation of the circumstances related to the underlying securities. . . . [C]urrent practices developed in the ETF industry allow for the flexibility needed to address this issue.'').

[189] *See* Eaton Vance Comment Letter. Another commenter suggested requiring any ETF that suspends creations, or otherwise has its creation process halted, to immediately notify the market via a Form 8–K or other mechanism. *See* Jane Street Comment Letter.

[190] *See supra* section II.B.2 (discussing the potential concerns regarding shareholder dilution, unjust discrimination and preferential treatment among investors purchasing and redeeming fund shares that section 22(e) and rule 22c–1 were designed to address).

[191] Rule 6c–11(a)(1). As proposed, rule 6c–11(a)(1) also will define a ''national securities exchange'' as an exchange that is registered with the Commission under section 6 of the Exchange Act.

[192] As proposed, the definition also requires that an ETF's shares trade at market-determined prices. This requirement is not designed to establish a minimum level of trading volume for ETFs necessary in order to rely on the rule, but rather to distinguish ETFs from other products that are listed on exchanges but trade at NAV-based prices (*i.e.,* exchange-traded managed funds (''ETMFs'')). *See* 2018 ETF Proposing Release, *supra* footnote 7, at text accompanying n.192. Commenters did not address this aspect of the definition of exchange-traded fund.

[193] *See, e.g.,* ICI Comment Letter; SSGA Comment Letter I.

[194] SIFMA AMG Comment Letter I.

[195] Thompson Hine Comment Letter (''[D]eeming the former ETF to no longer have [status as an ETF under the rule] may lead to confusion and a possible race to redeeming shares by remaining shareholders while liquid assets are still available.'').

[196] See SSGA Comment Letter I; ICI Comment Letter; Invesco Comment Letter. See also FINRA, Investor Alert, When Trading Halts: What You Need to Know About Halts, Suspensions and Other Interruptions (February 7, 2013), available at *http://www.finra.org/investors/alerts/when-trading-stops-halts-suspensions-other-interruptions* (describing trading halts and trading suspensions).

eligible to rely on rule 6c–11 and must meet individual redemption requests within seven days pursuant to section 22(e) of the Act or liquidate if it is not listed on an exchange.[197] In response to commenters' request that we clarify the specific circumstances constituting a ''delisting'' for purposes of rule 6c–11, an ETF is considered no longer listed on an exchange as of the effective date of the removal of the ETF's shares from listing pursuant to rule 12d2–2 under the Exchange Act.[198] Circumstances such as a trading suspension, a trading halt, or a temporary non-compliance notice from the exchange therefore would not constitute a ''delisting'' for purposes of rule 6c–11. An ETF also may request temporary relief from the Commission to permit the ETF to suspend redemptions for a limited period of time where necessary to protect ETF shareholders.[199]

3. Intraday Indicative Value (''IIV'')

As proposed, rule 6c–11 will not require ETFs to disseminate an intraday estimate of their NAV per share (an ''intraday indicative value'' or ''IIV'') as a condition for reliance on the rule. Our orders require the dissemination of an IIV, and ETFs have stated in their exemptive applications that an ETF's IIV is useful to investors because it allows them to determine (by comparing the IIV to the market value of the ETF's shares) whether and to what extent the ETF's shares are trading at a premium or discount on an intraday basis.[200] The exchange listing standards also currently require ETFs to disseminate an IIV at least every 15 seconds during regular trading hours.[201]

We did not propose, however, an IIV dissemination requirement under rule 6c–11 because of our concerns regarding the accuracy of IIV estimates for certain ETFs.[202] For example, the IIV may not accurately reflect the value of an ETF that holds securities that trade less frequently. The IIV can be stale or inaccurate for ETFs with foreign securities or less liquid debt instruments. For such ETFs, there may be a difference between the IIV, which is constructed using the last available market quotations or stale prices, and the ETF's NAV, which uses fair value when market quotations are not readily available.[203] Conversely, in today's fast moving markets, given the dissemination lags, the IIV may not accurately reflect the value of an ETF that holds frequently traded component securities.[204] Because there are no uniform methodology requirements, the IIV also can be calculated in different and potentially inconsistent ways.

In addition, we understand that market makers and authorized participants no longer use IIV to evaluate arbitrage opportunities for ETFs that provide full portfolio transparency.[205] These market participants typically calculate their own intraday value of an ETF's portfolio with proprietary algorithms that use an ETF's daily portfolio disclosure and available pricing information about the assets held in the ETF's portfolio and generally use the IIV as a secondary or tertiary check on the value that their proprietary algorithms generate.

The majority of commenters that addressed IIV requirements supported our proposed approach. For example, commenters agreed that authorized participants and other market participants calculate their own intraday values based on other sources of information such as an ETF's published baskets and portfolio holdings.[206] Some of these commenters stated, therefore, that the proposed rule's conditions regarding daily portfolio holdings information would provide more useful information to market participants than IIV.[207] Commenters also agreed that IIV can have significant limitations depending on the types of securities the ETF holds. For example, one commenter stated that these limitations for ETFs holding fixed income securities are the result of market structure issues and that increasing the frequency of the IIV publication would not change these limitations.[208]

Commenters also noted that under current regulatory requirements, IIV can be confusing or misleading to market participants. For example, one commenter stated that current requirements for IIV actually reduce ETF transparency, because the IIV does not reflect the true value of an ETF due to dissemination delays, stale pricing for underlying holdings, and inconsistent calculation methodologies.[209] One commenter opined that IIV is inaccurate for 80% of all ETFs and the rule should not require its dissemination.[210] Another commenter stated that ''[IIV] is, at best, slow and likely stale and, at worst confusing, inaccurate, and misleading.'' [211] In addition, several of these commenters stated that the IIV requirements across regulatory regimes applicable to ETFs should be harmonized.[212] Specifically, these commenters noted that, even if rule 6c–11 were to omit an IIV requirement, existing relief under the Exchange Act

[197] Indeed, an ETF that does not comply with the provisions of the rule would be required to comply with the Investment Company Act in all respects unless it was relying on other relief.

[198] *See* 17 CFR 240.12d2–2 (rule 12d2–2 under the Exchange Act) (requiring a national securities exchange to file with the Commission an application on Form 25 (17 CFR 249.25) to strike a class of securities from listing on a national securities exchange and/or registration under section 12(b) of the Exchange Act).

[199] *See* section 22(e)(3) of the Act.

[200] *See, e.g.,* WisdomTree Investments, Inc., *et al.,* Investment Company Act Release Nos. 27324 (May 18, 2006) [71 FR 29995 (May 24, 2006)] (notice) and 27391 (June 12, 2006) (order) and related application (''2006 WisdomTree Investments'').

[201] *See, e.g.,* NYSE Arca Equities Rule 5.2E(j)(3), Commentary .01(c) (stating that IIV may be based upon ''current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value''). The IIV is also sometimes referred to as the ''iNAV'' (indicative net asset value) or the ''PIV'' (portfolio indicative value).

[202] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.3. The exemptive relief we provided to certain non-transparent ETFs included a condition requiring those ETFs to provide a verified intraday indicative value (''VIIV'') throughout the trading day. *See* 2019 Precidian, *supra* footnote 8. Those ETFs' VIIV, considering their limited investment strategies, addressed the Commission's concerns regarding the traditional IIV. *See id.*

[203] Section 2(a)(41)(B) of the Act defines ''value'' as: ''(i) with respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors.'' This definition also is used in rule 2a–4 under the Act as the required basis for computing a fund's current NAV per share. With daily portfolio disclosure, market participants can estimate fair value on their own for the ETF's current holdings. 15 U.S.C. 80a–2(a)(41)(B).

[204] An ETF's current portfolio value changes every time the value of any underlying component of the ETF changes. The IIV for an ETF that includes a more frequently traded component security might not reflect the most recent trading information for that underlying security.

[205] *See* ETF Handbook, *supra* footnote 25.

[206] *See, e.g.,* Jane Street Comment Letter; Invesco Comment Letter; WisdomTree Comment Letter; Vanguard Comment Letter (''These other sources of data include the ETF's published basket, its last published portfolio holdings list, the index tracked by the ETF, and data from third party vendors'').

[207] *See* Comment Letter of Legg Mason, Inc. (Oct. 1, 2018) (''Legg Mason Comment Letter''); Cboe Comment Letter. *See also* SSGA Comment Letter I (''[t]o the extent there is market demand for information similar to the IIV by market participants absent a regulatory mandate, we expect industry-led solutions will be available, perhaps as part of a broader discussion around market price validation.'').

[208] *See* Legg Mason Comment Letter (noting, for example, that fixed-income securities are predominantly traded by dealers and not on exchanges). *See also* ICI Comment Letter.

[209] *See* SSGA Comment Letter I.

[210] Comment Letter of *ETF.com* (Aug. 28, 2018) (''*ETF.com* Comment Letter'') (stating that ''the idea of contemporaneous measure of fair value is enticing'' but IIV ''is not accurate enough for authorized participants to use in arbitrage analysis.'').

[211] Cboe Comment Letter.

[212] *See, e.g.,* Invesco Comment Letter; SIFMA AMG Comment Letter I; WisdomTree Comment Letter; SSGA Comment Letter I; *ETF.com* Comment Letter.

and certain exchange listing requirements would require ETFs to continue disseminating IIV. They encouraged the Commission to work with the exchanges to remove these listing requirements.

Some commenters disagreed with this aspect of the proposal and encouraged the Commission to require ETFs to disseminate IIV as a requirement of the rule. These commenters generally asserted that IIV—despite its limitations—can be useful to retail investors.[213] One such commenter stated that IIV is important for informed trading of ETFs (and other ETPs) by retail investors because it is an ''important signal of the value of the underlying portfolio.'' [214] One commenter stated that IIV allows investors to screen for significant price deviations that could signal breakdowns in the market maker arbitrage process.[215]

Some of these commenters noted that an ETF's IIV may be the only source of pricing information publicly available to retail investors.[216] Another commenter asserted that the rule should include an IIV requirement, but that market participants, particularly retail investors, also would benefit from an explanation of the potential limitations of IIV.[217] Many of the commenters who recommended that the Commission retain an IIV requirement also recommended that the Commission standardize and otherwise improve the IIV calculation.[218]

After considering these comments, we continue to believe that rule 6c–11 should not require ETFs to disseminate IIV as IIV is not necessary to support the arbitrage mechanism for ETFs that provide daily portfolio holdings disclosure. Instead, rule 6c–11's portfolio holdings disclosure will provide market participants with the relevant data to input into their internal algorithms and thus allow them to determine if arbitrage opportunities exist.

We also do not believe that IIV will provide a reliable metric for retail investors to assess all ETFs relying on rule 6c–11 given the breadth of asset classes that ETFs may hold (and the particular shortcomings of IIV when an ETF holds assets that do not trade contemporaneously with the ETF or are traded less frequently). Furthermore, retail investors do not have easy access to IIV through free, publicly available websites today even for those asset classes where an IIV may be more reliable. A staff review of the websites for the ten largest ETFs by assets under management found that none provides a real-time IIV on its website. Some of these ETFs disclose a specific ticker symbol for the ETF's IIV (as opposed to the ticker symbol for the ETF itself) on their websites, others provide the IIV with a delay of up to 45 minutes, while others provide no information about the ETF's IIV at all.[219] A review of several publicly available, free financial websites also found that not all of these websites provide an ETF's IIV.[220] Where these websites did provide the IIV, it was delayed by at least 15 minutes.[221] We believe this raises a significant risk that retail investors using these websites may be receiving stale IIVs for ETFs. We have noted, and commenters agreed, that even the 15-second interval for dissemination of an ETF's IIV required under the exchange listing standards may be too infrequent to effectively reflect the full trading activity for component securities, and therefore to reflect the actual value of the ETF. Therefore, we do not believe that adopting rule 6c–11 without an IIV requirement would remove information from the market that retail investors could reliably use when making investment decisions.

We considered whether to require an ETF to publicly disseminate a modified IIV on its website on a real time basis as a condition to rule 6c–11, requiring ETFs to calculate IIVs more frequently and in a more accessible manner. We also considered creating a methodology that takes into account circumstances when market prices for underlying assets are not available or should not be used to reflect the ETF's intraday value. However, we believe that these modifications are not necessary given that an ETF operating in reliance on rule 6c–11 will provide full portfolio transparency on its website.

We recognize that intraday information accurately reflecting the current value of an ETF's shares can be important to retail investors and encourage the ETF industry to undertake efforts to develop intraday value metrics targeted at these investors.[222] We believe that ETFs are in a position to consider and develop tailored metrics for ETFs holding different asset classes in a format that is useful for retail investors. As one commenter noted, rule 6c–11's portfolio holdings disclosure requirements may promote a market-based solution to today's IIV shortcomings by making the information required to calculate intraday values broadly available in a standardized, user-friendly format, which could ''encourage pricing services and other potential providers to develop commercial ETF intraday valuation services that would compete in the market on the basis of timeliness, accuracy, reliability and price.'' [223]

4. Portfolio Holdings Disclosure

Since the first exemptive order for an ETF, the Commission has relied on the existence of an arbitrage mechanism to keep market prices of ETF shares at or close to the NAV per share of the ETF. One mechanism that facilitates the arbitrage mechanism is daily portfolio transparency.[224] Portfolio transparency provides authorized participants and other market participants with a tool to facilitate valuing the ETF's portfolio on an intraday basis, which, in turn, enables them to identify arbitrage opportunities and to effectively hedge their positions. Accordingly, as proposed, rule 6c–11 will require an ETF to disclose prominently on its website, publicly available and free of charge, the portfolio holdings that will

[213] *See, e.g.,* Angel Comment Letter; Nasdaq Comment Letter; IDS Comment Letter.

[214] *See* Angel Comment Letter.

[215] *See* Nasdaq Comment Letter.

[216] *See* IDS Comment Letter. *See also* CFA Comment Letter; Eaton Vance Comment Letter.

[217] *See* FIMSAC Comment Letter.

[218] *See, e.g.,* NYSE Comment Letter; IDS Comment Letter; Nasdaq Comment Letter; Eaton Vance Comment Letter. *See also* Angel Comment Letter (recommending dissemination on standard CQS and UTP feeds, one-second updates, and standardization of IIV suffixes).

[219] Fewer than half of the ETFs included in the review use a specific ticker symbol that allows an investor to locate the ETF's IIV (*e.g.,* the ETF's ticker symbol followed by ''.iv'' or ''–iv'').

[220] When input into a free financial website, the IIV was provided with a delay of at least 15 minutes.

[221] *See, e.g., https://finance.yahoo.com/quote/%5ESPY-IV/; https://www.morningstar.com/etfs/arcx/spy/betaquote.html.*

[222] One commenter noted that a lack of disclosure regarding potential intraday deviations could, in some circumstances, be misleading. *See* Comment Letter of Henry Hu and John Morley, Yale Law School (Aug, 27, 2018) ''(Hu and Morley Comment Letter'') (incorporating article by Henry T. C. Hu, University of Texas Law School and John D. Morley, *A Regulatory Framework for Exchange-Traded Funds,* 91 S. Cal. Law Review 839–941 (July 2018) at 920, which describes a particular ETF that ''suffered extraordinary [intraday] departures from NAV on August 24, 2015'' and noting how ''[in looking] only at the close and not intra-day performance, the result was an emphatically reassuring picture being presented to investors. As a result, an investor may have a misleading sense as to the true risks and returns of the ETF.'').

[223] *See* Eaton Vance Comment Letter.

[224] Our exemptive orders for actively managed ETFs and recent orders for self-indexed ETFs have required full portfolio transparency. Exemptive orders for index-based ETFs with an unaffiliated index provider have required publication of the ETF's baskets. We understand, however, that all ETFs that can rely on rule 6c–11 currently provide full transparency as a matter of industry practice.

form the basis for each calculation of NAV per share.[225]

We received numerous comments on this aspect of the proposal. Many commenters generally supported requiring full, daily portfolio holdings disclosure on the ETF's website as a condition for reliance on rule 6c–11.[226] These commenters agreed with our view that portfolio transparency supports an efficient arbitrage mechanism and thus helps maintain the close tie between the market price of an ETF's shares and the value of its portfolio. One commenter stated that portfolio transparency is important to individual investors because it allows them to better discern differences between ETFs that purport to track similar indexes or have similar investment objectives.[227]

On the other hand, one commenter did not support daily disclosure of an ETF's full portfolio, opining that an effective arbitrage mechanism is sufficiently supported by disclosure of well-constructed baskets with performance that closely tracks the performance of both the fund and its index.[228] This commenter further asserted that daily portfolio transparency may harm ETF investors by permitting market participants to front-run index funds, which could negatively impact the prices at which the ETF trades portfolio holdings and thus reduce investors' returns. This commenter recommended, as an alternative to the proposed requirement, that the Commission require ETFs to provide daily disclosure of portfolio holdings, with an exception for the portion of holdings that are ''subject to sensitive trading strategies,'' such as those related to index changes.[229]

One commenter supported requiring daily portfolio transparency for index-based ETFs, but opposed requiring it for actively managed ETFs, due to the risk of market participants using the portfolio holdings disclosures to front-run or piggyback on actively managed strategies.[230] Similarly, another commenter asserted that daily portfolio transparency is not a necessary condition for effective arbitrage, and noted that the risks of front-running and ''free riding'' that arise from portfolio transparency were preventing it from offering more actively managed ETFs.[231]

We continue to believe ETFs relying on rule 6c–11 should provide full daily portfolio transparency in order to facilitate an efficient arbitrage process. Notably, we believe it is likely that all current ETFs that may rely on the rule already provide full portfolio transparency as a matter of market practice and this approach will eliminate regulatory distinctions between index-based and actively managed ETFs that rely on rule 6c–11. Moreover, although we recognize there are alternative approaches to facilitate efficient arbitrage, the Commission has limited experience with such approaches, which are new and continuing to evolve and we therefore believe that these alternatives should be considered within our exemptive applications process.

Accordingly, rule 6c–11 will require full, daily portfolio holdings disclosure for ETFs relying on the rule. As discussed below, however, the portfolio transparency requirement we are adopting includes several modifications from the proposed rule, including modifications regarding the required timing and presentation of the portfolio holdings disclosure.

a. Timing of Portfolio Holdings Disclosure

Rule 6c–11 will require website disclosure of an ETF's portfolio holdings on each business day before the opening of regular trading on the primary listing exchange of the ETF's shares.[232] Our proposal also would have required an ETF to disclose its portfolio holdings before the ETF starts accepting orders for the purchase or redemption of creation units.[233] The proposed rule's timing requirements were designed to prevent an ETF from disclosing its portfolio holdings only after the beginning of trading or after the ETF has begun accepting orders for the next business day.[234]

We received several comments on this aspect of the proposal, particularly on the proposed requirement that an ETF disclose its portfolio holdings before the ETF starts accepting orders on a given business day. Several commenters opposed the proposed timing requirement because it could prevent certain ETFs from accepting creation and redemption orders shortly after the US market closes (''T–1 orders'').[235] These commenters explained that T–1 orders allow ETFs, authorized participants, and other market participants to place orders for the purchase and sale of portfolio securities in non-U.S. markets with hours that do not overlap (or have limited overlap) with U.S. market hours when those markets are open.[236] An ETF that holds Japanese equities, for example, may permit authorized participants to submit T–1 orders (between 4:00 p.m. ET and 5:00 p.m. ET) to allow for trading in the underlying Japanese securities before the Japanese market closes (2:00 a.m. ET).[237] Some commenters explained that the operational steps necessary to disclose an ETF's portfolio holdings would take 2–3 hours after NAV calculation (typically 4:00 p.m. ET) and the requirement to disclose portfolio holdings before accepting orders therefore would eliminate the T–1 order window.[238]

Several commenters discussed the benefits of permitting ETFs to accept T–1 orders. Commenters stated that T–1 orders allow market participants to align the execution time of underlying securities transactions with the NAV calculation of the order, and thus minimize costs and support effective arbitrage.[239] Some commenters stated

[225] Rule 6c–11(c)(1)(i). For purposes of this requirement, as well as other requirements to disclose information on a publicly available website under rule 6c–11, an ETF should not establish restrictive terms of use that would effectively make the disclosures unavailable to the public or otherwise difficult to locate. For example, the required website disclosure should be easily accessible on the website, presented without encumbrance by user name, password, or other access constraints, and should not be subject to usage restrictions on access, retrieval, distribution or reuse. However, this requirement does not preclude the ETF from making other, unrelated sections of its website private or password protected. We also encourage ETFs to consider whether there are technological means to make the disclosures more accessible. For example, today, ETFs could include the portfolio holdings information in a downloadable or machine-readable format, such as comma-delimited or similar format.

[226] *See, e.g.,* Comment Letter of Stuart Cary (July 3, 2018) (''Cary Comment Letter''); *ETF.com* Comment Letter; Comment Letter of Jack Reagan (July 12, 2018) (''Reagan Comment Letter''); BlackRock Comment Letter; Cboe Comment Letter; BNY Mellon Comment Letter; Fidelity Comment Letter; SIFMA AMG Comment Letter I; CSIM Comment Letter; Virtu Comment Letter; Eaton Vance Comment Letter.

[227] *See* CSIM Comment Letter.

[228] Vanguard Comment Letter.

[229] *Id.* (recommending that the rule permit ETFs to disseminate a list of index securities that, when combined with disclosed portfolio holdings, would be reasonably designed to track the ETF's (and the index's) performance).

[230] *See* Invesco Comment Letter (recommending that the rule permit actively managed ETFs to delay disclosure of portfolio holdings at least two days).

[231] *See* JPMAM Comment Letter. *See also* Dechert Comment Letter (urging the Commission to consider moving to a more uniform, standardized approach in determining whether to grant exemptive relief for non-fully transparent ETFs).

[232] Rule 6c–11(c)(1)(i).

[233] *See* proposed rule 6c–11(c)(1)(i).

[234] *See* 2018 Proposing Release, *supra* footnote 7, at n.209 and accompanying text.

[235] *See, e.g.,* ICI Comment Letter; BlackRock Comment Letter.

[236] *See, e.g.,* Invesco Comment Letter.

[237] *See* ICI Comment Letter.

[238] *See* Invesco Comment Letter.

[239] *See, e.g.,* ICI Comment Letter (discussing the importance to authorized participants of the ability to trade or hedge the underlying exposures at the same time the ETF strikes its NAV); BlackRock Comment Letter; Jane Street Comment Letter

Continued

that eliminating the T–1 order window may lead to wider bid-ask spreads, larger premiums/discounts, and greater tracking differences for these ETFs.[240] One commenter stated that, without T–1 orders, an ETF may have uninvested cash for longer periods of time (leading to increased tracking error) and authorized participants may need to hedge their exposures for longer than usual due to the delay between when the creation order is placed and when the ETF acquires the portfolio securities (leading to wider bid-ask spreads).[241] Another commenter noted that moving the T–1 order window later into the evening to allow the ETF to calculate and disclose its portfolio holdings before accepting T–1 orders would require an additional staffing shift, and thus would impose additional staffing costs on sponsors, custodians, and other market participants.[242]

Commenters recommended alternatives to the proposed rule's timing requirements. Several commenters suggested we require portfolio holdings disclosure only before the opening of regular trading on the primary listing exchange.[243] These commenters asserted that authorized participants placing purchase or redemption orders on a T–1 basis are able to assess and hedge market risk associated with transacting in underlying foreign securities prior to regular trading in U.S. equity markets. Other alternatives suggested by commenters included: (i) Carving out ETFs investing in foreign markets from the proposed timing requirements;[244] and (ii) permitting ETFs to accept T–1 orders provided that they first share certain standardized information with authorized participants.[245]

After considering these comments, we are not adopting the proposed requirement that an ETF disclose its portfolio holdings before it starts accepting orders for the purchase or redemption of creation units. Instead, rule 6c–11 will require an ETF to disclose the portfolio holdings that will form the basis for the ETF's next calculation of NAV per share each business day before the opening of regular trading on the primary listing exchange of the exchange-traded fund shares.[246] This will accommodate T–1 orders, as requested by commenters, and is consistent with our existing exemptive orders.[247]

The goal of our proposed timing requirement was to facilitate effective arbitrage by providing authorized participants and other market participants buying and selling ETF shares with portfolio holdings information at the time of the transaction. We believe that accommodating T–1 orders, but requiring disclosure before the opening of regular trading on the primary listing exchange of the ETF's shares, will nonetheless allow for effective arbitrage. Commenters stated that ETFs utilizing T–1 orders have shown relatively narrow bid-ask spreads and small premiums and discounts, and stated that precluding T–1 orders could have the unintended effect of actually widening bid-ask spreads and disrupting existing market practices.[248] Moreover, staff review of the websites of several ETFs that disclose that they use T–1 orders indicates that these ETFs' bid-ask spreads and premiums and discounts fall approximately within the same range as ETFs that do not use T–1 orders.

We considered whether to impose other conditions for the acceptance of T–1 orders, such as disclosure of the last published portfolio holdings. However, given the information already available to market participants and the data demonstrating that existing market practices have led to effective arbitrage, we do not believe additional conditions are currently necessary to facilitate arbitrage for these orders.

b. Presentation of Portfolio Holdings Disclosure

Rule 6c–11 will require an ETF to disclose standardized information regarding each portfolio holding.[249] The rule, however, will not require this information to be presented and contain information in the manner prescribed within Article 12 of Regulation S–X as proposed.[250] In response to concerns and suggestions of commenters, we have modified this condition to require ETFs to disclose a limited set of information for each portfolio holding.[251]

Commenters on this aspect of the proposal agreed that there currently is little consistency in the presentation of holdings information by ETFs,[252] and generally agreed this disclosure should be standardized.[253] Several commenters, however, stated that the specific presentation standard included in the proposed rule (*i.e.,* Article 12 of Regulation S–X) is not an appropriate framework for daily portfolio holdings disclosures by ETFs.[254] Commenters

(stating that ''market participants have found that that benefits of agreeing to an order shortly after market close outweighs] the costs imposed by lack of certainty'').

[240] *See, e.g.,* ICI Comment Letter (asserting that inability to trade at T–1 could introduce slippage, which in turn may lead to wider bid-ask spreads and larger premium/discounts); CSIM Comment Letter; Comment Letter of OppenheimerFunds (Oct. 1, 2018) (''OppenheimerFunds Comment Letter''). *See also* BlackRock Comment Letter (''Many ETFs in the marketplace currently take orders prior to publication of basket or portfolio holdings information and operate efficiently and with tight spreads.'').

[241] *See* Dechert Comment Letter.

[242] *See* Invesco Comment Letter.

[243] *See* NYSE Comment Letter; CSIM Comment Letter; WisdomTree Comment Letter.

[244] *See* Nasdaq Comment Letter.

[245] *See* Invesco Comment Letter (suggesting that, as a condition for accepting T–1 orders, ETFs be required to provide APs with (1) the last-published portfolio holdings, (2) applicable corporate action information, (3) data relating to index changes, and (4) an updated basket file).

[246] For these purposes, ''business day'' is defined as any day the ETF is open for business, including any day when it satisfies redemption requests as required by section 22(e) of the Act. *See* rule 6c–11(a)(1).

[247] *See, e.g.,* Salt Financial, LLC, et al., Investment Company Act Release Nos. 32974 (Jan. 23, 2018) [83 FR 4097 (Jan. 29, 2018)] (notice) and 33007 (Feb. 21, 2018) (order), and related application (''Salt Financial'') (requiring disclosure of portfolio holdings before commencement of trading on the exchange).

[248] *See, e.g.,* Jane Street Comment Letter; ICI comment Letter; BlackRock Comment Letter; SIFMA AMG Comment Letter I.

[249] Rule 6c–11(c)(1)(i). As proposed, the term ''portfolio holdings'' is defined to mean an ETF's securities, assets, or other positions. *See* rule 6c–11(a)(1). As a result, ETFs relying on rule 6c–11 are required to disclose securities, their cash holdings, as well as holdings that are not securities or assets, including short positions or written options. For example, an ETF will have to disclose that it entered into a written call option, under which it would sacrifice potential gains that would result from the price of the reference asset increasing above the price at which the call may be exercised (*i.e.,* the strike price). Unless the ETF discloses the presence of these and similar liabilities, authorized participants and other investors may not be able to fully evaluate the portfolio's exposure. We did not receive any comments on this definition.

[250] *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.220–221 (noting that a staff review of ETF websites found little consistency in how portfolio holdings information was presented, particularly with respect to derivatives, which could lead to investor confusion).

[251] *See infra* footnotes 257–260 and accompanying text.

[252] *See, e.g.,* Cary Comment Letter; *ETF.com* Comment Letter.

[253] *See, e.g.,* BlackRock Comment Letter; BNY Mellon Comment Letter; Fidelity Comment Letter.

[254] *See, e.g.,* Fidelity Comment Letter; ICI Comment Letter. The proposed Article 12 presentation requirements would have required an ETF to include the name of issuer and title of issue (as prescribed within the S–X schedules including any related footnotes on the description columns), balance held at close of period, number of shares, principal amount of bonds, and value of each item at close of period for the ETF's investments in securities, securities sold short, and other investments. For derivatives, Article 12 would require disclosure that includes the description (as prescribed within the S–X schedules including any related footnotes), number of contracts, value, expiration date (as applicable), unrealized appreciation/depreciation (as applicable), and amount and description of currency to be purchased and to be sold (as applicable). *See* 17

asserted that certain of the Article 12 requirements are overly burdensome for daily disclosure or unnecessary to achieve the Commission's goal of facilitating effective arbitrage.[255]

Some commenters recommended alternative approaches. Several commenters, for example, suggested using disclosure requirements based on the generic listing standards for actively managed ETFs.[256] One of these commenters stated that using the generic listing standards would provide ''more streamlined portfolio holdings disclosure that includes a subset of the items required by Article 12 that is most relevant and useful for investors.'' [257] Other commenters stated that the Commission should consider a more limited set of requirements, such as: (i) The name of the security; (ii) the size of the position; (iii) the percentage exposure to such security; and (iv) the security's value.[258] Some commenters also recommended that, in addition to website disclosure, rule 6c–11 require ETFs to file portfolio holdings information in a central public location, such as EDGAR.[259]

We proposed the Article 12 framework because ETFs are already required to comply with Article 12 for periodic financial reporting purposes and therefore we believed that it would provide an efficient way to standardize daily portfolio holdings disclosure. After considering comments, however, we believe that a more streamlined requirement will provide standardized portfolio holdings disclosure in a more efficient, less costly, and less burdensome format, while still providing market participants with relevant information. Accordingly, rule 6c–11 will require an ETF to post a subset of the information required by the listing exchanges' current generic listing standards for actively managed ETFs. Rule 6c–11 will require ETFs to disclose the following information for each portfolio holding on a daily basis: (1) Ticker symbol; (2) CUSIP or other identifier; (3) description of holding; (4) quantity of each security or other asset held; and (5) percentage weight of the holding in the portfolio.[260] We believe that this framework will provide market participants with the information necessary to support an effective arbitrage mechanism and eliminate potential investor confusion due to a lack of standardization.

As commenters suggested, to arbitrage an ETF's holdings, market participants generally must be able to identify the security or asset held, the quantity held, and percentage weighting of the holding in the ETF's portfolio.[261] To enable market participants to identify the investment held, we are requiring the ETF to disclose the ticker, CUSIP or other identifier (where applicable) of the holding, and to provide a description of the holding. Because certain investments may not have been assigned a common securities identifier, we are requiring the ETF to provide a brief description of the investment to allow an investor to effectively hedge the ETF.[262] For example, ETFs holding debt securities should include the security's name, maturity date, coupon rate, and effective date, where applicable, to assist investors in identifying the specific security held.[263] To indicate the quantity of a security or other asset held, the ETF generally should use the measure typically associated with quantifying that class of security, such as number of shares for equity securities, par value for debt securities, number of units for securities, such as UITs, that are measured in units, and dollar value for cash. With respect to derivatives, the ETF generally should provide both the notional value of the derivative and number of contracts, as well as a general description of the investment, which should include the type of derivative (*i.e.,* swap, option, forward). ETFs also may want to consider several of the other reporting fields in Form N–PORT, for example, depending on the type of investment the ETF holds, in order to provide investors with the necessary information.

We continue to believe that the ETF's website is the most effective location for the disclosure of portfolio holdings information. By posting the portfolio information on its website, free of charge, the ETF makes the information available to a broad range of investors, including retail investors, and other market participants.[264] We further believe, and commenters agreed, that requiring ETFs to file their portfolio holdings information on EDGAR would impose additional costs on ETFs that are not justified in light of other available disclosure methods.[265] Moreover, the purpose of this requirement is to allow ETF investors to understand and potentially arbitrage the ETF's holdings. We therefore do not believe that requiring ETFs to file daily portfolio

CFR 210.12–12; 210.12–12A; 210.12–13; 210.12–13A; 210.12–13B; 210.12–13C; and 210.12–13D.

[255] *See, e.g.,* WisdomTree Comment Letter (explaining that Article 12 requires detailed categorization of investments by investment type, industry, and country or geographic region and also requires identification of fair valued and non-income producing securities); SIFMA AMG Comment Letter I (stating that information such as appreciation and depreciation for derivatives, as required under Article 12, would be difficult and impractical to calculate and disseminate on a daily basis); Comment Letter of Franklin Resources, Inc. (Oct. 1, 2018) (''Franklin Templeton Comment Letter'') (noting that certain data required under Article 12 is updated only on a quarterly basis and would not be easily accessible on a daily basis); BlackRock Comment Letter; ICI Comment Letter.

[256] *See, e.g.,* BlackRock Comment Letter; Fidelity Comment Letter; Eaton Vance Comment Letter. *See also* ICI Comment Letter (noting that standardizing ''the presentation formats based on exchange listing requirements would obviate the need for two separate schedules, a costly and largely redundant exercise with no additional benefit''). The listing exchanges' current generic listing standards for actively managed ETFs require disclosure of ticker symbol; CUSIP or other identifier; description of the holding; identity of the asset upon which the derivative is based; strike price for any options; quantity of each security or other asset held as measured by (i) par value, (ii) notional value, (iii) number of shares, (iv) number of contracts, and (v) number of units; maturity date; coupon rate; effective date; market value; and percentage weight of the holding in the portfolio. *See, e.g.,* NYSE Arca Rule 8.600–E(c)(2); Nasdaq Rule 5735(c)(2); Cboe BZX Rule 14.11(i)(3)(B).

[257] *See* BlackRock Comment Letter.

[258] *See, e.g.,* WisdomTree Comment Letter. *See also* CSIM Comment Letter (suggesting that Commission adopt an ETF holdings disclosure requirement similar to what money market funds report on fund websites); Cary Comment Letter (recommending disclosure of the portfolio holding's ticker symbol and weighting in the portfolio as minimum requirements); Comment Letter of ICE Data Services, Intercontinental Exchange (Oct. 1, 2018) (''IDS Comment Letter'') (stating that Commission should consider a standardized nomenclature for ETFs' description of derivative holdings).

[259] *See, e.g.,* Reagan Comment Letter. *See also* Morningstar Comment Letter (recommending that the Commission also require ETFs to disclose the information and other website disclosure requirements in structured format for analysis and comparison purposes); FIMSAC Comment Letter (recommending the rule require ETFs to file certain website disclosures on EDGAR or another public, centralized database).

[260] Article 12 of Regulation S–X also generally requires disclosure of these items, but does not require a ticker, CUSIP, or other identifier for a holding. *See, e.g.,* 17 CFR 210.12–12, 210.12–12A (requiring disclosure of name of issuer and title of issue). We believe that such identifiers can allow market participants to efficiently identify the asset or security held, and thus we included this requirement, which is required under the current generic listing standards for actively managed ETFs.

[261] *See, e.g.,* WisdomTree Comment Letter.

[262] *See, e.g.,* Investment Company Reporting Modernization Adopting Release, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (''Reporting Modernization Adopting Release''), at section II.A.4.g.i. (discussing use of unique securities identifiers for portfolio holdings and observing that some holdings lack such identifiers).

[263] Based on our experience with structured portfolio reporting, such as Form N–PORT, we believe that this information will provide a sufficient amount of data for a market participant to understand the payment profile of the investment and therefore arbitrage the ETF's portfolio holdings. *See id.,* at section II.A.4.g.ii.

[264] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.271 and accompanying text (discussing advantages of website posting over use of National Securities Clearing Corporation (''NSCC'') portfolio composition file).

[265] *See, e.g.,* Invesco Comment Letter (stating that additional dissemination requirements, such as EDGAR, would be costly).

holding disclosure on EDGAR or other centralized location in order to provide potentially greater comparability across ETFs is justified in light of current market practices and the additional costs associated with such a requirement.[266] In addition, other documents, such as reports on Form N–PORT or Form N–CEN, registration statements on Form N–1A, and consolidated structured datasets derived from those submissions, provide centralized, structured information, including information about portfolio holdings, that can be analyzed and compared across ETFs, albeit on a less frequent basis.[267]

c. Portfolio Holdings That Will Form the Basis for the ETF's NAV Calculation

As proposed, rule 6c–11 will require the portfolio holdings that form the basis for the ETF's NAV calculation to be the ETF's portfolio holdings as of the close of business on the prior business day.[268] Changes in an ETF's holdings of portfolio securities would therefore be reflected on a T+1 basis. We did not receive any comments on this proposed condition, which is consistent with current ETF practices. We continue to believe that requiring an ETF to disclose the portfolio that will form the basis for the next NAV calculation at the beginning of the business day will help to facilitate the efficient functioning of the arbitrage process while protecting against potential front-running of the ETF's trades.

Accordingly, rule 6c–11 will not require ETFs to disclose intraday changes in portfolio holdings because these changes would not affect the portfolio composition serving as a basis for NAV calculation until the next business day.[269] We continue to believe that the selective disclosure of nonpublic information regarding intraday changes in portfolio holdings (or any advance disclosure of portfolio trades) could result in the front-running of an ETF's trades, causing the ETF to pay more to obtain a security.[270] We have stated that registered investment companies' compliance policies and procedures required by rule 38a–1 under the Act should address potential misuses of nonpublic information, including the disclosure to third parties of material information about a fund's portfolio, its trading strategies, or pending transactions, and the purchase or sale of fund shares by advisory personnel based on material, nonpublic information about the fund's portfolio.[271] ETFs also are required to describe their policies and procedures on portfolio security disclosure in the Statement of Additional Information and post such policies and procedures on their websites.[272]

5. Baskets

As proposed, rule 6c–11 will require an ETF relying on the rule to adopt and implement written policies and procedures governing the construction of baskets and the process that the ETF will use for the acceptance of baskets.[273] In addition, as proposed, the rule will provide an ETF with flexibility to use ''custom baskets'' if the ETF has adopted written policies and procedures that: (i) Set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders, including the process for any revisions to, or deviations from, those parameters; and (ii) specify the titles or roles of employees of the ETF's investment adviser who are required to review each custom basket for compliance with those parameters (''custom basket policies and procedures'').[274]

a. Basket Policies and Procedures

When an ETF uses in-kind creations and redemptions, the composition of the basket is an important aspect of the efficient functioning of the arbitrage mechanism. Basket composition affects the costs of assembling and delivering the baskets exchanged for creation units as well as the costs of liquidating basket securities when redeeming creation units.[275] Basket composition also is important to ETF portfolio management, as each in-kind creation or redemption increases or decreases positions in the ETF's portfolio, and allows portfolio managers to add or remove certain portfolio holdings. This can be an efficient way for a portfolio manager to execute changes in the ETF's portfolio because the manager can make the changes without incurring the additional expenses of trades in the market. When an ETF does not have flexibility to manage basket composition, however, undesired changes to the portfolio may result, such as the loss of desirable bonds when paying redemptions in kind.

The exemptive relief relating to baskets evolved over time. Early orders for ETFs organized as open-end funds included few explicit restrictions on baskets, and these orders did not expressly limit ETFs' baskets to a *pro rata* representation of the ETF's portfolio holdings.[276] Since approximately 2006, however, our orders placed tighter restrictions on an open-end ETF's composition of baskets.[277] These orders expressly require that an ETF's basket generally correspond *pro rata* to its portfolio holdings, while identifying certain limited circumstances under which an ETF may use a non-*pro rata* basket.[278]

[266] As stated above, however, we encourage ETFs to consider whether there are technological means, such as including portfolio holdings information in a machine-readable format, to make these disclosures more accessible. *See supra* footnote 226.

[267] *See, e.g.,* Part C of Form N–PORT.

[268] *See* rule 6c–11(c)(1)(i). *See also* 2018 Proposing Release, *supra* footnote 7, at nn.210–211 and accompanying text.

[269] *See* 2018 ETF Proposing Release, *supra* footnote 7, at note 222 and accompanying text.

[270] We also requested comment in the proposal on whether we should amend Regulation FD to apply to ETFs. Regulation FD prohibits the selective disclosure of material information by publicly traded companies and other issuers. *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.228. We received two comments stating that ETFs should be subject to Regulation FD. *See* Eaton Vance Comment Letter; Jane Street Comment Letter. However, we are not amending Regulation FD at this time in order to further explore certain aspects of applying Regulation FD to ETFs, which unlike other entities subject to this regulation, are continuously offered.

[271] Rule 38a–1 Adopting Release, *supra* footnote 134. Pursuant to rule 6c–11, ETFs are required to disclose portfolio holdings information with greater frequency than other open-end funds, which are generally required to publicly disclose holdings on a quarterly basis. However, we have previously noted that a fund or investment adviser that discloses the fund's portfolio securities may only do so consistent with the antifraud provisions of the federal securities laws and the adviser's fiduciary duties. *See* Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Investment Company Act Release No. 26418 (Apr. 20, 2004) [69 FR 22299 (Apr. 23, 2004)] (''Disclosure of Portfolio Holdings Release''), at section II.C. Moreover, divulging nonpublic portfolio holdings to selected third parties is permissible only when the fund has legitimate business purposes for doing so and the recipients are subject to a duty of confidentiality, including a duty not to trade on the nonpublic information. *Id.*

[272] *See* Items 9(d) and 16(f) of Form N–1A; *see also* Disclosure of Portfolio Holdings Release, *supra* footnote 272, at section II.C.

[273] *See* rule 6c–11(c)(3). The rule will define ''basket'' to mean the securities, assets or other positions in exchange for which an ETF issues (or in return for which it redeems) creation units. *See* rule 6c–11(a)(1).

[274] *See* rule 6c–11(c)(3); *see also infra* footnote 299 and accompanying text.

[275] For example, the number of positions included in a basket, as well as the difficulty and cost of trading those positions, will affect the cost of basket transactions.

[276] *See* WEBs Index Fund, Inc., *et al.,* Investment Company Act Release Nos. 23860 (June 7, 1999) [64 FR 31658 (June 11, 1999)] (notice) and 23890 (July 6, 1999) (order) and related application. Our earliest ETF orders for ETFs organized as UITs provide that in-kind purchases of creation units were to be made using a basket of securities substantially similar to the composition and weighting of the ETF's underlying index. Given the unmanaged nature of the UIT structure, a UIT ETF's basket generally reflected a pro rata representation of the ETF's portfolio. *See* SPDR, *supra* footnote 51.

[277] *See, e.g.,* 2006 WisdomTree Investments, *supra* footnote 201.

[278] *See id.; see also* 2018 ETF Proposing Release, *supra* footnote 7, at nn. 238–242 and accompanying

The requirement that baskets correspond *pro rata* to the ETF's portfolio holdings, and the increasingly limited exceptions to the *pro rata* requirement, were designed to address the risk that an authorized participant could take advantage of its relationship with the ETF and pressure the ETF to construct a basket that favors an authorized participant to the detriment of the ETF's shareholders. For example, because ETFs rely on authorized participants to maintain the secondary market by promoting an effective arbitrage mechanism, an authorized participant holding less liquid or less desirable securities potentially could pressure an ETF into accepting those securities in its basket in exchange for liquid ETF shares (*i.e.,* dumping). An authorized participant also could pressure the ETF into including in its basket certain desirable securities in exchange for ETF shares tendered for redemption (*i.e.,* cherry-picking). In either case, the ETF's other investors would be disadvantaged and would be left holding shares of an ETF with a less liquid or less desirable portfolio of securities.[279]

Based on our experience with ETFs, however, we believe there are many circumstances, in addition to the specific circumstances enumerated in our orders, where allowing basket assets to differ from a *pro rata* representation or allowing the use of different baskets could benefit the ETF and its shareholders. For instance, ETFs without basket flexibility typically are required to include a greater number of individual securities within their basket when transacting in kind, making it more difficult and costly for authorized participants and other market participants to assemble or liquidate baskets. This could result in wider bid-ask spreads and potentially less efficient arbitrage. In such circumstances, these ETFs may be at a competitive disadvantage to ETFs with greater flexibility. As a result, these differing conditions and requirements for basket composition in our exemptive orders may have created a disadvantage for newer ETFs that are subject to our later, more stringent restrictions on baskets.

Moreover, certain exceptions to a *pro rata* basket requirement may help ETFs operate more efficiently. For example, ETFs, particularly fixed-income ETFs, that do not have basket flexibility may satisfy redemption requests entirely in cash in order to avoid losing hard-to-find securities and to preserve the ETF's ability to achieve its investment objectives.[280] ETFs that meet redemptions in cash may maintain larger cash positions to meet redemption obligations, potentially resulting in cash drag on the ETF's performance. The use of cash baskets also may be less tax-efficient than using in-kind baskets to satisfy redemptions, and may result in additional transaction costs for the purchase and sale of portfolio holdings.[281]

We therefore proposed to provide additional basket flexibility, subject to conditions designed to address concerns regarding the potential risk of overreaching. Specifically we proposed to require ETFs to adopt: (i) Policies and procedures governing the construction of baskets and the process that would be used for the acceptance of baskets generally; and (ii) heightened process requirements for ETFs using custom baskets, including policies and procedures specifically covering the use of custom baskets.[282]

Commenters generally supported requiring ETFs to adopt policies and procedures governing the construction of baskets.[283] One commenter stated, for example, that this requirement is consistent with other investment and portfolio management processes that require guidelines, oversight and recordkeeping.[284] Commenters also generally supported our proposal to permit ETFs relying on the rule to use custom baskets provided they adopt certain heightened process requirements.[285] These commenters agreed that providing ETFs with the flexibility to use custom baskets potentially could benefit ETF investors through more effective arbitrage and more efficient portfolio management.[286] One commenter provided the results of an analysis it performed indicating that fixed-income ETFs with basket flexibility had narrower bid-ask spreads, had lower tracking differentials (*i.e.,* the difference between the ETF's daily return and the daily return of its benchmark), and traded at smaller discounts than fixed-income ETFs without basket flexibility.[287]

One commenter, however, asserted that the rule should not afford custom basket flexibility to all ETFs relying on it.[288] Rather, this commenter opined that the rule should require fixed-income ETFs to make in-kind, *pro rata* redemptions upon shareholder request (with limited substitutions for holdings that cannot be settled or transferred) because, under certain market conditions, custom baskets can lead to greater price volatility and dislocation from NAV for these ETFs.

Some commenters, although generally supporting custom basket flexibility and the proposed heightened process requirements, requested that we modify or clarify certain aspects of the proposed condition.[289] For example, one commenter did not support requiring ''detailed parameters'' for the construction and acceptance of custom baskets, stating that the rule should permit ETF sponsors to develop broad policies and procedures to cover the wide range of circumstances that may arise relating to custom baskets.[290] Another commenter stated that the Commission should explicitly set forth the appropriate considerations for custom basket policies and procedures, such as periodic monitoring and testing and oversight of the custom basket process.[291] This commenter also stated that the Commission should clarify that an ETF has discretion to tailor its custom basket policies and procedures to address different risks, considerations, and requirements for

text (describing the circumstances when a basket could deviate from a *pro rata* representation of the ETF's portfolio under recent exemptive orders).

[279] These abuses also could occur when a liquidity provider or other market participant engages in primary market transactions with the ETF by using an authorized participant as an agent.

[280] Many ETFs, including fixed-income ETFs, are permitted under their exemptive orders to satisfy redemptions entirely in cash where the ETF holds thinly traded securities, among other circumstances. *See, e.g.,* Pacific Investment Management Company LLCP, *et al.,* Investment Company Act Release Nos. 28723 (May 11, 2009) [74 FR 22772 (May 14, 2009)] (notice) and 28752 (June 1, 2009) (order) and related application.

[281] In-kind redemptions allow ETFs to avoid taxable events and certain transaction costs that arise when selling securities for cash within the ETF. *See, e.g.,* Prudential Investments LLC, *et al.,* Investment Company Act Release Nos. 32351 (Nov. 1, 2016) (notice) [81 FR 78228 (Nov. 7, 2016)] and 32374 (Nov. 30, 2016) (order) and related application (stating that cash redemptions may result in adverse tax consequences and higher transaction costs, such as brokerage costs, than in-kind redemptions). Additionally, based upon Form N–CEN data through September 5, 2019, the median transaction fee charged to an authorized participant for the use of an in-kind basket to satisfy a redemption was approximately $350.00, while the median transaction fee for the use of a basket that was partially or fully composed of cash was approximately $375.00, when charged on a per-creation-unit basis.

[282] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.5.a.

[283] *See, e.g.,* ICI Comment Letter; BlackRock Comment Letter; SIFMA AMG Comment Letter I.

[284] *See* SIFMA AMG Comment Letter I.

[285] *See, e.g.,* ICI Comment Letter; BlackRock Comment Letter; Invesco Comment Letter; BNY Mellon Comment Letter; IDC Comment Letter; Fidelity Comment Letter.

[286] *See, e.g.,* BlackRock Comment Letter.

[287] *See* ICI Comment Letter. *See also infra* footnotes 574–575 and accompanying text.

[288] *See* Bluefin Comment Letter.

[289] *See, e.g.,* ICI Comment Letter; BlackRock Comment Letter; Invesco Comment Letter; BNY Mellon Comment Letter; IDC Comment Letter; Fidelity Comment Letter; Dechert Comment Letter.

[290] *See* Invesco Comment Letter.

[291] *See* BlackRock Comment Letter.

different types of custom baskets, particularly those involving cash substitutions.

We are adopting the basket conditions under rule 6c–11 as proposed. Rule 6c–11 therefore will require an ETF to adopt and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of baskets as proposed.[292] These policies and procedures must cover the methodology that the ETF will use to construct baskets. For example, the policies and procedures should detail the circumstances under which the basket may omit positions that are not operationally feasible to transfer in kind. The policies and procedures also should detail when the ETF would use representative sampling of its portfolio to create its basket, and how the ETF would sample in those circumstances. The policies and procedures also should detail how the ETF would replicate changes in the ETF's portfolio holdings as a result of the rebalancing or reconstitution of the ETF's underlying securities market index, if applicable. We believe this policies and procedures requirement will protect against overreaching and other abusive practices in circumstances where an ETF uses a basket that does not reflect a *pro rata* slice of the ETF's portfolio holdings, but does not meet the definition of custom basket.

Rule 6c–11 also will require the policies and procedures to (i) set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders, including the process for any revisions to, or deviations from, those parameters; and (ii) specify the titles or roles of the employees of the ETF's investment adviser who are required to review each custom basket for compliance with those parameters.[293] We continue to believe that an ETF and its shareholders may benefit from custom baskets and that the heightened process requirements for custom baskets in rule 6c–11 serve to protect the ETF and its shareholders from the risks that custom baskets may present.

Effective custom basket policies and procedures should provide specific parameters regarding the methodology and process that the ETF would use to construct or accept each custom basket. They also should describe the ETF's approach for testing compliance with the custom basket policies and procedures and assessing (including through back testing or other periodic reviews) whether the parameters continue to result in custom baskets that are in the best interests of the ETF and its shareholders. An ETF should consistently apply the custom basket policies and procedures and must establish a process that the ETF will adhere to if it wishes to make any revisions to, or deviate from, the parameters. In addition, an ETF's custom basket policies and procedures should include reasonable controls designed to prevent inappropriate differential treatment among authorized participants.

We do not believe that the requirement for ''detailed parameters'' would prevent an ETF sponsor from developing policies and procedures to cover the wide range of circumstances that may arise relating to custom baskets.[294] ETFs may tailor their custom basket policies and procedures to address different risks and requirements for different types of custom baskets. For example, an ETF could develop tailored procedures when it uses cash substitutions that differ from the procedures it uses when substituting securities and other positions. An ETF's custom basket policies and procedures also could address the differing considerations for custom baskets depending on the direction of the trade (*i.e.,* whether the custom basket is being used for a creation or a redemption).[295] This condition provides ETFs with flexibility to cover operational circumstances that make the inclusion of certain portfolio securities and other positions in a basket operationally difficult (or impossible), while facilitating portfolio management changes in a cost- and tax-efficient manner.

Although one commenter opined that fixed-income ETFs present unique concerns, we believe that requiring fixed-income ETFs to establish detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders will address the risks associated with custom baskets. As discussed above, we also believe that fixed-income ETFs (and their shareholders) may experience the most pronounced benefits from basket flexibility.[296] As a result, all ETFs that comply with the conditions in rule 6c–11 will have basket flexibility.

One commenter stated that the Commission should confirm that the ''best interests of the ETF and its shareholders'' standard included in rule 6c–11(c)(3)(i) includes the ETF's shareholders generally rather than individually, on the basis that the adviser to an ETF owes a fiduciary duty only to the ETF, and that ETFs cannot evaluate the interests of individual shareholders.[297] The ''best interests of the ETF and its shareholders'' in this context is not intended to apply to each ETF shareholder individually, but rather to the ETF's shareholders generally. This formulation is consistent with other Commission rules.[298]

As proposed, rule 6c–11 also will require an ETF, as part of its custom basket policies and procedures, to specify the titles or roles of employees of the ETF's investment adviser who are required to review each custom basket for compliance with the parameters set forth in those policies and procedures. Several commenters did not support this requirement as proposed.[299] One of these commenters stated that the rule should require ETFs to identify only the employees that are responsible for approving custom baskets that deviate from the parameters set forth in the policies and procedures.[300] Another commenter stated that the review requirement is overly prescriptive and could cause operational challenges when an ETF is sub-advised.[301]

In addition, several commenters did not support the statement in the 2018 ETF Proposing Release that an ETF may want to consider whether employees outside of portfolio management should review the components of custom baskets before approving a creation or redemption.[302] Commenters stated that approval of custom baskets is a typical portfolio management function, and that requiring non-investment personnel to review custom baskets before approving a creation or redemption would be

[292] *See* rule 6c–11(c)(3).

[293] Rule 6c–11(c)(3)(i) and (ii).

[294] *See* Invesco Comment Letter.

[295] *See* BlackRock Comment Letter.

[296] *See supra* footnotes 281–282 and accompanying text and footnote 288 and accompanying text.

[297] *See* SIFMA AMG Comment Letter I.

[298] *See, e.g.,* 17 CFR 270.12b–1 (rule 12b–1 under the Act) (providing that fund board may approve distribution plan under rule 12b–1 only if, among other things, the board concludes ''that there is a reasonable likelihood that the plan will benefit the company and its shareholders''); 17 CFR 270.2a–7 (rule 2a–7 under the Act) (providing that board of a money market fund, in order to use certain share price calculation methods, must determine ''that it is in the best interests of the fund and its shareholders'' to maintain a stable net asset value per share).

[299] *See, e.g.,* SIFMA AMG Comment Letter I; WisdomTree Comment Letter I.

[300] *See* SIFMA AMG Comment Letter I.

[301] *See* WisdomTree Comment Letter.

[302] *See, e.g.,* Dechert Comment Letter; Fidelity Comment Letter; JPMAM Comment Letter; SIFMA AMG Comment Letter I; Invesco Comment Letter; CSIM Comment Letter; SSGA Comment Letter I.

impractical, burdensome, and would detract from the flexibility custom baskets provide.[303] One commenter requested that the Commission clarify that the requirement to approve custom baskets applies only to employees with discretionary or direct supervisory authority over custom baskets, and not to employees responsible for governance, back-testing, or periodic reviews.[304]

We continue to believe that the ETF's investment adviser is in the best position to design and administer the custom basket policies and procedures and to establish parameters that are in the best interests of the ETF and its shareholders.[305] We also believe that the adviser is in the best position to determine which employee (or employees) are responsible for determining whether an ETF's custom baskets comply with the custom basket policies and procedures depending on its own structure, strategy, and other relevant circumstances (including whether the ETF is sub-advised). The ETF's adviser (and personnel) are familiar with the ETF's portfolio holdings and are able to assess whether the process and methodology used to construct or accept a custom basket is in the best interests of the ETF and its shareholders and whether a particular custom basket complies with the parameters set forth in the custom basket policies and procedures. We believe that these requirements will allow an ETF to establish a tailored framework for the use of custom baskets, while also requiring the ETF to put into place safeguards against abusive practices related to basket composition.

To the extent that a particular ETF's investment adviser determines that its portfolio management employees are the appropriate employees to be responsible for compliance with the custom basket policies and procedures, we believe that the requirements of rule 38a–1 under the Act provide appropriate safeguards to address possible conflicts of interest that could arise from such an arrangement. For example, ETFs currently are required by rule 38a–1 under the Act to adopt, implement, and periodically review written policies and procedures reasonably designed to prevent violations of the federal securities laws.[306] An ETF's compliance policies and procedures should be appropriately tailored to reflect its particular compliance risks. An ETF's basket policies and procedures (including its custom basket policies and procedures), therefore, should be covered by the ETF's compliance program and other requirements under rule 38a–1.[307] For example, an ETF would be required to preserve the basket policies and procedures pursuant to the requirements of rule 38a–1(d)(1). Also, we believe that the ETF's board of directors' oversight of the ETF's compliance policies and procedures, as well as their general oversight of the ETF, would provide an additional layer of protection for an ETF's use of custom baskets.[308]

b. Definition of Custom Baskets

As proposed, rule 6c–11 will define ''custom baskets'' to include two categories of baskets. First, a basket containing a non-representative selection of the ETF's portfolio holdings would constitute a custom basket.[309] These types of custom baskets include, but are not limited to, baskets that do not reflect: (i) A *pro rata* representation of the ETF's portfolio holdings; (ii) a representative sampling of the ETF's portfolio holdings; or (iii) changes due to a rebalancing or reconstitution of the ETF's securities market index, if applicable.[310]

Second, if different baskets are used in transactions on the same business day, each basket after the initial basket would constitute a custom basket. For example, if an ETF exchanges a basket with either the same or another authorized participant that reflects a representative sampling that differs from the initial basket, that basket (and any such subsequent baskets) would be a custom basket.[311] Similarly, if an ETF substitutes cash in lieu of a portion of basket assets for a single authorized participant, that basket would be a custom basket.

We received a number of comments on the proposed definition of custom basket. Several commenters asserted that baskets including cash substitutions should not be subject to the heightened policies and procedures requirement for custom baskets, and thus should be excluded from the definition of custom baskets.[312] These commenters asserted that baskets with cash substitutions do not raise the same concerns about conflicts or overreach as securities substitutions.[313] Commenters also contended that the use of cash substitutions as part of standard (*i.e.,* non-custom) baskets is a routine portfolio management matter that is necessary for the efficient operation of ETFs.[314] One commenter suggested several technical changes to the proposed definition of custom basket in rule 6c–11 to treat cash substitutions as part of a non-custom, *pro rata* basket under certain enumerated circumstances.[315]

[303] *See, e.g.,* Dechert Comment Letter; Fidelity Comment Letter; JPMAM Comment Letter; Invesco Comment Letter; CSIM Comment Letter.

[304] *See* BlackRock Comment Letter.

[305] An investment adviser has a fiduciary duty to act in the best interests of a fund it advises. *See* section 36(a) under the Act. *See also, e.g., Rosenfeld* v. *Black,* 445 F.2d 1337 (2d Cir. 1971); *Brown* v. *Bullock,* 194 F. Supp. 207, 229, 234 (S.D.N.Y.), aff'd, 294 F.2d 415 (2d Cir. 1961); *In re* Provident Management Corp., Securities Act Release No. 5155 (Dec. 1, 1970), at text accompanying n.12; Rule 38a–1 Adopting Release, *supra* footnote 64, at n.68. *See also supra* footnote 64 (discussing certain other obligations for registered investment advisers).

[306] *See* Rule 38a–1 Adopting Release, *supra* footnote 134. Among other things, rule 38a–1 requires a fund's chief compliance officer to provide a written report to the fund's board of directors, no less frequently than annually, that addresses, among other things, the operation of the fund's compliance policies and procedures and any material changes made to those policies and procedures since the date of the last report and any material changes to the policies and procedures recommended as a result of the annual review of the policies and procedures. *See* rule 38a–1(a)(4)(iii)(A).

[307] The compliance policies and procedures could require, for example, the ETF's chief compliance officer or other compliance professionals to conduct a post hoc, periodic review of a sample of custom baskets used by the ETF.

[308] Several commenters expressed support for the description in the 2018 ETF Proposing Release of the oversight role of ETF boards, including with respect to custom basket policies and procedures. *See* ETF.com Comment Letter; IDC Comment Letter; Nasdaq Comment Letter.

[309] Rule 6c–11(a)(1).

[310] A basket that is a *pro rata* representation of the ETF's portfolio holdings, except for minor deviations when it is not operationally feasible to include a particular instrument within the basket, generally would not be considered a ''custom basket'' except to the extent different baskets are used in transactions on the same business day.

[311] When making the best interest determination for such custom baskets, the ETF should consider how this change in sampling affects the ETF's portfolio.

[312] *See, e.g.,* ICI Comment Letter; BlackRock Comment Letter; Fidelity Comment Letter; Dechert Comment Letter; SIFMA AMG Comment Letter I; SSGA Comment Letter I.

[313] *See, e.g.,* Fidelity Comment Letter (''Purchasing or redeeming using a cash basket does not create opportunities for 'cherry picking,' 'dumping' or other abuses . . . and therefore does not give rise to the risk of overreaching that the proposed custom basket policies and procedures were designed to prevent.''); ICI Comment Letter; BlackRock Comment Letter; SIFMA AMG Comment Letter I; JPMAM Comment Letter.

[314] *See, e.g.,* SIFMA AMG Comment Letter I (asserting that ''the use of cash is driven by restrictions applicable to authorized participants, restrictions on in-kind transactions in certain markets, or authorized participants' inability to access individual securities.''); JPMAM Comment Letter. *See also* CSIM Comment Letter (recommending that the standard basket policies and procedures, rather than the custom basket policies and procedures, cover cash substitutions).

[315] *See* BlackRock Comment Letter (recommending that we deem a basket to be *pro rata* if it: (1) Substitutes cash for odd lot positions or as a result of minimum trade sizes; (2) substitutes cash due to security specific restrictions, such as corporate actions or regulatory reasons; (3)

Continued

After consideration of these comments, we are adopting the definition of ''custom basket'' as proposed. While we generally agree with commenters that cash substitutions may not raise the same concerns as securities substitutions, an ETF's use of cash substitutions may raise concerns regarding the potential for an authorized participant to overreach, particularly in connection with redemptions. For example, during periods of market stress, an authorized participant may demand cash from the ETF instead of less liquid securities in exchange for ETF shares, impacting the liquidity of the ETF's portfolio and the ability of the ETF to satisfy additional cash redemption requests from authorized participants.[316]

We also considered excluding certain types of cash substitutions from the definition of custom baskets where authorized participant overreach is unlikely, consistent with the approach taken in our recent exemptive orders.[317] However, we are concerned that such an approach may fail to effectively capture all circumstances in which an ETF may substitute cash. We believe that the policies and procedures requirements for custom baskets will provide ETFs with sufficient flexibility to design custom basket policies and procedures that are tailored to address the different risks that cash substitutions and securities substitutions may present. An ETF could, for example, design custom basket policies and procedures with more streamlined requirements for certain cash substitutions that present lower risks.[318]

c. Basket Publication Requirement

Proposed rule 6c–11 would have required an ETF to post information regarding one basket that it would exchange for orders to purchase or redeem creation units to be priced based on the ETF's next calculation of NAV per share (a ''published basket'') on its website each business day.[319] This proposed disclosure requirement was designed to: (i) Facilitate arbitrage by providing authorized participants and other market participants with timely information regarding the contents of a basket that the ETF will accept each day; and (ii) allow market participants that do not have access to an ETF's daily portfolio composition file to compare the ETF's basket with its portfolio holdings, assist in building intraday hedges, and estimate the cash balancing amount. After considering comments, however, the Commission is not including a basket publication requirement in rule 6c–11.

Commenters generally did not support requiring disclosure of a published basket on the ETF's website.[320] For example, one commenter asserted that the proposed published basket was ''speculative,'' and had little value, particularly for certain types of fixed-income ETFs.[321] Several commenters contended that the contents of an ETF's basket are irrelevant for secondary market investors and publication of an ETF's basket could result in confusion, particularly if the basket is mistaken for portfolio holdings information.[322] Other commenters stated that the publication requirement could delay the process by which the ETF and an authorized participant negotiate the contents of a custom creation or redemption basket.[323] Another commenter stated that we should require an ETF to provide its published basket through the NSCC, rather than through its website, because the market participants that would use the published basket currently are able to access it either directly through the NSCC or through intermediaries.[324]

After considering these comments, the Commission is not including in rule 6c–11 a requirement that an ETF post information regarding one published basket that it would exchange for orders to purchase or redeem creation units. We proposed this condition, in part, because we were concerned that certain market participants that needed access to basket information for arbitrage purposes would not have access to ETF portfolio composition files.[325] However, we understand from commenters that market participants that use basket information, including those seeking to hedge exposure to an ETF, currently have access to this information through the NSCC, an intermediary, or the ETF itself. We are, however, requiring ETFs to provide daily website disclosure of portfolio holdings, which we believe will provide market participants with the necessary tools to determine if an arbitrage opportunity exists and to hedge the ETF's portfolio.[326] As a result, we believe that the publication of a single published basket would provide little additional value to market participants assessing the existence of arbitrage opportunities. We also agree with commenters' concerns that some investors may confuse the published basket information with an ETF's portfolio holdings information.

We requested comment on whether we should require an ETF to publish certain information regarding each basket used by the ETF to ameliorate some of the limitations associated with publication of a single basket each day and to serve as an additional check against overreaching by authorized participants.[327] However, commenters stated that such a requirement would be costly to implement and unnecessarily burdensome, particularly because basket composition information is not used by secondary market investors.[328] In addition, commenters asserted that publication of each basket could raise the risk that market participants front-run trades in basket securities or attempt to replicate authorized participants' or other market makers' trading strategies, particularly for those ETFs that have more frequent primary market transactions.[329] Rule 6c–11 as adopted instead will require ETFs to maintain certain information regarding each basket exchanged with an authorized participant.[330] We believe that this record keeping requirement is a more efficient way to ensure compliance with the rule, while

substitutes cash for positions or other instruments that cannot be delivered in-kind (*e.g.,* derivatives, to-be-announced (or ''TBA'') transactions); or (4) is otherwise representative of the ETF).

[316] *See generally* LRM Adopting Release, *supra* footnote 123.

[317] For example, authorized participant overreach is unlikely where the ETF substitutes cash for odd lot positions or as a result of minimum trade sizes.

[318] *See* BlackRock Comment Letter.

[319] *See* proposed rule 6c–11(c)(1)(i).

[320] *See, e.g.,* SIFMA AMG Comment Letter I; Invesco Comment Letter I; Nasdaq Comment Letter; CSIM Comment Letter.

[321] *See, e.g.,* SIFMA AMG Comment Letter I; *see also* CSIM Comment Letter (''CSIM does not believe that disclosure of one standard basket for orders to create or redeem creation units on an ETF's website would be useful disclosure to either individual investors or authorized participants as proposed.'').

[322] *See, e.g.,* CSIM Comment Letter; ICI Comment Letter. One commenter also noted that the proposed amendments to Form N–1A eliminated other disclosure that were relevant only to authorized participants and potentially confusing to secondary market investors. *See* ICI Comment Letter.

[323] *See, e.g.,* Invesco Comment Letter; Nasdaq Comment Letter.

[324] *See* OppenheimerFunds Comment Letter.

[325] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.5.b.

[326] *See* rule 6c–11(c)(1); *see also* 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.4. (stating that without the ability to hedge, market makers may widen spreads or be reluctant to make markets because doing so may require taking on greater market risk than the firm is willing to bear).

[327] *See* 2018 ETF Proposing Release, *supra* footnote 7, text following nn.269 and 272.

[328] *See, e.g.,* ICI Comment Letter; SSGA Comment Letter I; Vanguard Comment Letter.

[329] *See, e.g.,* ICI Comment Letter; SSGA Comment Letter I; SIFMA Comment Letter; Vanguard Comment Letter (also opining that publication of each custom basket could confuse investors); *but see* Morningstar Comment Letter (advocating for disclosure of all baskets in a structured format).

[330] *See infra* section II.D.

mitigating concerns regarding potential overreaching by authorized participants.

6. Website Disclosure

There has been a significant increase in the use of the internet as a tool for disseminating information, and many investors obtain information regarding ETFs on ETF websites.[331] Rule 6c–11 therefore will require ETFs to disclose certain information on their websites as a condition to the rule.[332] The website disclosure requirements are designed to provide investors with key metrics to evaluate their investment and trading decisions in a format that is easily accessible and frequently updated.

Specifically, under rule 6c–11 the following information must be disclosed publicly and prominently on the ETF's website: [333]

- NAV per share, market price, and premium or discount, each as of the end of the prior business day;
- A table and chart showing the number of days the ETF's shares traded at a premium or discount during the most recently completed calendar year and calendar quarters of the current year; [334]
- For ETFs whose premium or discount was greater than 2% for more than seven consecutive trading days, disclosure that the premium or discount was greater than 2%, along with a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount; and
- Median bid-ask spread over the most recent thirty calendar days.

a. Disclosure of Prior Business Day's NAV, Market Price, and Premium or Discount

As proposed, rule 6c–11 will require an ETF to post on its website the ETF's current NAV per share, market price, and premium or discount, each as of the end of the prior business day.[335] This disclosure provides investors with a ''snapshot'' view of the difference between an ETF's NAV per share and market price on a daily basis.

Commenters generally supported this requirement, observing that the investors should have easy access to the required information.[336] Some commenters, however, questioned the benefits of the premium or discount disclosure requirement. One such commenter stated that premium and discount disclosures do not provide the same benefit to shareholders as NAV per share and market price.[337] Another commenter, while not objecting to the posting of daily premiums or discounts, opined that emphasizing this information would be unnecessary and—to the extent that a discount might be understood by prospective investors as a bargain—potentially misleading.[338]

We continue to believe that daily website disclosure of NAV per share and market price will promote transparency and alert investors to the relationship between NAV per share and market price. We also believe that this information will help investors better understand the risk that an ETF's market price may be higher or lower than the ETF's NAV per share and compare this information across ETFs. Daily premium/discount disclosures also will provide investors with useful information regarding ETFs that frequently trade at a premium or discount to NAV per share.[339] We believe that ETF investors use this information today.[340]

These disclosures are consistent with our exemptive orders except that rule 6c–11 includes a definition of ''market price'' that differs from the definition applicable to those orders. Rule 6c–11 defines ''market price'' as: (A) The official closing price of an ETF share; or (B) if it more accurately reflects the market value of an ETF share at the time as of which the ETF calculates current NAV per share, the price that is the midpoint of the national best bid and national best offer (''NBBO'') as of that time.[341]

One commenter addressed our proposed definition of ''market price'' and asserted that the rule should permit ETFs to use the midpoint of the NBBO without evaluating whether it more accurately reflects the market value of the ETF's shares.[342] We continue to believe, however, that using the ''official closing price'' provides a more precise measurement of an ETF's market price than other alternatives, including during disruptive market events.[343] Requiring use of the midpoint of the NBBO only if it more accurately reflects market value also provides an appropriate degree of flexibility to an ETF when its closing price may be stale or otherwise does not reflect the ETF share's market value, while at the same time providing a consistent and verifiable methodology for how ETFs determine market

[331] *See, e.g.,* Reporting Modernization Adopting Release *supra* footnote 263.

[332] Rule 6c–11(c)(1).

[333] *See* rule 6c–11(c)(1); *see also supra* footnote 226.

[334] This requirement is similar to a current requirement in Item 11(g)(2) of Form N–1A, which requires disclosed percentages to be rounded to the nearest hundredth of one percent. *See* Current Instruction 2 to Item 11(g)(2) of Form N–1A. ETFs may similarly round percentages disclosed in response to this provision of rule 6c–11.

[335] Rule 6c–11(c)(1)(ii); 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.6. Proposed rule 6c–11 would have required this information ''as of the prior business day.'' Proposed rule 6c–11(c)(1)(ii). For clarity, the final rule will specify that the information be provided ''as of *the end* of the prior business day.'' Rule 6c–11(c)(1)(ii). This is consistent with our existing exemptive orders.

[336] *See ETF.com* Comment Letter; ICI Comment Letter (stating that the commenter does ''not object to'' the requirement); NYSE Comment Letter (stating that the website disclosure requirements in rule 6c–11 ''sufficiently address Commission concerns about investors' better understanding trading costs''); Virtu Comment Letter; CSIM Comment Letter.

[337] *See* Invesco Comment Letter.

[338] *See* SSGA Comment Letter I (''Similarly, investors may choose not to buy ETF shares because of a premium, when in fact the NAV is based on stale prices from an earlier close.''). One commenter recommended that we also require footnote disclosure when premium or discount information is known to include inaccurate data due to exchange-hours overlap issues (*i.e.,* when the ETF does not trade contemporaneously with its underlying holdings). *See ETF.com* Comment Letter. Rule 6c–11 as adopted will not require additional footnote disclosure in these circumstances because a majority of ETFs do not have this type of timing issue and the recommended disclosure may not capture other circumstances where an ETF's premium or discount reflects inaccurate data. ETFs may include this context alongside the premium/discount disclosures on their websites as applicable.

[339] Some ETFs have frequent deviations between closing market price and NAV per share. These ETFs typically hold non-U.S. securities and trade during hours when the markets for their non-U.S. holdings are closed, allowing the trading price of ETF shares to reflect expected changes in the next opening price of the non-U.S. holdings (*i.e.,* to help ''discover'' the price of the holdings). ETFs also may have greater premiums and discounts to the extent that there are greater transaction costs associated with assembling baskets. In addition, an ETF with less liquid portfolio holdings also may show a deviation between closing market price and NAV per share, and an ETF with a less efficient arbitrage mechanism may frequently show this type of end of day deviation.

[340] One commenter suggested that investors are more likely to look for information on the website of the entity with which they interact, such as a broker-dealer. *See* JPMAM Comment Letter. However, we believe that ETF issuers, as the entities that are the subject of this rule's relief, should provide investors with this information to assist those shareholders who visit the ETF's website in the first instance. Moreover, another commenter stated that smaller investors rely predominantly on website disclosures for their investment analysis. *See ETF.com* Comment Letter.

[341] *See* rule 6c–11(a)(1).

[342] *See* WisdomTree Comment Letter. An ETF uses the market price of an ETF share in calculating premiums and discounts. *See* rule 6c–11(a)(1) (defining ''premium or discount'' to mean the positive or negative difference between the market price of an ETF share and the ETF's current NAV per share, expressed as a percentage of the ETF's current NAV per share).

[343] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.281 and accompanying text. We believe that using the ''official closing price'' is a better measure than, for example, only the last price at which ETF shares traded on their principal U.S. trading market during a regular trading session, particularly in situations where the last trade of the day was not reflective of the actual market price (*e.g.,* due to an erroneous order). Exchanges have detailed rules regarding the determination of the official closing price of a security.

price.[344] Therefore, we have determined to adopt the definition of ''market price'' for purposes of this website disclosure requirement as proposed.

b. Disclosure of Table and Line Graphs of the ETF's Premiums and Discounts

As proposed, rule 6c–11 will require an ETF to post on its website both a table and line graph showing the ETF's premiums and discounts for the most recently completed calendar year and the most recently completed calendar quarters of the current year.[345] For new ETFs that do not yet have this information, the rule will require the ETF to post this information for the life of the fund.[346] We believe that presenting the data as both a table and a line graph will provide investors with useful information in formats that are easy to view and understand, depending on the investor's preference.[347] This disclosure is similar to current requirements that allow an ETF to omit certain premium/discount disclosures from its prospectus and annual report if the ETF posts on its website a table showing the number of trading days the ETF traded at a premium and the number of days it traded at a discount.[348]

Commenters were generally supportive of this requirement.[349] However, some commenters recommended that the rule require only one of the two presentations.[350] We recognize, as commenters observed, that the same information underlies both presentations. However, each presentation highlights different information, as illustrated in Figure 1 and Table 1 below. The tabular disclosure shows investors how often the ETF traded at a premium or discount. The graphic disclosure shows investors the degree of those deviations, particularly during periods of market stress, and could assist some investors with understanding how the arbitrage mechanism performs for an ETF under various market conditions.[351] Different audiences also may find one presentation more effective.[352] Therefore, we continue to believe that the rule should require both disclosures, and are adopting this aspect of the rule as proposed.

FIGURE 1: SAMPLE PREMIUM AND DISCOUNT LINE GRAPH

[344] Use of the midpoint of the NBBO, for example, mitigates the potential for gaming practices that could inaccurately minimize a deviation between market price and NAV per share when showing premiums and discounts. Because security information processors calculate NBBO continuously during the trading day, NBBO has the benefit of being a verifiable third-party quote.

[345] Rule 6c–11(c)(1)(iii)–(iv).

[346] For example, an ETF that has been in existence for 4 months should provide this disclosure for its first quarter of operations.

[347] While past performance cannot predict how an ETF will trade in the future, it is important that investors, and particularly retail investors, understand that certain classes of ETFs could have a larger and more persistent deviation from NAV, which could result in a higher cost to investors and a potential drag on returns.

[348] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.300 and accompanying text; *see also infra* section II.H.2.c. (discussing the elimination of this requirement in Form N–1A for funds relying on rule 6c–11).

[349] *See, e.g.,* JPMAM Comment Letter; *ETF.com* Comment Letter; ICI Comment Letter (does not object to requirements).

[350] John Hancock Comment Letter (recommending elimination of the proposed line graph requirement as it would result in disclosure duplicative of the table); WisdomTree Comment Letter (stating the line graph requirement would be adequate and that the required table would be too detailed).

[351] For example, two ETFs may have traded at a discount for the same number of days. One ETF's daily deviations could have been small with little effect on investors trading on those days, whereas the other ETF could have had significant discounts. These distinctions would not be apparent based on the required tabular disclosure, but would be observable with the graphic disclosure.

[352] Another commenter recommended that we require ETFs to provide a separate line graph showing an ETF's market price and NAV per share over the most recently completed calendar year and quarters. *See* JPMAM Comment Letter. While we agree that this context could be informative, we believe that the rule as proposed appropriately balances the usefulness of the line graph disclosure with the costs of preparation. Of course, ETFs may include this context alongside the required disclosures on their websites, so long as the information is not misleading.

TABLE 1—SAMPLE PREMIUM AND DISCOUNT TABLE

	Calendar year 2018	First quarter of 2019
Days traded at premium	202	59
Days traded at discount	47	2

The rule will require historical premium/discount information for the most recently completed calendar year and the most recently completed calendar quarters of the current year as proposed. Some commenters recommended that we require ETFs to update this information on a daily basis or require ETFs to present intra-day premiums or discounts in certain circumstances.[353] However, after considering the usefulness of timely information for investors and other data users and the costs of more frequent collection and publication of the information, we continue to believe the rule should require disclosure of this information only on a quarterly basis. First, this period is consistent with existing prospectus disclosure requirements, and we believe the time period will allow investors to readily observe the extent and frequency of deviations from NAV per share in a graphic format. Second, as discussed above, although the trailing historical data is subject to a less frequent quarterly updating requirement, the *current* premium or discount is required to be disclosed daily.

c. Disclosure of ETF Premiums or Discounts Greater Than 2%

As proposed, rule 6c–11 will require an ETF whose premium or discount was greater than 2% for more than seven consecutive trading days to post that information on its website,[354] along with a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount.[355] We continue to believe that disclosure of such periods will promote transparency about the significance and persistence of deviations between market price and NAV per share, and may help investors to make more informed investment decisions.[356]

One commenter supported this requirement, stating that daily premium and discount information is an important metric for investors.[357] This commenter stated that its internal metrics suggest that it would be unusual for ETFs to trigger the proposed disclosure requirement, and therefore the disclosure ''would not be burdensome'' for ETFs. Other commenters, however, opposed the proposed requirement, expressing concern that ETFs holding certain asset classes are more likely to trigger the requirement than others, and that disclosure by ETFs that frequently trigger the requirement could become inappropriately repetitive.[358]

We recognize that this disclosure requirement may affect certain categories of ETFs more than others. An ETF that invests in foreign securities, for example, may be more likely to experience a persistent deviation between market price and NAV per share given that many foreign markets are closed during the U.S. trading day. Such deviations may be pronounced if the market on which the ETF's underlying securities trade is closed for an extended period of time. We believe that this information could help to inform investors about the nature of these ETFs and the potential for frequent deviations.

However, we believe this requirement will affect a broader range of ETFs than just those investing in certain foreign markets. For example, we estimate that, out of a total 2,046 ETFs, 11 alternative ETFs, 20 international equity ETFs, 2 sector equity ETFs, 1 taxable bond ETF, and 15 U.S. equity ETFs would have triggered the 2% premium or discount disclosure requirement in 2018.[359] In addition, during the period from 2008 to 2018, we estimate that the percentage of ETFs that would have triggered the reporting requirement at least once varied from 1.5% to 10%.[360] Even if certain ETFs make the disclosure more frequently or predictably than others because of this variation, we believe that the requirement will promote transparency regarding the significance and persistence of deviations between market price and NAV per share, and thus may permit investors to make more informed investment decisions. Moreover, we believe that this disclosure helps inform investors that certain types of ETFs are more likely to experience persistent premiums or discounts than others.

Other commenters expressed concern with the requirement that an ETF include a discussion of the factors that are reasonably believed to have contributed to the premium or discount.[361] These commenters stated that an ETF may have difficulty identifying these factors before it makes the required disclosure. Although the required information will be subjective in some cases, we believe that this requirement can provide secondary market investors with useful context for the disclosed deviations. For example, the identification of factors that are reasonably believed to contribute to the premium or discount *at that time* may inform ETF investors and other market participants about factors potentially contributing to the premium or discount, even if additional contributing factors may later be identified. Such disclosed factors might include, for example, that many of an ETF's portfolio securities are traded on foreign markets that are closed during the U.S. trading day or that the markets on

[353] *See* CFA Comment Letter; Eaton Vance Comment Letter; Comment Letter of Hagens Berman (Oct. 1, 2018) (''Hagens Berman Comment Letter''). (''[T]he new rule should require disclosure of the gross discount spreads that have reoccurred during times of high volatility or lack of liquidity.'').

[354] We have modified the proposed rule text to further clarify that an ETF must post a statement that the ETF's premium or discount, as applicable, was greater than 2%—and not only the factors reasonably believed to have materially contributed to the premium or discount. *See* rule 6c–11(c)(1)(vi).

[355] Rule 6c–11(c)(1)(vi). The rule will require ETFs to post this information on their websites on the trading day immediately following the day on which the ETF's premium or discount triggered this provision (*i.e.,* on the trading day immediately following the eighth consecutive trading day on which the ETF had a premium or discount greater than 2%) and maintain it on their websites for at least one year following the first day it was posted.

[356] 2018 ETF Proposing Release, *supra* footnote 7, at text preceding n.307 (stating that the proposed information also may provide the market (and the Commission) with information regarding the efficiency of an ETF's arbitrage mechanism).

[357] *See* Invesco Comment Letter.

[358] *See, e.g.,* ICI Comment Letter; Nasdaq Comment Letter; WisdomTree Comment Letter.

[359] These figures are based on Bloomberg and Morningstar data for calendar year 2018 and estimate the number of ETFs with at least one instance that would have triggered the 2% premium or discount reporting requirement. As discussed in detail below, on a percentage basis, we estimate that 0.3% of taxable bond ETFs, 0.6% of sector equity ETFs, 3.1% of U.S. equity ETFs, 4.2% of international equity ETFs, and 4.8% of alternative ETFs would have triggered this disclosure requirement in 2018.

[360] *See infra* footnote 598 and accompanying text.

[361] *See* ICI Comment Letter; SSGA Comment Letter I.

which the ETF's underlying securities are traded were closed due to extended holidays or for other reasons. Because the requirement to disclose these factors will continue to apply while the premium or discount persists, the disclosure may change and become better developed over time as the ETF refines its analysis of what it reasonably believes is causing the persistent premium or discount. As a result, such a disclosure also could inform ETF investors and other market participants about the premium's or discount's persistence.

Another commenter recommended that we shorten the time an ETF is required to maintain the disclosure on its website (to, *e.g.,* 45 days), asserting that the required information is likely to be most useful when it is most recent and grows less important over time.[362] Rule 6c–11, however, will require ETFs to maintain the disclosure on their website for at least one year following the first day it was posted to help investors identify ETFs that historically have had persistent deviations between market price and NAV per share. Additionally, although we are requiring maintenance of this disclosure for at least one year, the requirement to post the information will continue to apply as the premium or discount persists—that is, the one-year maintenance requirements will not obviate the need for an ETF to post more current information if otherwise required.[363] Thus, the continued availability of the posted information over the required one-year period will not substitute for or prevent more current and timely disclosure.

Finally, some commenters expressed concerns with the 2% threshold.[364] For example, one commenter recommended a materiality standard instead of a 2% threshold.[365] Another commenter recommended raising the threshold to 5 or 10% and shortening the period over which it is measured.[366] As discussed above, in the Commission's experience, the deviation between the market price of ETFs and NAV per share, averaged across broad categories of ETF investment strategies and over time periods of several months, has been relatively small.[367] We therefore believe that limiting this disclosure to ETFs that have a premium or discount of greater than 2% for more than seven consecutive trading days will serve to highlight potentially unusual circumstances of an ETF with a persistent premium or discount. In Table 2 below, we summarize the effect that different variations on the proposed threshold recommended by the commenter would have had on the number of ETFs that would have triggered the requirement in 2018.

TABLE 2—NUMBER OF ETFS THAT WOULD HAVE TRIGGERED THE REQUIREMENT IN 2018

Category	3-Day period			7-Day period		
	2%	5%	10%	2%	5%	10%
Allocation	2					
Alternative	15	2		11		
Commodities						
International Equity	48	4		20	1	
Municipal Bond						
Sector Equity	10	1		2	1	
Taxable Bond	3			1		
U.S. Equity	29	5		15	3	
Total	107	12	None	49	5	None

As shown above, a 10% threshold would not have required any ETFs to provide this information in 2018, and a 5% threshold, even over just a three-day period, would have only required disclosure by 12 ETFs. After considering the commenter's recommended modifications to the threshold, we believe that the proposed threshold of 2% over more than seven consecutive trading days will more effectively highlight those patterns of sustained premiums or discounts that will be informative to investors than will the recommended alternatives. We also believe that in this circumstance the objective 2% threshold will result in more consistent application of the disclosure requirement than would a more subjective materiality standard. Furthermore, deviations that do not meet the objective 2% threshold, but that would be material to an investment decision, must be disclosed.[368]

d. Median Bid-Ask Spread

Rule 6c–11 will require daily website disclosure of the ETF's median bid-ask spread calculated over the most recent 30-day period.[369] The bid-ask spread information is designed to inform investors that they may bear bid-ask spread costs when trading ETFs on the secondary market, which ultimately could impact the overall cost of the investment. We have modified this requirement from our proposal, which would have required an ETF to disclose the median bid-ask spread for the ETF's most recent fiscal year on its website and in its prospectus.[370]

Comments on the proposed website disclosure of an ETF's bid-ask spread were mixed. Many commenters opposed this requirement, asserting that the proposed disclosures would require ETFs to bear costs and liability for data

[362] CSIM Comment Letter.

[363] Rule 6c–11(c)(1)(vi).

[364] *See* John Hancock Comment Letter; Nasdaq Comment Letter; WisdomTree Comment Letter (asserting that the proposed threshold was ''arbitrary'').

[365] *See* John Hancock Comment Letter.

[366] *See* Nasdaq Comment Letter.

[367] *See supra* footnote 360 and accompanying text; 2018 ETF Proposing Release, *supra* footnote 7, at nn.119–120, 307 and accompanying text (discussing the relatively small size of historic deviations between ETF market prices and NAV per share in the context of calibrating the threshold).

[368] *See* rule 10b–5 under the Exchange Act [17 CFR 240.10b–5]; *see also* section 34(b) of the Act [15 U.S.C. 80a–33].

[369] Rule 6c–11(c)(1)(v). In calculating the median bid-ask spread, an ETF would be required to: (i) Identify the ETF's NBBO as of the end of each 10 second interval during each trading day of the last 30 calendar days; (ii) divide the difference between each such bid and offer by the midpoint of the NBBO; and (iii) identify the median of those values.

[370] Although we proposed these bid-ask spread disclosure requirements as amendments to Forms N–1A and N–8B–2, rule 6c–11 will require ETFs relying on it to provide median bid-ask spread disclosure on its website as a condition to the rule. Our amendments to Form N–1A will provide an ETF that does not rely on rule 6c–11 with the option of providing the information required by rule 6c–11 on its website or the median bid-ask spread over the ETF's most recent fiscal year in its prospectus. *See infra* section II.H.2.b.

collected by third parties,[371] and that other sources (*e.g.,* financial intermediaries, the Commission) were in a better position to provide bid-ask spread information.[372] Some commenters noted that the bid-ask spread information may be misleading to investors if the historical information is not representative of current execution costs or if the bid-ask spread information is overemphasized.[373] Others expressed concern that there is no uniform method for computing bid-ask spread, which could make bid-ask spreads difficult to compare across different investment options.[374] Still others supported it as an alternative to the parallel proposed prospectus disclosure requirements.[375] For example, some commenters stated that providing more recent bid-ask spread data on an ETF's website alongside other ETF trading data would give investors more useful and timely information.[376] Commenters also expressed concern about potential liability under section 11 of the Securities Act for bid-ask spread data included in the prospectus if an investor's actual bid-ask spread costs differ materially from the bid-ask spread disclosed in the prospectus.[377]

While we recognize the costs for ETFs to collect and publish this bid-ask spread data, we believe that quantitative information regarding median bid-ask spreads will provide ETF investors with greater understanding of the costs associated with investing in ETFs. This will help investors make more informed investment decisions. We acknowledge that historical bid-ask spread data may reflect differences that result from varying methods of computing bid-ask spread. However, we have modified the proposal in several respects, such as using NBBO for computing the bid-ask spread, to make the computation more uniform. We therefore do not believe that the variance will be large enough to outweigh the importance of giving investors a greater understanding of these potential trading costs. We similarly understand that bid-ask spread may not reflect an individual investor's actual spread, as an individual's spread may depend on the execution strategies employed by an intermediary (such as mid-point pricing), the size of a particular order, or other factors. We nonetheless believe that the bid-ask spread is a helpful tool for investors making better informed trading decisions and that website disclosure can provide that information in a format that is easily accessible and relied upon by investors.

Based on comments we received, however, we are modifying certain of the bid-ask spread requirements to make the disclosure more cost-effective for ETFs, while maintaining or enhancing the utility for investors. First, the rule will require an ETF to disclose its median bid-ask spread only on its website, instead of requiring disclosure both on an ETF's website and in its prospectus as proposed.[378] ETFs will present the median bid-ask spread disclosure alongside other ETF-specific disclosures, such as premium and discount and market price, which should mitigate some commenters' concerns relating to the overemphasis of bid-ask spread data.

Second, some commenters suggested shortening the look-back period for calculating the bid-ask spread metric, such as to a 30- or 45-day rolling period.[379] One commenter noted that a shorter look-back period may show a more representative spread level, particularly for a newly launched ETF, as spreads are likely to tighten as the ETF matures.[380] Several commenters also suggested that the Commission require ETFs to provide a time-weighted average bid-ask spread rather than the proposed median bid-ask spread.[381] These commenters stated that a time-weighted average is more helpful for investors because it represents a ''typical'' bid-ask spread.

We agree that a bid-ask spread metric based on the more recent inputs from the last 30 days may provide a better representation of the costs that an investor may incur when trading ETF shares. Accordingly, we are shortening the look-back period for calculating the bid-ask spread from the most recent fiscal year to the most recent 30-day period on a rolling basis.[382] We think the 30-day look-back period strikes an appropriate balance between reflecting only very short term fluctuations and reflecting information that is no longer representative of current execution costs. We do not think it is necessary to require a time-weighted average rather than the proposed median, however, because rule 6c–11 requires an ETF to determine the median by first identifying the exchange-traded fund's national best bid and national best offer as of the end of each 10 second interval during each trading day. This methodology (and the resulting number of data points) has the same effect as time-weighting. In addition, requiring an ETF to disclose the median of bid-ask spreads is less likely to give disproportionate effect to outlier values than a time-weighted average.

Finally, we are modifying the proposal to require that an ETF use the NBBO in calculating median bid-ask spreads.[383] While the proposal did not specify that the NBBO must be used, after considering comments recommending more uniformity regarding bid-ask spread disclosures,[384] we believe that requiring ETFs to use the NBBO when calculating the median will increase consistency and comparability of the resulting disclosure across ETFs.[385] In addition, we believe that requiring use of NBBO will help to reduce costs associated with obtaining the required information, because the NBBO also is an input to the market price disclosure requirement.

We also proposed related amendments to Form N–1A that would have required an ETF to provide: (i) Examples in the ETF's prospectus showing how bid-ask spreads impact the return on a hypothetical investment for both buy-and-hold and frequent traders; and (ii) an interactive calculator in a clear and prominent format on the ETF's website that would allow an investor to customize the hypothetical bid-ask spread calculations to its specific investing situation.[386] These

[371] *See, e.g.,* BNY Mellon Comment Letter; John Hancock Comment Letter.

[372] *See, e.g.,* IDC Comment Letter; Invesco Comment Letter; SSGA Comment Letter I.

[373] *See, e.g.,* John Hancock Comment Letter; CSIM Comment Letter.

[374] *See, e.g.,* IDC Comment Letter; John Hancock Comment Letter.

[375] *See, e.g.,* Fidelity Comment Letter (expressing support for website disclosure with a rolling 30-day median calculation methodology); Dechert Comment Letter; Thomson Hine Comment Letter.

[376] *See, e.g.,* OppenheimerFunds Comment Letter; SIFMA AMG Comment Letter I.

[377] *See, e.g.,* ABA Comment Letter; CSIM Comment Letter; Dechert Comment Letter; 15 U.S.C. 77k.

[378] *See infra* section II.H.3. (discussing our determination not to adopt certain prospectus disclosure requirements that we proposed).

[379] *See, e.g.,* BlackRock Comment Letter (30-day period); BNY Mellon Comment Letter (30-day period); Cboe Comment Letter (45-day period); *ETF.com* Comment Letter (45-day period).

[380] *See* BlackRock Comment Letter (providing an example showing an ETF that saw its spread improve from 35 basis points at inception in January 2016 to 4.03 basis points in July 2018, and observing that its median bid-ask spread over the prior fiscal year ending July 31, 2018 was 6.34 basis points, while its median bid-ask spread over the prior month was 4.03 basis points).

[381] *See, e.g.,* Fidelity Comment Letter; JPMAM Comment Letter.

[382] Rule 6c–11(c)(1)(v).

[383] Rule 6c–11(c)(1)(v)(A)–(B).

[384] *See supra* footnote 375 and accompanying text.

[385] The NBBO also is used in the definition of market price in rule 6c–11. Rule 6c–11(a)(1); *see also supra* section II.C.6.a. Requiring NBBO is likely to result in more uniform and comparable calculations across funds.

[386] *See* proposed amendment to Item 3 of Form N–1A. The proposed spread costs example would

Continued

requirements were designed to allow secondary market investors to see the impact that bid-ask spreads can have on the investor's trading expenses and ultimately the return on investment.

Commenters generally opposed requiring bid-ask spread examples in the summary prospectus or summary section. For example, some commenters expressed concerns regarding the costs of obtaining the underlying bid-ask spread data from third parties.[387] Some commenters also noted that the historical bid-ask spread data, which ETFs would use to calculate the examples, is not representative of current trading costs and could mislead investors if disclosures overemphasize this information.[388] Other commenters suggested alternatives to the proposed examples such as using hypothetical brokerage commissions and bid-ask spreads, rather than using actual historical bid-ask spreads.[389] However one commenter supported this aspect of the proposal, stating that it would yield ''relevant and helpful'' information.[390]

Many commenters raised similar concerns regarding the proposed interactive calculator, including that varying data sources and calculation methodologies may result in an inconsistent investor experience across ETFs.[391] Other commenters noted that the interactive calculator was limited to bid-ask spread data, which placed undue emphasis on spreads as a component of an ETF investor's trading costs.[392] Commenters also noted that the proposed requirement may result in additional vendor and licensing costs.[393]

After considering comments, we are not adopting the proposed bid-ask spread examples or interactive calculator requirements. We are instead requiring ETFs relying on rule 6c–11 to provide more recent bid-ask spread information on their website. We believe that streamlining the required bid-ask spread disclosures will mitigate commenters' concerns that investors may fail to understand the relevance of the bid-ask spread information or the potential impact of bid-ask spreads on their specific trading situations. We are also persuaded by commenters that an interactive calculator focused solely on bid-ask spread costs may overemphasize those costs and thereby obscure the effect of other costs of investing in ETFs.

7. Marketing

As proposed, rule 6c–11 will not include certain requirements related to ETF marketing, which were included in our exemptive orders. Specifically, rule 6c–11 will not require an ETF to: (i) Identify itself in its sales literature as an ETF that does not sell or redeem individual shares, and (ii) explain that investors may purchase or sell individual ETF shares through a broker via a national securities exchange.[394] Our exemptive orders included a condition requiring this information to help prevent investors, particularly retail investors, from confusing ETFs with mutual funds, at a time when ETFs were not a well-known investment product.

The comments on this aspect of the proposal were mixed. Commenters who supported the proposal generally agreed that the market has developed a familiarity with ETFs and that retail investors generally understand that, unlike mutual funds, individual ETF shares may be purchased and sold only on secondary markets.[395] One commenter disagreed, asserting that many investors do not understand the distinctions between ETFs and mutual funds.[396] This commenter suggested that the rule require an ETF to include a statement in its sales literature noting that buyers of ETF shares may pay more than the shares' current value and that sellers of ETF shares may receive less than current value. Another commenter noted that requiring this type of disclosure in ETF sales literature would help put investors on notice that the ETF pricing mechanism works differently than that of mutual funds.[397]

We continue to believe that ETF investors have grown familiar with ETFs and the fundamental distinctions between ETFs and mutual funds, and that this disclosure is now unnecessary. The disclosure requirements we are adopting also should provide ETF investors, including retail investors, with useful information regarding the exchange-traded nature of ETFs and ETF pricing, including the potential for market price to deviate from NAV per share.[398]

8. ETF and ETP Nomenclature

We requested comment on whether the Commission should address possible investor confusion arising from the nomenclature that has developed for identifying ETPs, including confusion between ETFs and other types of ETPs that are not registered under the Act.[399] We asked, for example, whether the Commission should consider proposing to require a naming convention or other identification scheme to assist investors in distinguishing ETFs from other ETPs in a future rulemaking. We also asked whether we could address investor confusion by restricting certain sales practices, such as by proposing restrictions on how intermediaries communicate with retail investors about ETPs unless they disclose certain information designed to clearly differentiate ETPs that are not subject to the Act from ETFs that are registered investment companies.

Several commenters generally supported a classification system for ETPs to assist investors in distinguishing among these different products.[400] One commenter stated that leveraged/inverse ETFs, commodity pools, and exchange-traded notes have differences that investors should understand prior to making investment decisions.[401] Commenters expressed varying views, however, regarding

demonstrate the hypothetical impact of the ETF's bid-ask spread for one $10,000 ''round-trip'' trade (*i.e.,* one buy *and* sell transaction) and, to illustrate that more frequent trading can significantly increase costs, it would demonstrate the costs associated with 25 $10,000 round-trip trades (50 total trades). 2018 ETF Proposing Release, *supra* footnote 7, at section II.H.2.

[387] *See, e.g.,* BNY Mellon Comment Letter; ICI Comment Letter; John Hancock Comment Letter; OppenheimerFunds Comment Letter.

[388] *See, e.g.,* Vanguard Comment Letter (noting that in the second quarter of 2018, Vanguard's retail brokerage clients paid less than 5% of the bid-ask spread when trading Vanguard ETFs with an effective spread/quoted spread of 1.89%, and approximately 97% of those market orders were executed inside the NBBO, with 94% of those orders at midpoint or better). *See also* ABA Comment Letter; BlackRock Comment Letter; CSIM Comment Letter.

[389] *See, e.g.,* SIFMA AMG Comment Letter II.

[390] *See* FIMSAC Comment Letter.

[391] Fidelity Comment Letter; Invesco Comment Letter; SIFMA Comment Letter I; Vanguard Comment Letter.

[392] *See, e.g.,* Vanguard Comment Letter. *See also* Eaton Vance Comment Letter (recommending replacing the proposed interactive calculator with new requirements for website trading information).

[393] *See, e.g.;* ICI Comment Letter; JPMAM Comment Letter. *See also* WisdomTree Comment Letter (stating that broker-dealers are better suited to provide the information required by the proposed interactive calculator).

[394] *See* 2018 ETF Proposing Release, *supra* footnote 7.

[395] *See, e.g.,* Invesco Comment Letter; ICI Comment Letter.

[396] Eaton Vance Comment Letter.

[397] CFA Comment Letter.

[398] The website disclosure requirements are described in section II.C.6 and the amendments to Form N–1A are described in section II.H.

[399] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.7. *See also supra* footnote 16 (describing differences between ETFs and other types of ETPs, such as exchange-traded notes and commodity pools).

[400] *See, e.g.,* BlackRock Comment Letter; Invesco Comment Letter; Cboe Comment Letter; FIMSAC Comment Letter; Hu and Morely Comment Letter (incorporating article by comment letter's authors suggesting that ETFs can be categorized into three groups, ''Investment Company ETFs,'' ''Commodity Pool ETFs,'' and ''Operating Company ETFs,'' based on the applicable regulatory framework, but not suggesting a related nomenclature system).

[401] *See* Invesco Comment Letter. *See also* BlackRock Comment Letter.

which types of ETPs should call themselves ETFs under an ETP classification system. One commenter asserted that the Commission should permit only ETFs that fall squarely within proposed rule 6c–11 to call themselves ETFs.[402] Two commenters provided examples of comprehensive classification systems for ETPs that would not permit ''exchange-traded notes,'' ''exchange-traded commodities,'' or ''exchange-traded instruments'' (including leveraged/inverse ETFs) to refer to themselves as ETFs.[403] One commenter opined that the Commission should not preclude leveraged/inverse ETFs from calling themselves ETFs, as that would ''confuse investors and muddle both the existing regulatory framework applicable to ETFs and fund naming conventions.'' [404] Another commenter asserted that UITs and other ETFs that fall outside the scope of the rule should nonetheless be permitted to call themselves ETFs.[405]

One commenter asserted that Commission action relating to ETP naming is premature at the present time.[406] This commenter encouraged ETF market participants to engage in a dialogue ''around refining existing ETP disclosures, adding new elements as useful to investors, and developing an industry-led standard ETP disclosure approach beneficial to investors and all market participants.''

We agree that these issues need to be examined and discussed in more depth before the implementation of an ETP naming system. We will continue to consider the comments we received and, if appropriate, will take steps to address investor confusion relating to ETF and ETP nomenclature. At present, we believe that the term ''ETF'' is generally associated with ETPs regulated under the Investment Company Act. Leveraged/inverse ETFs, for example, are regulated under the Act and are structurally and operationally similar to ETFs that will rely on rule 6c–11. As a result, we do not believe it is appropriate to require leveraged/inverse ETFs to use a naming convention that does not include the term ''ETF.'' Similarly, because UIT ETFs are subject to a substantially similar regulatory regime as ETFs structured as open-end funds (and subject to similar regulatory safeguards), we do not find it appropriate to require UIT ETFs to utilize a naming convention that does not include the term ''ETF.'' We encourage ETP market participants to continue engaging with their investors, with each other, and with the Commission on these issues.

D. Recordkeeping

We are adopting, as proposed, an express requirement that ETFs relying on rule 6c–11 preserve and maintain copies of all written agreements between an authorized participant and the ETF (or one of the ETF's service providers) that allow the authorized participant to purchase or redeem creation units (''authorized participant agreements'').[407] One commenter supported this aspect of the proposal.[408] Another commenter, however, stated that this requirement is unnecessary because ETFs already generally implement robust recordkeeping programs pursuant to their policies and procedures.[409]

After considering these comments, we believe it is appropriate for rule 6c–11 to specifically require that ETFs preserve and maintain authorized participant agreements. Authorized participants play a central role in the proper functioning of the ETF marketplace and authorized participant agreements are critical to understanding the relationship between an authorized participant and an ETF. Requiring the preservation of authorized participant agreements is designed to provide our examination staff with a basis to determine whether the relationship between the ETF and the authorized participant is in compliance with the requirements of rule 6c–11 and other provisions of the Act and rules thereunder, based on the specific terms of their written agreement. While we believe that most ETFs are currently preserving copies of their written authorized participant agreements pursuant to our current recordkeeping rules, for avoidance of doubt, we believe it is appropriate to expressly require that ETFs relying on rule 6c–11 preserve and maintain copies of all such agreements.

We also are adopting, largely as proposed, a requirement that ETFs maintain information regarding the baskets exchanged with authorized participants. Rule 6c–11 will require an ETF to maintain records setting forth the following information for each basket exchanged with an authorized participant: (i) Ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units;[410] (ii) if applicable, an identification of the basket as a ''custom basket'' and a record stating that the custom basket complies with the ETF's custom basket policies and procedures; (iii) cash balancing amounts (if any); and (iv) the identity of the authorized participant conducting the transaction.[411]

Commenters generally supported requiring ETFs to maintain records regarding baskets.[412] One commenter stated that clear, auditable records would help Commission staff monitor custom basket usage and its impact on the ETF arbitrage process.[413] Another agreed that the records would provide Commission staff with a basis to understand how baskets are being used by ETFs and to evaluate compliance with the rule and other requirements.[414] As noted above, one commenter stated that it is unnecessary for the rule to contain any recordkeeping provisions.[415]

After considering these comments, we believe that requiring ETFs to maintain records regarding each basket exchanged with authorized participants will provide our examination staff with a basis to understand how baskets are being used by ETFs, particularly with respect to custom baskets. In order to provide our examination staff with detailed information regarding basket composition, however, we have modified rule 6c–11 to require the ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units as part of the basket records, instead of the name and quantities of each position as proposed.[416] We believe that this additional information will better enable our examination staff to evaluate compliance with the rule and other applicable provisions of the federal securities laws. Moreover, we do not believe that requiring ETFs to maintain

[402] *See* Invesco Comment Letter.

[403] *See* BlackRock Comment Letter; FIMSAC Comment Letter.

[404] *See* ProShares Comment Letter.

[405] *See* SIFMA AMG Comment Letter I.

[406] *See* Comment Letter of State Street Global Advisors (Feb. 4, 2019).

[407] *See* rule 6c–11(d)(1). For example, an authorized participant and the ETF's principal underwriter may enter into the authorized participant agreement.

[408] *See* ICI Comment Letter.

[409] *See* Invesco Comment Letter.

[410] As discussed below, proposed rule 6c–11 would have required ETFs to maintain the ''names and quantities of the positions composing the basket'' exchanged for creation units and did not require additional information about the ticker symbol, CUSIP or other identifier, or a description of the holding. *See* proposed rule 6c–11(d)(2).

[411] *See* rule 6c–11(d)(2).

[412] *See* ICI Comment Letter; Nasdaq Comment Letter; SIFMA AMG Comment Letter I.

[413] *See* SIFMA AMG Comment Letter I.

[414] *See* ICI Comment Letter.

[415] *See* Invesco Comment Letter.

[416] *See* proposed rule 6c–11(d)(2).

detailed information regarding basket composition will create operational challenges or unduly burden ETFs because rule 6c–11 already requires ETFs to disclose the same information for each portfolio holding as part of the portfolio transparency requirements.[417]

As proposed, the rule will require ETFs to maintain these records for at least five years, the first two years in an easily accessible place. The retention period is consistent with the period provided in rules 22e–4 and 38a–1(d) under the Act. Funds currently have compliance program-related recordkeeping procedures in place that incorporate this type of retention period and we believe consistency with that period will minimize any compliance burdens to ETFs subject to rule 6c–11. The commenter that addressed this aspect of the recordkeeping requirement supported the proposed retention period.[418]

E. Share Class ETFs

As proposed, rule 6c–11 does not provide relief from sections 18(f)(1) or 18(i) of the Act or expand the scope of 17 CFR 270.18f–3 (rule 18f–3) (the multiple class rule).[419] Sections 18(f) and (i) of the Act were intended, in large part, to protect investors from certain abuses associated with complex investment company capital structures, including conflicts of interest among a fund's share classes.[420] These provisions also were designed to address certain inequitable and discriminatory shareholder voting provisions that were associated with many investment company securities before the enactment of the Act.[421] Rule 18f–3 created a limited exception from sections 18(f)(1) and 18(i) for certain funds but requires, among other things, that each share class of a fund have the same rights and obligations as each other class.[422] An ETF cannot rely on rule 18f–3 to operate as a share class within a fund, however, because the rights and obligations of the ETF shareholders would differ from those of investors in the fund's mutual fund share classes.[423] Therefore, absent any separate relief from sections 18(f)(1) or 18(i) of the Act, an ETF structured as a share class of a fund that issues multiple classes of shares representing interests in the same portfolio cannot operate in reliance on rule 6c–11.

We recognize that the Commission has previously granted ETFs exemptive relief from the provisions of section 18 of the Act in the past, subject to various conditions.[424] However, relief from section 18 raises policy considerations that are different from those we are seeking to address in this rule. For example, an ETF share class that transacts with authorized participants on an in-kind basis and a mutual fund share class that transacts with shareholders on a cash basis may give rise to differing costs to the portfolio. As a result, while certain of these costs may result from the features of one share class or another, all shareholders would generally bear these portfolio costs.[425]

Three commenters stated that it was unnecessary for rule 6c–11 to provide relief for share class ETFs.[426] One commenter, a sponsor of share class ETFs, stated that it is unnecessary for the rule to encompass share class ETFs because it is currently uncommon for ETF issuers to seek the exemptive relief necessary for such ETFs.[427] Another stated that our proposed treatment is appropriate given the nuances associated with those products, [428] and the third similarly indicated that share class ETFs present issues that would be more appropriately addressed through means other than rule 6c–11.[429]

Two other commenters, however, opined that rule 6c–11 (or a separate future rule) should provide relief for share class ETFs in order to create a more level ETF playing field.[430] Additional commenters echoed the importance of leveling the ETF playing field without specifically addressing share class ETFs.[431] Another commenter urged the Commission to explore granting relief from the relevant provisions of section 18 broadly to the fund industry.[432]

Leveling the ETF playing field is a goal for rule 6c–11, and we acknowledge that our approach will result in there being a segment of ETF assets that are unable to rely on the rule. At the same time, we continue to believe that share class ETFs raise policy considerations that are different from those we seek to address in the rule. With such concerns unresolved, we do not believe it is appropriate to broadly grant relief from sections 18(f)(1) and 18(i) of the Act for share class ETFs at this time. Share class ETFs are structurally and operationally different from the other types of ETFs within the scope of rule 6c–11.[433] We

[417] This modification aligns the rule's recordkeeping requirements in paragraph (d) with the information the ETF must already collect and disclose as part of the portfolio transparency requirements. Proposed rule 6c–11 would have required an ETF to post on its website information regarding a published basket at the beginning of each business day and to present the description, amount, value and unrealized gain/loss in the manner prescribed by Article 12 of Regulation S–X for each basket asset. As discussed above, we are not adopting a basket publication requirement as part of rule 6c–11, and therefore the rule does not set forth recordkeeping requirements relating to the proposed basket publication requirement. *See supra* section II.C.5.c.

[418] *See* Invesco Comment Letter (agreeing with the five-year retention timeline despite generally objecting to the rule's recordkeeping requirements).

[419] *See* 15 U.S.C. 80a–18(f)(1) and (i). Section 18(f)(1) of the Act generally prohibits a registered open-end company from issuing a class of ''senior security,'' which is defined in section 18(g) to include any stock of a class having priority over any other class as to distribution of assets or payment of dividends. *See* 15 U.S.C. 80a–18(g). Section 18(i) of the Act provides that all shares of stock issued by a registered management company must have equal voting rights.

[420] *See* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares, Investment Company Act Release No. 19955 (Dec. 15, 1993) [58 FR 68074 (Dec. 23, 1993)] (proposing release), at nn.20 and 21 and accompanying text.

[421] *See id.*

[422] *See* 17 CFR 270.18f–3(a)(4); Exemption for Open-End Management Companies Issuing Multiple Classes of Shares, Investment Company Act Release No. 20915 (Feb. 23, 1995) [60 FR 11876 (Mar. 2, 1995)] (adopting release) (''Multiple Class Adopting Release''), at n.8 and accompanying text.

[423] For example, ETF shares would be redeemable only in creation units, while the investors in the fund's mutual fund share classes would be individually redeemable. Similarly, ETF shares are tradeable on the secondary market, whereas mutual fund shares classes would not be traded.

[424] *See* Vanguard Index Funds, *et al.,* Investment Company Act Release Nos. 24680 (Oct. 6, 2000) [65 FR 61005 (Oct. 13, 2000)] (notice) and 24789 (Dec. 12, 2000) (order) and related application; Vanguard Index Funds, *et al.,* Investment Company Act Release Nos. 26282 (Dec. 2, 2003) [68 FR 68430 (Dec. 8, 2003)] (notice) and 26317 (Dec. 29, 2003) (order) and related application; Vanguard International Equity Index Funds, *et al.,* Investment Company Act Release Nos. 26246 (Nov. 3, 2003) [68 FR 63135 (Nov. 7, 2003)] (notice) and 26281 (Dec. 1, 2003) (order) and related application; Vanguard Bond Index Funds, *et. al.,* Investment Company Act Release Nos. 27750 (Mar. 9, 2007) [72 FR 12227 (Mar. 15, 2007)] (notice) and 27773 (Apr. 25, 2007) (order) and related application (collectively, the ''Vanguard orders'').

[425] These costs can include brokerage and other costs associated with buying and selling portfolio securities in response to mutual fund share class cash inflows and outflows, cash drag associated with holding the cash necessary to satisfy mutual fund share class redemptions, and distributable capital gains associated with portfolio transactions.

[426] *See* Vanguard Comment Letter; Invesco Comment Letter; SSGA Comment Letter I.

[427] *See* Vanguard Comment Letter.

[428] *See* Invesco Comment Letter.

[429] *See* SSGA Comment Letter I.

[430] *See* BNY Mellon Comment Letter; OppenheimerFunds Comment Letter.

[431] *See ETF.com* Comment Letter (stating that the disclosure requirements of any final rule should apply to all ETFs, regardless of whether the ETFs rely on the final rule); Invesco Comment Letter (indicating that the Commission should generally abstain from regulatory actions that allow only certain market participants to benefit from innovation).

[432] *See* MFDF Comment Letter.

[433] For example, when an ETF is structured as a share class of an open-end fund, the open-end fund has other share classes representing interests in the same portfolio. These interests (and the cash flows associated with the other share classes) can impact the fund's portfolio. In addition, share class ETFs

therefore continue to believe it is appropriate for share class ETFs to request relief from sections 18(f)(1) and 18(i) of the Act through our exemptive application process, and for the Commission to continue to assess all relevant policy considerations in the context of the facts and circumstances of each particular applicant. We are not rescinding exemptive relief previously granted to share class ETFs.

We also are adopting amendments to Form N–1A that will require share class ETFs to provide certain additional disclosures regarding ETF trading costs. As discussed in more detail below in section II.H., these disclosure amendments are designed to help ensure consistent disclosures to investors between ETFs relying on proposed rule 6c–11 and share class ETFs operating pursuant to individualized exemptive relief. The rule and form amendments require all ETFs that are subject to the Investment Company Act to provide similar disclosures in order to help investors compare products.

F. Master-Feeder ETFs

Many of our recent ETF orders allow ETFs to operate as feeder funds in a master-feeder structure.[434] In general, an ETF that operates as a feeder fund in a master-feeder structure functions like any other ETF. An authorized participant deposits a basket with the ETF and receives a creation unit of ETF shares in return for those assets. Conversely, an authorized participant that redeems a creation unit of ETF shares receives a basket from the ETF. In a master-feeder arrangement, however, the feeder ETF then also enters into a corresponding transaction with its master fund. The ETF may use the basket assets it receives from an authorized participant to purchase additional shares of the master fund, or it may redeem shares of the master fund in order to obtain basket assets and satisfy a redemption request.

Because the feeder ETF may, in the course of these transactions, temporarily hold the basket assets, it would not be able to rely on section 12(d)(1)(E) of the Act, which requires that a feeder fund hold no investment securities other than securities of the master fund.[435] To accommodate the unique operational characteristics of these ETFs, our recent exemptive orders have allowed a feeder ETF to rely on section 12(d)(1)(E) without complying with section 12(d)(1)(E)(ii) of the Act to the extent that the ETF temporarily holds investment securities other than the master fund's shares for use as basket assets. These orders also provided the feeder ETF and its master fund with relief from sections 17(a)(1) and 17(a)(2) of the Act, with regard to the deposit by the feeder ETF with the master fund and the receipt by the feeder ETF from the master fund of basket assets in connection with the issuance or redemption of creation units,[436] and section 22(e) of the Act if the feeder ETF includes a foreign security in its basket assets and a foreign holiday (or a series of consecutive holidays) prevents timely delivery of the foreign security.[437]

The exemptive orders we have granted to master-feeder ETFs, however, do not include relief from section 18 under the Act inasmuch as investment by several feeder funds or by mutual fund and ETF feeder funds in the same class of securities issued by a master fund generally does not involve a senior security subject to section 18. We are concerned, as discussed above, that if an ETF feeder fund transacts with a master fund on an in-kind basis, but non-ETF feeder funds transact with the master fund on a cash basis, all feeder fund shareholders would bear costs associated with the cash transactions.[438] Due to these concerns, and the lack of market interest in this structure, we proposed to rescind the master-feeder relief granted to ETFs that did not rely on the relief as of the date of the proposal (June 28, 2018). We also proposed to grandfather existing master-feeder arrangements involving ETF feeder funds, but prevent the formation of new ones, by amending relevant exemptive orders.

One commenter stated that it did not object to preventing the formation of new master-feeder arrangements and rescinding master-feeder relief (with the exception of master-feeder relief that funds actively relied on as of the date of the Proposing Release).[439] Other commenters, however, indicated that the rule should provide relief for master-feeder structures[440] or that the Commission should not rescind existing master-feeder relief.[441] Some of these commenters indicated that failing to provide relief for master-feeder structures would cause an uneven playing field among ETFs but did not address the concerns discussed above.[442]

Other commenters set forth potential methods for mitigating such concerns. For example, one commenter indicated that the Commission could address its concerns regarding potential cross-subsidization by requiring master funds to impose certain transaction fees,[443] while another indicated that the Commission should address these concerns by requiring each feeder fund in a master-feeder structure to transact with the master fund consistently (*i.e.,* only in cash or only in kind).[444] An additional commenter suggested that an ETF's board should evaluate whether a master-feeder structure's overall benefits outweigh its overall costs in order to address these concerns.[445] Another commenter indicated that it has already invested resources exploring various approaches to an ETF master-feeder structure, including models that it believed would address the Commission's concerns.[446]

As discussed in the context of share class ETFs, leveling the ETF playing field is a goal for rule 6c–11, and we acknowledge that our approach will result in there being a segment of ETF assets that are unable to rely on the rule. Like share class ETFs, however, we continue to believe that master-feeder funds raise policy considerations that are different from those we seek to

do not provide daily portfolio transparency. *See* Vanguard orders, *supra* footnote 425.

[434] *See, e.g.,* T. Rowe Price Associates, Inc., *et al.,* Investment Company Act Release Nos. 30299 (Dec. 7, 2012) [77 FR 74237 (Dec. 13, 2012)] (notice) and 30336 (Jan. 2, 2013) (order) and related application; SSgA Funds Management, Inc., *et al.,* Investment Company Act Release Nos. 29499 (Nov. 17, 2010) [75 FR 71753 (Nov. 24, 2010)] (notice) and 29524 (Dec. 13, 2010) (order) and related application (''SSgA'').

[435] Section 12(d)(1) of the Act limits the ability of a fund to invest substantially in shares of another fund. *See* sections 12(d)(1)(A)–(C) of the Act. Section 12(d)(1)(E) of the Act allows an investment company to invest all of its assets in one other fund so that the acquiring fund is, in effect, a conduit through which investors may access the acquired fund. *See* section 12(d)(1)(E)(ii) of the Act.

[436] Relief from the affiliated transaction prohibitions in sections 17(a)(1) and 17(a)(2) of the Act is necessary because these sections would otherwise prohibit the feeder ETF and its master fund from selling to or buying from each other the basket assets in exchange for securities of the master fund. *See* 15 U.S.C. 80a–17(a)(1)–(2).

[437] *See* 15 U.S.C. 80a–22(e) (generally requiring the satisfaction of redemptions within seven days). *See also supra* section II.B.4.

[438] *See supra* footnote 426 and accompanying text.

[439] *See* ICI Comment Letter.

[440] *See ETF.com* Comment Letter; BNY Mellon Comment Letter; Dechert Comment Letter.

[441] *See* Fidelity Comment Letter; Eaton Vance Comment Letter.

[442] *See ETF.com* Comment Letter; BNY Mellon Comment Letter.

[443] *See* Eaton Vance Comment Letter.

[444] *See* Fidelity Comment Letter.

[445] *See* Dechert Comment Letter. This commenter also opposed excluding exemptive relief for master-feeder structures based on a lack of market interest because the ETF industry is dynamic and interest in master-feeder structures may develop in the future. *Id.*

[446] *See* Fidelity Comment Letter.

address in the rule and are structurally and operationally distinct from other ETFs within the scope of rule 6c–11. We do not believe it is appropriate to broadly grant exemptive relief for master-feeder funds. Instead, we continue to believe that the Commission should consider the special concerns presented by ETFs in master-feeder structures in the context of the facts and circumstances of each particular applicant through individualized exemptive applications. The Commission's exemptive relief process is well-suited for applicants to set forth novel methods of mitigating the Commission's concerns, such as the methods suggested above. The process allows applicants to experiment with many different approaches, and may eventually assist the Commission in identifying a particular solution that is appropriate for a broader rule. Any ETF that is exploring a particular approach is free to bring its methodology forward in an exemptive application, which should help mitigate commenters' concerns about future changes in the ETF industry and resources already committed to such research. As proposed, therefore, we will rescind the master-feeder relief granted to ETFs that did not rely on the relief as of the date of the proposal (June 28, 2018).[447]

Only one fund complex had established as of June 28, 2018 master-feeder arrangements involving ETF feeder funds, and each arrangement involves an ETF as the sole feeder fund. We understand that all but one of the complex's original ETF feeder funds has discontinued its use of a master-feeder structure.[448] Because this arrangement involves only one ETF feeder fund for its master fund, we do not believe it will raise the policy concerns discussed above without new, additional feeders, and therefore do not believe it is necessary to require this structure to change its existing investment practices by rescinding the relief.[449] Instead, as proposed, we are amending this fund complex's existing exemptive orders to prevent the complex from forming new master-feeder ETFs.[450]

G. Effect of Rule 6c–11 on Prior Orders

As proposed, we have determined to exercise our authority under the Act to amend and rescind the exemptive relief we have issued to ETFs that will be permitted to operate in reliance on rule 6c–11.[451] Accordingly, one year following the effective date of rule 6c–11, we will rescind those portions of our prior ETF exemptive orders that grant relief related to the formation and operation of an ETF, including master-feeder relief except as described in section II.F. We will not rescind the exemptive orders of UIT ETFs, leveraged/inverse ETFs, share class ETFs, or non-transparent ETFs. We also are not rescinding the relief we have provided to ETFs from section 12(d)(1) and sections 17(a)(1) and (a)(2) under the Act related to fund of funds arrangements involving ETFs as discussed below.

Commenters generally supported the rescission of the exemptive relief granted to ETFs that fall within the scope of rule 6c–11,[452] while permitting ETFs that could not rely on rule 6c–11 to continue to rely on their individual exemptive orders.[453] One commenter stated that rescission of these orders will further the Commission's regulatory goal to create a consistent, transparent, and efficient regulatory framework for ETFs.[454]

After reviewing comments, we continue to believe that rescinding ETF exemptive relief in connection with rule 6c–11 will result in a consistent, transparent, and efficient framework for ETFs that operate in reliance on rule 6c–11, as those ETFs would no longer be subject to differing and sometimes inconsistent provisions of their exemptive relief. Moreover, investment companies that seek to operate an ETF under conditions that differ from those in rule 6c–11 are able to request exemptive relief from the Commission.

In addition, approximately 200 of our current ETF exemptive orders automatically expire on the effective date of any Commission rule that provides relief permitting the operation of ETFs.[455] We have determined, as proposed, to amend those orders to provide that the ETF relief contained therein will terminate one year following the effective date of rule 6c–11 to allow time for these ETFs to make any adjustments necessary to rely on rule 6c–11.

We continue to believe that the one-year period for the termination of our ETF exemptive relief is sufficient to give ETFs that are operating under exemptive orders time to bring their operations into conformity with the requirements of rule 6c–11. We did not receive any comments on this aspect of the proposal. We also did not receive any comments stating that the need to comply with the requirements of rule 6c–11, as opposed to their exemptive relief, would significantly negatively affect the operations of existing ETFs.

Finally, we did not propose to rescind the fund of funds exemptive relief included in our ETF exemptive orders.[456] This relief permits an ETF to create fund of funds structures, subject to certain conditions set forth in the ETF's exemptive application, designed to prevent the abuses that led Congress to enact section 12(d)(1), including abuses associated with undue influence and control by acquiring fund shareholders, the payment of duplicative or excessive fees, and the creation of complex structures. The conditions for fund of funds relief for ETFs are substantially similar across our exemptive orders.

Commenters generally agreed that we should not rescind the fund of funds exemptive relief, but asserted that the Commission should include fund of funds relief in a final rule or provide such relief through other means.[457]

[447] One commenter indicated that this date provided an insufficient notice period for ETFs interested in pursuing the master-feeder structure and recommended ''a sunset provision of at least 3 years from the effective date of the final rule to allow ETFs that have been developing this structure sufficient time to test and implement it.'' *See id.* Exemptive orders for existing ETF master-feeder structures that rely on the relief will not be rescinded, however, and ETFs interested in pursuing a master-feeder structure in the future may apply for individualized exemptive relief. We therefore believe that such a 3-year sunset provision is unnecessary.

[448] *See, e.g.,* SSGA Active Trust Prospectus (Oct. 31, 2017), *available at https://www.sec.gov/Archives/edgar/data/1516212/000119312518313788/d635918d497.htm.*

[449] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.342 (noting that rescinding the relief for existing master-feeder ETFs would require them to change the manner in which they invest).

[450] The amendment to the exemptive order will expressly provide that the complex cannot create new master-feeder structures as of June 28, 2018.

[451] *See* section 38(a) of the Act, 15 U.S.C. 80a–37(a).

[452] *See, e.g.,* ABA Comment Letter; ICI Comment Letter.

[453] *See, e.g.,* ICI Comment Letter; Eaton Vance Comment Letter. In addition, one commenter stated that, because the commenter has designed its ETFs around the basket flexibility afforded by its exemptive orders, it would oppose the rescission of prior orders if the final rule limits ETFs' ability to use custom baskets. *See* Invesco Comment Letter. As discussed above, rule 6c–11 will permit an ETF to use custom baskets if it meets certain conditions. *See supra* section II.C.5.b.

[454] *See* ABA Comment Letter. One commenter, a sponsor of ETMFs as well as ETFs, requested that the Commission amend the terms and conditions relating to custom baskets in the ETMF orders to correspond to the treatment of custom baskets in rule 6c–11. *See* Eaton Vance Comment Letter. We believe this request is beyond the scope of the proposal. However, the commenter may seek to amend its order as part of the exemptive application process.

[455] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.348 and accompanying text (noting that the Commission began including a condition in its exemptive orders in 2008 stating that the relief permitting the operation of ETFs would expire on the effective date of any Commission rule that provides relief permitting the operation of ETFs).

[456] *See id.* at n.344 and accompanying text.

[457] *See, e.g.,* Dechert Comment Letter; ABA Comment Letter; MFDF Comment Letter; SSGA

Some commenters stated that because fund of funds relief is part of standard ETF exemptive orders, the Commission also should permit new ETFs to rely on the terms and conditions of fund of funds relief previously granted to existing ETFs.[458] These commenters stated that failing to provide this relief would frustrate the Commission's purpose of allowing new ETFs to enter the market without obtaining an exemptive order from the Commission.

In December 2018, we proposed new rule 12d1–4 under the Act to streamline and enhance the regulatory framework applicable to fund of funds arrangements for registered investment companies, including ETFs.[459] In connection with that proposed rule, we also proposed to rescind our exemptive orders granting relief to certain fund of funds arrangements, including the relief from sections 12(d)(1)(A) and (B) that, as discussed above, has been included in our ETF exemptive orders. The Commission has not yet acted upon this proposal and is not rescinding the fund of funds relief in existing exemptive orders in connection with this rulemaking.

We agree with commenters, however, that new entrants to the ETF market would be at disadvantage to existing ETFs without fund of funds relief. Accordingly, ETFs relying on rule 6c–11 that do not have exemptive relief from sections 12(d)(1)(A) and (B) and section 17(a)(1) and (2) of the Act may enter into fund of funds arrangements as set forth in our recent ETF exemptive orders, provided that they satisfy the terms and conditions for fund of funds relief in those orders.[460] This relief will be available only until the effective date of a new Commission rule permitting registered funds to acquire the securities of other registered funds in excess of the limits in section 12(d)(1), including rule 12d1–4 if adopted.[461]

H. Amendments to Form N–1A

We are adopting several amendments to Form N–1A, the registration form used by open-end funds to register under the Act and to offer their securities under the Securities Act, that are designed to provide ETF investors with additional information regarding ETF trading and associated costs. Commenters generally supported providing additional information to investors regarding ETF trading, but many suggested specific modifications to the proposals.[462] After considering these comments, we are adopting the following amendments to Form N–1A:

- Adding the term ''selling'' to current narrative disclosure requirements to clarify that the fees and expenses reflected in the expense table may be higher for investors if they buy, hold, *and sell* shares of the fund (*Item 3*);
- Streamlined narrative disclosures relating to ETF trading costs, including bid-ask spreads (*Item 6*);
- Requiring ETFs that do not rely on rule 6c–11 to disclose median bid-ask spread information on their websites or in their prospectus (*Item 6*);
- Excluding ETFs that provide premium/discount disclosures in accordance with rule 6c–11 from the premium and discount disclosure requirements in Form N–1A (*Items 11 and 27);* and
- Eliminating disclosures relating to creation unit size and disclosures applying only to ETFs with creation unit sizes of less than 25,000 shares (*Items 3, 6, 11 and 27*).

1. Fee Disclosures for Mutual Funds and ETFs (Item 3)

As proposed, we are adopting a narrative disclosure that will specify that the fees and expenses reflected in the Item 3 expense table also may be higher for investors if they sell shares of the fund.[463] Currently, this item requires disclosure indicating only that the table describes fees and expenses investors may pay if they *buy and hold* shares of the fund. However, both mutual funds and ETF investors also may incur expenses other than redemption fees when selling fund shares.[464] We are therefore amending this disclosure to specify that investors may pay the fees and expenses described in Item 3 if they buy, hold, *and sell* shares of the fund.[465] Commenters who addressed this proposed change supported it because it will help investors better understand that they may incur costs in addition to those in the fee table.[466]

We also are adopting, as proposed, a requirement to include a statement that investors may be subject to other fees not reflected in the table, such as brokerage commissions and fees to financial intermediaries.[467] Commenters who addressed this proposed requirement supported it.[468] We continue to believe this is an appropriate disclosure for both ETFs

Comment Letter; WisdomTree Comment Letter; OppenheimerFunds Comment Letter. Commenters also suggested that the Commission should permit funds relying on sections 3(c)(l) and 3(c)(7) under the Act to be acquiring funds under any future fund of funds relief. *See* Dechert Comment Letter; OppenheimerFunds Comment Letter. While the subject matter of these comments falls outside the scope of the proposal of rule 6c–11, this issue is addressed as part of the proposed fund of funds rules. *See* FOF Proposing Release, *supra* footnote 40.

[458] *See, e.g.,* ABA Comment Letter; Dechert Comment Letter.

[459] *See* FOF Proposing Release, *supra* footnote 40, at nn.236–237 and accompanying text.

[460] *See* Salt Financial, *supra* footnote 248. Our exemptive orders permitting ETFs to enter into fund of funds arrangements include relief from section 17(a) of the Act. Section 17(a) would prohibit an ETF that is an acquiring fund that holds 5% or more of an acquired fund's securities from making any additional investments in the acquired fund. In addition, fund of funds arrangements involving funds that are part of the same group of investment companies or that have the same investment adviser (or affiliated investment advisers) implicate section 17(a), regardless of whether an acquiring fund exceeds the 5% threshold. Furthermore, where an ETF is an acquired fund, section 17(a) would prohibit the delivery or deposit of basket assets on an in-kind basis by an affiliated fund (that is, by exchanging certain assets from the ETF's portfolio, rather than in cash). *See* FOF Proposing Release, *supra* footnote 40, at nn.60–64 and accompanying text. The relief we are providing from section 17(a) does not extend beyond the scope of the relief we have provided in our exemptive orders to ETFs. We are providing the relief from sections 12(d)(1)(A) and (B) and section 17(a) in accordance with our authority under sections 6(c), 12(d)(1)(J), and 17(b) of the Act. *See* 15 U.S.C. 80a–6(c), 15 U.S.C. 80a–12(d)(1)(J), and 15 U.S.C. 80a–17(b).

[461] For the reasons discussed above, we find that this relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. *See* 15 U.S.C. 80a–6(c). We similarly find that such an exemption is consistent with the public interest and the protection of investors. *See* 15 U.S.C. 80a–12(d)(1)(J).

[462] We also received a comment requesting that we confirm the applicability of the civil liability provisions in sections 11 and 12 of the Securities Act to investors that purchase ETF shares on the secondary markets. *See* Hagens Berman Comment Letter. This rulemaking is intended to codify existing relief for ETFs relating to the formation and operation of ETFs under the Investment Company Act. Accordingly, the applicability of those Securities Act provisions is beyond the scope of this rulemaking.

[463] Item 3 of Form N–1A (requiring, for example, disclosure of sales loads, exchange fees, maximum account fees, and redemption fees that funds charge directly to shareholders). We also are amending Instruction 1(e) of Item 3, as proposed, to eliminate: (i) The requirement that ETFs modify the narrative explanation for the fee table to state that investors may pay brokerage commissions on their purchase and sale of ETF shares, which are not reflected in the example; and (ii) the instruction to exclude fees charged for the purchase and redemption of the fund's creation units if the fund issues or redeems shares in creation units of not less than 25,000 shares. Thus, as proposed, an ETF may exclude from the fee table any fees charged for the purchase and redemption of the Fund's creation units regardless of the number of shares. *See also* Instruction 1(e)(ii) to Item 27(d)(1) (adopting the same modification for the expense example in an ETF's annual and semi-annual reports).

[464] For example, an investor may incur a back-end sales load when selling a mutual fund share. Likewise, an investor may bear costs associated with bid-ask spreads when selling ETF shares.

[465] *See* Item 3 of Form N–1A.

[466] *See, e.g.,* CSIM Comment Letter; FIMSAC Comment Letter; IDC Comment Letter.

[467] Item 3 of Form N–1A.

[468] *See, e.g.,* IDC Comment Letter; Invesco Comment Letter.

and mutual funds, as investors in ETFs and mutual funds alike may incur brokerage commissions and fees to financial intermediaries.

2. Disclosures Regarding ETF Trading and Associated Costs (Item 6)

We are adopting amendments to Item 6 of Form N–1A that: (i) Will require an ETF to provide narrative disclosure identifying specific costs associated with buying and selling ETF shares and directing investors to its website for additional information; and (ii) allow an ETF that is not subject to rule 6c–11 the option to provide disclosure regarding the ETF's median bid-ask spread on its website or in its prospectus.[469] These form amendments differ in several respects from our proposal, which would have required an ETF to disclose information regarding how ETF shares trade and the associated costs, including information regarding bid-ask spreads, as part of the fund's fee table disclosure.

a. Narrative Disclosures

Secondary market investors in ETF shares are subject to trading costs when purchasing and selling ETF shares that ETFs are not currently required to disclose in their prospectuses. Trading costs, like all costs and expenses, affect investors' returns on their investment.[470] In addition, some investors use ETFs more heavily as trading vehicles compared to mutual funds and may thus incur substantial trading costs. We believe that investors could overlook these costs and that additional disclosure would help them better understand these costs when purchasing or selling ETF shares.

As a result, we proposed to require ETFs to include a series of questions and answers—or Q&As—in Item 3 that would have provided investors with narrative disclosure regarding ETF trading and associated costs, as well as quantitative disclosures regarding bid-ask spreads.[471] Although many commenters supported providing information regarding trading costs to investors, commenters raised concerns regarding the quantitative aspects of the bid-ask spread disclosures.[472] In addition, comments on the proposed Q&A format were mixed. Some commenters supported the format, stating that it provided a user-friendly method for identifying certain costs.[473] Many others expressed concerns that this format would significantly lengthen the summary prospectus, potentially resulting in less investor-friendly formats or increased printing costs.[474] Some commenters asserted that the proposed Q&A format may be more appropriate for inclusion in the statutory prospectus rather than the summary prospectus.[475]

We continue to believe that investors could overlook certain trading costs when buying or selling ETF shares and that additional disclosure will help them better understand these costs. However, we agree with commenters that the extent of trading cost disclosures we proposed to require in Item 3 could obscure other key information regarding other fees and expenses and potentially give bid-ask spread disclosures undue prominence. We also agree that ETFs and their investors may benefit from flexibility in the manner of presenting the required information, especially if the proposed format would unduly distract from other key information. We therefore are permitting ETFs to use formats other than Q&As to present this information.[476] In addition, we are moving the narrative disclosures regarding trading costs to Item 6 of Form N–1A, which provides investors with information regarding the purchase and sale of fund shares to avoid overemphasizing these costs.

We also are streamlining several of the narrative disclosure requirements we proposed. First, we are adopting a requirement that the ETF's summary prospectus or summary section cross-reference the ETF's website.[477] Rule 6c–11 will require daily website disclosure of several items, including the NAV per share, market price, premium or discount, and bid-ask spread information. Form N–1A also will permit ETFs to omit certain information from their registration statements if they satisfy certain of the rule's website disclosure conditions.[478] This disclosure will inform investors how to access this information.

Commenters did not specifically address this proposed requirement. However, in general, commenters expressed support for website disclosure requirements, including as a substitute for certain registration statement disclosure requirements.[479] We believe a cross-reference in Form N–1A to the required website disclosures will enable investors to receive timely and granular information that could assist with making an investment decision and are therefore adopting the

[469] Rule 6c–11 will require an ETF to disclose its median bid-ask spread for the last thirty calendar days on its website as a condition to the rule. Rule 6c–11(c)(1)(v). We also are amending the definition of ''Exchange-Traded Fund'' in Form N–1A to add a specific reference to rule 6c–11. *See* General Instruction A of Form N–1A (defining ''exchange-traded fund'' as a fund or class, the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order granted by the Commission or in reliance on rule 6c–11 under the Act). We are adopting this definition as proposed.

[470] *See* SEC Office of Investor Education and Advocacy, Investor Bulletin: How Fees and Expenses Affect Your Investment Portfolio (Feb. 2014), *available at https://www.sec.gov/investor/alerts/ib_fees_expenses.pdf,* at 2 (''As with any fee, transaction fees will reduce the overall amount of your investment portfolio.''); *see also* Andrea Coombes, *Calculating the Costs of an ETF,* The Wall Street Journal (Oct. 23, 2012), *available at https://www.wsj.com/articles/SB10000872396390444024204578044293008576204* .

[471] We also proposed to move certain disclosure regarding the purchase of ETF shares from Item 6 to Item 3, consolidating relevant disclosures regarding the fees and trading costs that an ETF investor may bear in one place. 2018 ETF Proposing Release, *supra* footnote 7, at text accompanying nn.391–394.

[472] *See also supra* section II.C.6.d. (discussing median bid-ask spread disclosure requirements in rule 6c–11 and our determination not to adopt amendments that would have required an ETF to provide: (i) Hypothetical examples in its prospectus of how the bid-ask spread impacts return on investment; and (ii) an interactive calculator on its website to allow investors the ability to customize those hypothetical calculations).

[473] *See, e.g.,* CFA Institute Comment Letter; FIMSAC Comment Letter.

[474] *See, e.g.,* CSIM Comment Letter (stating the that proposed format would require ETFs to rethink the presentation of the summary); Fidelity Comment Letter (stating that the proposed format would subsume other more important information and that concise narrative disclosure would be preferable); Vanguard Comment Letter (stating the sponsors should be permitted to determine how best to present this information).

[475] BlackRock Comment Letter; CSIM Comment Letter.

[476] *See* Item 6(c) of Form N–1A. An ETF must provide the required information using plain English principles under rule 421(d) under the Securities Act. *See* General Instructions to Form N–1A. The applicable standards provide ETFs and other funds with flexibility, for example, in determining whether to use headings in a question-and-answer format. Enhanced Disclosure and New Prospectus Delivery Option for Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546, 4549 n.39 (Jan. 26, 2009)] (''Summary Prospectus Adopting Release'').

[477] Item 6(c)(4) of Form N–1A. The form amendments permit an ETF to combine the information required by this website cross-reference requirement into the information required by Item 1(b)(1) of Form N–1A and 17 CFR 230.498(b)(1)(v) (rule 498(b)(1)(v)) in order to avoid duplicative references to the ETF's website. Instruction 4 to Item 6 of Form N–1A (referring to the website cross-reference disclosure requirements in the summary prospectus cover page and the statutory prospectus back cover page). However, by requiring a cross-reference to the ETF's website, the Commission does not intend for such information to be incorporated by reference into the prospectus.

[478] *See, e.g.,* Instruction 1 to Item 6 of Form N–1A. Item 11(g) currently requires an ETF to provide a website address in its prospectus if the ETF omits the historical premium/discount information from the prospectus and includes this information on its website instead. As a result, many ETFs already include a website address in their prospectus.

[479] *See, e.g.,* SIFMA AMG Comment Letter I; Fidelity Comment Letter.

requirement substantially as proposed in Item 6.

We also are adopting a requirement to provide narrative disclosure regarding bid-ask spreads.[480] As noted above, commenters generally did not address the substance of the disclosures, but raised concerns regarding the length of the disclosures. One commenter, however, asserted that the proposed requirement to disclose certain additional costs associated with buying and selling ETF shares would be redundant of information required by Item 3.[481]

We continue to believe that narrative bid-ask spread disclosure will inform investors regarding the potential impact of spread costs and provide investors with additional context to understand that the costs attributable to the bid-ask spread may increase or decrease when certain market conditions exist or certain factors are present. However, streamlining this disclosure to provide investors with key information regarding bid-ask spreads will both aid investor understanding and eliminate some of the length associated with the proposed disclosure requirement. Accordingly, our amendments to Form N–1A will require an ETF to state that an investor may incur costs attributable to the difference between the highest price a buyer is willing to pay to purchase shares of the ETF (bid) and the lowest price a seller is willing to accept for shares of the ETF (ask) when buying or selling shares in the secondary market (''the bid-ask spread'').[482] This information, combined with the website cross-reference requirement, will direct ETF investors to website disclosures regarding median bid-ask spreads.

Finally, Item 6 will continue to require ETFs to disclose: (i) That individual shares may only be purchased and sold on secondary markets through a broker-dealer; and (ii) the price of ETF shares is based on market price, and since ETFs trade at market prices rather than at net asset value, shares may trade at a price greater than net asset value (premium) or less than net asset value (discount).[483]

b. Median Bid-Ask Spread Requirement

Rule 6c–11 will require an ETF to provide website disclosure of median bid-ask spreads.[484] We believe that this disclosure will provide ETF investors with greater understanding of the costs associated with investing in ETFs. In order to provide similar disclosures to investors in ETFs that are outside the scope of rule 6c–11, we are adopting amendments to Form N–1A requiring the disclosure of median bid-ask spreads.

We proposed amendments to Form N–1A that would have required all open-end ETFs to disclose quantitative information about bid-ask spreads, both in an ETF's prospectus and on its website.[485] As discussed above, some commenters expressed concerns with these requirements, and we have made several modifications to mitigate those concerns while maintaining or enhancing the usefulness of the required disclosures. Those modifications include not adopting the proposed requirement for hypothetical bid-ask spread examples in the ETF's prospectus and interactive calculator, and instead only requiring ETFs relying on rule 6c–11 to provide disclosure of median bid-ask spread on their website.[486]

However, we continue to believe that all ETF investors should receive key information about bid-ask spread costs, and appreciate that ETFs that are not relying on rule 6c–11 may want the flexibility to provide more timely bid-ask spread information on their websites.[487] We are therefore amending Form N–1A to require an ETF that is not subject to rule 6c–11 to: (i) Provide the ETF's median bid-ask spread for its most recent fiscal year in its prospectus; or (ii) comply with the bid-ask spread website disclosure requirements in rule 6c–11(c)(1)(v).[488] We believe that this disclosure requirement will provide all ETF investors with quantitative bid-ask spread information, while providing ETFs not subject to rule 6c–11 with the flexibility to provide either website or prospectus disclosure.[489] This requirement also is consistent with our current approach to the disclosure of premiums and discounts in Form N–1A and, based on our experience with that disclosure, we believe most ETFs will opt to post bid-ask spread information on their websites as some ETFs do today on a voluntary basis.[490]

Although rule 6c–11 contemplates more current website disclosure for ETFs relying on rule 6c–11, we are adopting a lookback period of the ETF's most recent fiscal year for the prospectus bid-ask spread disclosure requirement. We are adopting this period for consistency with other disclosures in Form N–1A and to avoid establishing a requirement that would require more frequent updating of an ETF's prospectus. ETFs that opt to provide this information on their website, however, will provide median bid-ask spread information for the most recent thirty-day period on a rolling basis. Finally, newly launched ETFs subject to this prospectus requirement with less than a year of trading data will be required to provide a brief statement to the effect that the ETF does not have sufficient trading history to report trading information and related costs as proposed.[491]

c. Historical Premium and Discount Disclosures (Items 11 and 27)

Rule 6c–11 will require ETFs to provide certain disclosures regarding premiums and discounts on their websites.[492] We believe premium/discount disclosure will help investors

[480] Our proposal would have required an ETF to: (i) Describe the bid-ask spread as the difference between the highest price a buyer is willing to pay to purchase shares of the ETF (bid) and the lowest price a seller is willing to accept for shares of the ETF (ask); (ii) explain that the bid-ask spread can change throughout the day due to the supply of or demand for ETF shares, the quantity of shares traded, and the time of day the trade is executed, among other factors; and (iii) identify a set of specific costs, including bid-ask spreads, associated with buying and selling ETF shares. *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.H.2.

[481] *See* ABA Comment Letter.

[482] *See* Item 6(c)(3) of Form N–1A.

[483] Item 6(c) of Form N–1A. We proposed to move this disclosure to Item 3 to consolidate background information relating to ETF trading in one place. 2018 ETF Proposing Release, *supra* footnote 7, at section II.H.3. However, we are not adopting the proposed amendments to Item 3 and instead adding additional disclosures regarding ETF trading costs to Item 6. As proposed, amended Item 6 also will replace the current reference to ''national securities exchange'' with ''secondary markets'' because ETFs can also be bought and sold over the counter.

[484] *See* rule 6(c)(1)(v).

[485] *See* 2018 ETF Proposing Release, *supra* footnote 7, at sections II.H.2.b and II.I.

[486] *See supra* section II.C.6.d.

[487] *See infra* section II.I. (discussing similar changes for Form N–8B–2).

[488] *See* Item 6(c)(5) of Form N–1A (requiring disclosure of the median bid-ask spread for the ETF's most recent fiscal year in the summary prospectus or summary section of the prospectus); Instruction 1 to Item 6(c)(5) of Form N–1A (permitting an ETF to omit the information required if the ETF satisfies the requirements of paragraph (c)(1)(v) of rule 6c–11). As with the parallel website disclosure requirement, we are modifying the proposed methodology to clarify that the observations must be based on trades on the primary listing exchange and that the observations should be as of the end of each ten-second interval. Instruction 2 to Item 6(c)(5) of Form N–1A. We also are making similar amendments to Form N–8B–2 in order to extend this requirement to UIT ETFs. *See infra* section II.I.

[489] Item 6(c)(5) of Form N–1A. *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.H.2.b.

[490] *See* Items 11(g)(2) and 27(b)(7)(iv) of Form N–1A.

[491] Instruction 1 to Item 6(c) of Form N–1A. Newly launched ETFs seeking to satisfy the requirements of paragraph (c)(1)(v) of the rule should provide median bid-ask spread information for the most recent thirty-day period once the ETF has more than 30-days of trading data.information.

[492] *See* rule 6c–11(c)(1).

better understand that an ETF's market price may be higher or lower than the ETF's NAV per share and will provide investors with useful information regarding ETFs that frequently trade at a premium or discount to NAV. We are adopting amendments to Form N–1A that will exclude only those ETFs that provide premium/discount disclosures in accordance with rule 6c–11 from the premium and discount disclosure requirements in Form N–1A.

We proposed to eliminate existing disclosure requirements regarding premiums and discounts in Form N–1A since rule 6c–11 would require an ETF to provide more timely information on its website.[493] One commenter supported this amendment, stating that information relevant to premiums and discounts is already disclosed on a timely basis on ETF websites and therefore a duplicative registration statement requirement is not necessary.[494] Another commenter, however, stated that the Commission should apply disclosure requirements to all ETFs, including those that cannot rely on rule 6c–11, so that all ETF investors receive the same information.[495]

After considering comments, we are eliminating the premium and discount requirements in Items 11(g)(2) and 27(b)(7)(iv) for ETFs relying on rule 6c–11.[496] However, ETFs not relying on rule 6c–11 must include premium and discount information in both the prospectus and annual report unless they choose to comply with the website disclosure requirements in rule 6c–11(c)(1)(ii)–(iv) and (c)(1)(vi).[497] We agree that all ETF investors should receive similar premium/discount disclosure, regardless of the form of exemptive relief.

We acknowledge that the premium and discount disclosure requirements under rule 6c–11 are broader than what was required under Form N–1A.[498] However, to ensure consistency of website disclosure across ETFs, we are amending Form N–1A to require that if an ETF not relying on rule 6c–11 chooses to disclose the premium and discount disclosures on its website to satisfy the Form N–1A requirement, it must conform with the requirements in rule 6c–11.[499] Nonetheless, consistent with our experience with the current Form N–1A requirement, we believe that most ETFs not relying on rule 6c–11 will choose to comply with the website disclosure requirements in rule 6c–11.

3. Eliminated Disclosures

We are adopting the removal of certain disclosure requirements from Form N–1A relating to ETFs. We are removing the requirement that an ETF specify the number of shares it will issue or redeem in exchange for the deposit or delivery of basket assets.[500] The number of shares the ETF issues or redeems in exchange for the deposit or delivery of baskets is largely duplicative of information provided in reports on Form N–CEN.[501] Commenters did not address this aspect of the proposal, and we are adopting it as proposed.

We also are eliminating several disclosure requirements in Items 6 and 11 that applied only to ETFs that issue or redeem shares in creation units of less than 25,000 shares.[502] When we adopted these requirements, we reasoned that individual investors may be more likely to indirectly transact in creation units through authorized participants if the creation unit size was less than 25,000 shares.[503] Based on staff experience, however, we believe that these disclosures are unnecessary as retail investors generally do not engage in primary transactions through authorized participants and the current flow of information about the purchase and redemption process is robust.[504] One commenter supported eliminating these disclosure requirements, and we are eliminating these requirements as proposed.[505]

I. Amendments to Form N–8B–2

Form N–8B–2 is the registration form under the Investment Company Act for UITs that are currently issuing securities, and it is used for registration of ETFs organized as UITs.[506] Because Form S–6 requires UIT prospectuses to include disclosure required by specified provisions of Form N–8B–2, the disclosure requirements of Form N–8B–2 also apply to prospectuses on Form S–6. We are adopting several amendments to Form N–8B–2 that will mirror requirements we are adopting in Form N–1A.

Although we are not including UIT ETFs within the scope of rule 6c–11, we believe that it is important for investors to receive consistent disclosures for ETF investments, regardless of the ETF's form of organization. Secondary market investors in UIT ETFs, like other ETFs, are subject to trading costs that unit holders could overlook. We believe that additional disclosure will help investors better understand the total costs of investing in a UIT ETF. We therefore proposed to amend Form N–8B–2 to require UIT ETFs to provide the same disclosures regarding ETF trading and the associated costs as ETFs organized

[493] Item 11(g)(2) of Form N–1A currently requires an ETF to provide a table showing the number of days the market price of the ETF's shares was greater than the ETF's NAV per share for certain time periods. Item 27(b)(7)(iv) of Form N–1A requires an ETF to include a table with premium/discount information in its annual reports for the five most recently completed fiscal years. ETFs currently are permitted to omit both disclosures by providing on their websites the premium/discount information required by Item 11(g)(2).

[494] *See* Invesco Comment Letter.

[495] *See* ETF.com Comment Letter.

[496] Item 11(g)(2) of Form N–1A; Item 27(b)(7) of Form N–1A.

[497] Items 11(g)(2) and 27(g)(2) of Form N–1A.

[498] Unlike current Form N–1A, rule 6c–11 will require disclosure of a line graph showing exchange-traded fund share premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year and disclosure regarding persistent premium or discount of greater than 2%, in addition to a table showing premiums and discounts, in order to omit the premium/discount disclosures in the ETF's prospectus and annual report.

[499] We also are retaining the definition of the term ''Market Price'' in Form N–1A and amending it to reference the market price definition in rule 6c–11 as a result of the premium/discount disclosure requirements in the form. *See* General Instruction A to Form N–1A. Harmonizing the definition of market price in Form N–1A and rule 6c–11 will reduce regulatory confusion and will result in a more uniform methodology for calculating premiums and discounts for ETFs that provide premium/discount disclosure in accordance with rule 6c–11 and ETFs that provide premium/discount disclosures in their prospectuses and annual reports pursuant to these disclosure requirements. *See id.;* rule 6c–11(a)(1). We are making similar amendments to Form N–8B–2 in order to extend the premium/discount disclosure requirements to UIT ETFs. *See infra* section II.I.

[500] Item 6(c)(i) of current Form N–1A.

[501] *See* Item E.3.a of Form N–CEN.

[502] Item 6(c)(ii) currently requires ETFs issuing shares in creation units of less than 25,000 to disclose the information required by Items 6(a) and (b). Items 6(a) and (b) require funds to: (i) Disclose the minimum initial or subsequent investment requirements; (ii) disclose that the shares are redeemable; and (iii) describe the procedures for redeeming shares. Item 11(g)(1) currently provides that an ETF may omit information required by Items 11(a)(2), (b) and (c) if the ETF issues or redeems shares in creation units of not less than 25,000 shares each. Item 11(a) requires a fund to disclose when calculations of NAV are made and that the price at which a purchase or redemption is effected is based on the next calculation of NAV after the order is placed. Items 11(b) and (c) require a fund to describe the procedures used when purchasing and redeeming the fund's shares.

[503] Summary Prospectus Adopting Release, *supra* footnote 477.

[504] We believe the parties who purchase or redeem shares from the ETF directly would either have the knowledge necessary to do so without additional procedural disclosure or the ability to request such information.

[505] *See* Invesco Comment Letter.

[506] While open-end funds register with the Commission on Form N–1A, UITs must register on two forms: Form S–6, which is used for registering the offering of the UITs' units under the Securities Act, and Form N–8B–2, which is used for registration under the Investment Company Act. Form S–6, which must be filed with the Commission every 16 months, requires certain content, mainly by reference to the disclosure requirements in Form N–8B–2.

as open-end funds would disclose on Form N–1A.

Commenters that addressed this proposed provision generally supported these changes,[507] and we are amending Form N–8B–2 to mirror the amendments to Form N–1A with the modifications discussed above.[508] As with other ETFs that are not within the scope of rule 6c–11, these amendments will give UIT ETFs the option to forego certain disclosures relating to bid-ask spreads and premiums and discounts provided that the ETF conforms with rule 6c–11's corresponding website disclosure requirements.[509]

Below, Table 3 summarizes the amendments to Form N–8B–2 and the corresponding requirements in Form N–1A.

TABLE 3

Disclosure topic	Form N–1A ETF disclosure requirement	Corresponding Form N–8B–2 disclosure requirement
Definitions for Exchange-Traded Fund and Market Price.	General Instructions Part A	General Instructions *Definitions*.[510]
Information Concerning Fees and Costs	Item 3. Risk/Return Summary: Fee Table	Item I.13(h).
Information Concerning Purchase and Sale of Fund Shares.	Item 6(c). Purchase and Sale of Fund Shares	Item I.13(i).
Table Showing Premium and Discount Information.	Item 11(g)(2)	Item I.13(j).

J. Amendments to Form N–CEN

Form N–CEN is a structured form that requires registered funds to provide census-type information to the Commission on an annual basis.[511] As proposed, we are adopting a new requirement that will collect specific information on which ETFs are relying on rule 6c–11.[512] We believe that this requirement will allow us to better monitor reliance on rule 6c–11 and assist us with our accounting, auditing, and oversight functions, including compliance with the Paperwork Reduction Act.[513]

We also are changing the definition of ''authorized participant'' in Form N–CEN to conform the definition with rule 6c–11 by deleting a specific reference to an authorized participant's participation in DTC.[514] In addition to reducing regulatory confusion by harmonizing the definition of ''authorized participant'' with rule 6c–11, this change also will obviate the need for future amendments if additional clearing agencies become registered with the Commission.[515] Commenters that addressed the proposed amendments to Form N–CEN expressed support, and we have determined to adopt the amendments as proposed.

K. Technical and Conforming Amendments to Form N–1A, Form N–8B–2, Form N–CSR, Form N–PORT, and Regulation S–X

In October 2016, the Commission adopted new rules and forms and amended other rules and forms under the Investment Company Act to modernize the reporting and disclosure of information by registered investment companies.[516] In February 2019, the Commission adopted an interim final rule that amended the timing requirements for filing reports on Form N–PORT.[517] We are making the following technical corrections as a result of these rulemakings, as well as correcting certain other outdated citations and instructions:

- Correcting footnote 1 of 17 CFR 210.12–14 (rule 12–14 of Regulation S–X) by replacing a reference to Column E with a reference to Column F.[518]
- Amending General Instruction B.4.(a) of Form N–1A to update outdated citation references to 17 CFR 230.400 through 230.498 (Regulation C) by replacing references to 17 CFR 230.497 (rule 497) with references to rule 498.[519]
- Amending General Instruction B.4.(d) of Form N–1A to update outdated citation references to 17 CFR 232.10 through 232.903 (Regulation S–T) by replacing references to rule 903 with references to rule 501.[520]
- Amending Instruction 4(b) to Item 13 of Form N–1A by deleting outdated instructions regarding changes in methodology for determining the ratio of expenses to average net assets.[521]
- Amending Form N–1A to require money market funds to state in their annual and semi-annual reports that: (i) Their monthly portfolio holdings are available on Form N–MFP; (ii) the money market fund's reports on Form N–MFP are available on the Commission's website; and (iii) the money market fund makes portfolio holdings information available to shareholders on its website.[522] This amendment will reflect the fact that money market funds report monthly portfolio holdings on Form N–MFP rather than reporting portfolio holdings for the first and third fiscal quarters on Form N–PORT.

[507] *See* ICI Comment Letter (supporting mirroring proposed disclosure changes in Form N–1A, subject to comments regarding the amendments to Form N–1A).

[508] Items I.13(h) and (i) of Form N–8B–2. *See also supra* section II.H. (describing the ETF trading information and related costs disclosure requirements).

[509] Although UIT ETFs currently are not subject to website disclosure requirements regarding trading costs or other information, UIT ETFs generally disclose information regarding market price, NAV per share, premium and discounts, and spreads on their websites today.

[510] The definition of the term ''exchange-traded fund'' in Form N–1A covers ETFs organized as open-end funds and includes ETFs relying on either exemptive orders or rule 6c–11 to operate. Form N–8B–2, on the other hand, is for UITs, which cannot rely on rule 6c–11 to operate. Accordingly, the definition of ''exchange-traded fund'' in Form N–8B–2 omits the reference to rule 6c–11.

[511] *See* Reporting Modernization Adopting Release, *supra* footnote 263.

[512] Item C.7.k of Form N–CEN. Item C.7 of Form N–CEN requires management companies to report whether they relied on certain rules under the Investment Company Act during the reporting period. In addition, Item C.3.a.i of Form N–CEN already requires funds to report if they are an ETF.

[513] *See* Reporting Modernization Adopting Release, *supra* footnote 263.

[514] Item E.2 of Form N–CEN.

[515] As proposed, the amendments to Form N–CEN will define the term ''authorized participant'' as ''a member or participant of a clearing agency registered with the Commission, which has a written agreement with the Exchange-Traded Fund or Exchange-Traded Managed Fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.'' *See* Instruction to Item E.2 of Form N–CEN.

[516] *See* Reporting Modernization Adopting Release, *supra* footnote 263.

[517] *See* Amendments to the Timing Requirements for Filing Reports on Form N–PORT, Investment Company Act Release No. 33384 (Feb. 27, 2019) [84 FR 7980 (Mar. 6, 2019)] (''Interim Final Rule Release'').

[518] *See* rule 12–14, note 1.

[519] *See* General Instruction B.4.(a) of Form N–1A.

[520] *See* General Instruction B.4.(d) of Form N–1A.

[521] *See* Instruction 4(b) to Item 13.

[522] *See* Instruction to Item 27(d)(3) of Form N–1A.

• Amending Form N–CSR to correct references to item numbers in General Instruction D and in the instruction to Item 13.[523]

• Amending General Instruction F (Public Availability) of Form N–PORT to read ''With the exception of the non-public information discussed below, the information reported on Form N–PORT for the third month of each Fund's fiscal quarter will be made publicly available upon filing.'' [524] This amendment will reflect the Commission's action making quarter-end reports on Form N–PORT public immediately upon filing, with the exception of the non-public fields identified in General Instruction F.[525]

• Withdrawing Instruction 23 of Reporting Modernization Adopting Release, which would have amended 17 CFR 232.401 (rule 401 of Regulation S–T) to remove references to Form N–Q.[526] The amendment is no longer necessary because rule 401 was rescinded by a subsequent rulemaking.[527]

• Amending Item IX of Form N–8B–2 to clarify the required designation of exhibits and the use of incorporation by reference in order to conform to similar instructions in other Investment Company forms.[528]

L. Compliance Dates

The Commission is providing for a transition period for the amendments to Forms N–1A, N–8B–2, and N–CEN. Specifically, we are adopting compliance dates for our amendments to Form N–1A, Form N–8B–2, and Form N–CEN of December 22, 2020, one year following the amendments' effective date. All registration statements, post-effective amendments, and reports on these forms filed on or after the compliance date must comply with the amendments. Based on the staff's experience, we believe that this will provide adequate time for ETFs and other funds to compile and review the information that must be disclosed.

III. Other Matters

Pursuant to the Congressional Review Act,[529] the Office of Information and Regulatory Affairs has designated this rule a ''major rule,'' as defined by 5 U.S.C. 804(2). If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

IV. Economic Analysis

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act state that when the Commission is engaging in rulmaking under such titles and is required to consider or determine whether the action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, the Commission shall consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. Further, section 23(a)(2) of the Exchange Act requires the Commission to consider, among other matters, the impact such rules would have on competition and states that the Commission shall not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The following analysis considers, in detail, the potential economic effects that may result from the rule, including the benefits and costs to investors and other market participants as well as the broader implications of the rule for efficiency, competition, and capital formation.

A. Introduction

ETFs currently need to obtain an order from the Commission that exempts them from certain provisions of the Act that otherwise would prohibit several features essential to the structure and operation of ETFs. Obtaining such exemptive relief typically has resulted in expenses and delays in forming new ETFs. In addition, the conditions in the exemptive orders issued by the Commission have evolved over time. As a result, some ETF sponsors may have a competitive advantage over other sponsors because some exemptive orders allow the sponsors to launch new funds under the terms and conditions of those orders, and because the terms in some of these orders may be more flexible than others.

Rule 6c–11 will allow ETFs that satisfy certain conditions to operate without obtaining an exemptive order from the Commission. The Commission also is rescinding the exemptive relief we have issued to ETFs that will be permitted to operate in reliance on the rule. However, we anticipate that ETFs whose exemptive relief will be rescinded under the rule generally will be able to rely on the rule without substantially changing their current operations, as the rule's conditions are similar to those contained in existing exemptive relief, consistent with existing market practice, or generally more flexible than those contained within existing exemptive relief.[530] ETFs that wish to operate in a manner not covered by the final exemptive rule can seek individual exemptive relief from the Commission.[531]

We believe that rule 6c–11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.

The increased basket flexibility the rule affords in particular may benefit ETFs and their shareholders. To the extent that ETFs are able to implement basket policies and procedures that better facilitate the arbitrage mechanism, these ETFs may reduce their bid-ask spreads and thereby lower transaction costs for their investors. In addition, certain ETFs may be able to use the increased basket flexibility to reduce trading costs the ETF incurs.[532]

The amendments to Forms N–1A and N–8B–2 as well as the additional website disclosures required by the rule are intended to improve the information

[523] *See* General Instruction D to Form N–CSR and Item 13 of Instruction 13 of Form N–CSR.

[524] *See* Instruction F to Form N–PORT.

[525] *See* Interim Final Rule Release, *supra* footnote 518, at n.35 and accompanying text.

[526] *See* Reporting Modernization Adopting Release, *supra* footnote 263; *see also* 17 CFR 232.401.

[527] *See* Inline XBRL Filing of Tagged Data, Investment Company Act Release No. 33139 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)].

[528] *See, e.g.,* Item 28 of Form N–1A.; Item 26 of Form N–6.

[529] 5 U.S.C. 801 *et seq.*

[530] As discussed in more detail below, some conditions in the rule and the scope of the relief provided are less flexible than those included in certain exemptive orders (*e.g.* the absence of master-feeder relief) and others represent requirements that were not included in exemptive orders (*e.g.* basket policies and procedures and the recordkeeping requirements).

[531] We are not rescinding the exemptive orders for certain categories of ETFs (*i.e.,* UIT ETFs, share class ETFs, leveraged/inverse ETFs and non-transparent ETFs), with the exception of master-feeder relief that funds did not rely on as of the date of the 2018 ETF Proposing Release (June 28, 2018).

[532] Several of the anticipated benefits of rule 6c–11 may be associated with metrics that will be measurable only after funds operate in reliance on the rule; such metrics include changes in bid-ask spreads, premiums/discounts to NAV per share, fund fees, and the number of ETFs. These metrics may help facilitate evaluation of the extent to which the rule has generated the anticipated benefits, although these metrics may also be affected by developments independent of rule 6c–11.

about ETFs available to the market and to allow investors to more readily obtain information about fund products, resulting in reduced investor search costs. To the extent that the disclosure requirements will improve investors' ability to evaluate the performance and other characteristics of fund products, the amendments may result in better informed investor decisions and more efficient allocation of investor capital among fund products, and may further promote competition among ETFs and between ETFs and mutual funds.

The rule and amendments to Forms N–1A and N–8B–2 also may impact non-ETF products and market participants. To the extent that the rule will lead to lower investor search costs, lower fees, and increased product innovation and investor choice in the ETF market, investors may shift their investments towards ETFs and away from funds similar to ETFs, such as mutual funds. Such a shift in investor demand also may affect broker-dealers and investment advisers, whose customers and clients may show increased interest in and demand for ETFs. Moreover, because ETF shares are traded on the secondary market, the rule also can affect exchanges, alternative trading systems, facilities for OTC trading, broker-dealers, and clearing agencies to the extent that the rule causes changes in the ETF trading activity they support.

B. Economic Baseline

1. ETF Industry Growth and Trends

The ETF industry has experienced extensive growth since the first U.S. ETF began trading in 1993.[533] From 1993 to 2002, an average of 10 new ETFs registered each year and ETF net assets increased by an average of $10.7 billion annually. Industry growth accelerated from 2003 to 2006, when, on average, 62 new ETFs and $77 billion in net assets were added to the industry annually. Since 2007, the industry has seen an average of 137 new ETF entrants and an average growth of $241.2 billion annually. Since 2007, ETF net assets have grown at an average rate of 17.2% per year, which compares to 3.2% for closed-end funds and 6.3% for open-end funds over the same period.[534]

At the end of December 2018, there were 1,978 registered ETFs, totaling $3.3 trillion in net assets and spanning six broad investment style categories. ETFs are predominantly structured as open-end funds; however, eight UIT ETFs together represented 10.3% of ETF total net assets ($340.6 billion), and 68 share class ETFs together represented 25.6% of total net assets ($854.6 billion). The chart illustrates growth in ETF net assets by investment strategy beginning in 2000. It also tracks the percentage of net assets invested in actively managed ETFs.

[533] For the purpose of this release, we focus exclusively on ETFs that trade on U.S. exchanges.

[534] Unless otherwise noted, the number and net assets of ETFs in this section of the Release are based on a staff analysis of Bloomberg data. Growth rates for open- and closed-end funds are based on a staff analysis of Morningstar data.

The bars show ETF net assets (in $ trillions on the left vertical axis) at the end of each year by investment strategy beginning in 2000. "Other" includes commodity, specialty, mixed allocation, and alternative investment strategies. The dashed line shows the percentage of total ETF net assets in actively managed strategies (on the right vertical axis).

Although indexing is still the most common ETF strategy, over time ETFs have evolved to offer, among other things, active management, leveraged and inverse investment strategies, and exposure to various types of foreign securities (in both index-based and actively managed ETFs). At the end of December 2018, there were 167 leveraged/inverse ETFs that were structured as open-end funds.[535] In total, leveraged/inverse ETFs had total net assets of $29.64 billion or approximately 1% of all ETF net assets. None of the eight registered UIT ETFs employed leveraged or inverse investment strategies. Of the remaining unleveraged ETFs, both index-based and actively managed, 1,705 ETFs had combined net assets of $3 trillion operated as open-end funds, while eight UIT ETFs had $340.6 billion in net assets.[536]

There were 257 actively managed ETFs with total net assets of $69.5 billion. The remaining 1,721 ETFs, with a combined $3.23 trillion in net assets, were index-based ETFs. Of these, 1,713 ETFs with total net assets of $2.892 trillion were structured as open-end funds and eight UIT ETFs had total net assets of $340.6 billion.

The majority of ETFs (1,615) held some foreign exposure in their portfolio according to Morningstar data. These ETFs had total net assets of $2.921 trillion. Of these funds, seven were UIT ETFs and had $320.6 billion in net assets. The remaining 1,608 ETFs accounting for $2.6 trillion in net assets were organized as open-end funds. On average, these ETFs reported foreign exposure of 40.15% (56.87% for UIT ETFs and 40.07% for ETFs structured as open-end funds).[537]

2. Exemptive Order Process and Certain Conditions Under Existing Orders

ETFs seeking to operate as investment companies required exemptive relief from the Commission. Since the first exemptive order was granted in 1992, the Commission has issued approximately 300 exemptive orders to ETFs. The average number of approved exemptive orders between 1992 and 2006 was approximately 2.5 per year, which has increased to approximately 29 per year since 2007.

[535] *See supra* footnote 92 (noting that the exemptive orders that we have issued to sponsors of leveraged/inverse ETFs do not provide relief to ETFs described as seeking investment returns that correspond to the performance of a leveraged or inverse leveraged market index over a predetermined period of time).

[536] Bloomberg defines actively managed or index-based managed funds according to disclosure in the fund prospectus.

[537] We estimate funds' foreign holdings on February 27, 2019 from Morningstar data. For each ETF, foreign holdings of equity and debt securities are combined to obtain the approximate percentage of assets invested in foreign securities. Morningstar provided foreign holding data for 1,970 ETFs. In this data, 363 funds, one of which is a UIT ETF, reported holding no foreign securities and 8 funds from the original 1,978 are missing foreign holdings data.

Based on our review of exemptive orders that granted relief for unleveraged ETFs between January 2007 and early April 2019, the median processing time from the filing of an initial application to the issuance of an order was 213 days, although there was considerable variation.[538] Depending on the complexity of a fund's application, some ETF sponsors received exemptive relief in a relatively short period of time (the 10th percentile of the processing time was 87 days) while others waited over one year for approval (the 90th percentile of the processing time was 669 days).

In addition to the processing time associated with applying for an exemptive order, Commission staff estimates that the direct cost of a typical fund's application for ETF relief (associated with, for example, legal fees) is approximately $100,000, which may vary considerably depending on the complexity of the prospective fund.

These exemptive orders permit ETFs to operate as investment companies under the Investment Company Act, subject to representations and conditions, some of which have changed over time.[539] For example, as discussed above, our orders have required ETFs that will rely on rule 6c–11 to provide some degree of transparency regarding their portfolio holdings.[540] Actively managed ETFs and some self-indexed ETFs have been required to disclose their full portfolio holdings each day, while other index-based ETFs are permitted to specify the index they seek to track (as long as the index provider lists the constituent securities on its website) or disclose the components of their baskets. Based on a staff review of 150 randomly selected ETFs, which included 100 index-based ETFs and 50 actively managed ETFs, however, all 150 ETFs maintain a website and provide the ETF's complete daily portfolio holdings. Therefore, we believe it is likely that all ETFs that can rely on the rule, including those that are not subject to a full transparency condition in their exemptive order, currently provide full portfolio transparency.[541]

ETFs' flexibility to use custom baskets also has evolved over time under our exemptive orders. From 1996 to 2006, exemptive orders for open-end ETFs did not expressly limit baskets to a *pro rata* representation of the ETF's portfolio holdings. Since approximately 2006, however, our exemptive orders placed increasingly tighter restrictions on ETFs' composition of baskets.[542] Because our exemptive orders have generally included future funds relief to allow sponsors to form and operate new ETFs, we are unable to quantify the number of funds operating under each of the different basket flexibility conditions included in our orders.[543]

Many exemptive orders also have required ETFs to provide certain website disclosures on their website, free of charge.[544] Based on a staff review of the websites of 150 randomly selected ETFs, all 150 ETFs provided the previous day's NAV, price of the ETF shares,[545] and the premium or discount associated with the ETF share price at the market close. Accordingly, we believe that all ETFs that can rely on rule 6c–11 currently disclose this information on their website.[546] Our exemptive orders also have included other requirements, including the publication of the ETF's IIV every 15 seconds.

3. Market Participants

Several non-ETF market participants may be affected by the rule, including fund sponsors, authorized participants, liquidity providers, trading venues, and institutional and retail investors.

Using data from Bloomberg, we estimate that there are 81 unique ETF sponsors with approximately 1,978 ETFs as of December 31, 2018. The median number of ETFs per sponsor is six and the mean is 24, suggesting that a small number of sponsors have a large share of the ETF market (in terms of number of ETFs). Indeed, the top five sponsors operate a combined 965 ETFs, whereas the bottom half of sponsors operate only a combined 118 ETFs.

An ETF (either directly or through a service provider) has contractual arrangements with authorized participants to purchase or redeem ETF shares in creation unit size aggregations in exchange for a basket of securities and other assets. Based on data from Form N–CEN as of July 26, 2019, the median ETF has 23 authorized participant agreements and 4 active authorized participants.[547] [548] Larger ETFs tend to have more authorized participant agreements, with the median number of authorized participant agreements ranging from 13 for the smallest quarter of ETFs to 33 for the largest quarter of ETFs. Larger ETFs also tend to have more active authorized participants, ranging from a median of 2 to 7 for the smallest and largest quarters of ETFs, respectively. A 2015 survey-based study of fifteen fund sponsors reports, however, that creation and redemption transactions occurred only on between 10% to 20% of trading days and that only 10% of the daily activity in all ETF shares (by volume) are creations or redemptions.[549]

Some authorized participants also act as registered market makers in ETF shares. Other liquidity providers for ETF shares include market makers that are not authorized participants, hedge funds, and proprietary trading firms. According to a 2014 survey, the median number of liquidity providers for an ETF was 17, while the median number of authorized participants that are

[538] The earliest order in our sample was approved on January 17, 2007 and the latest order was approved on April 2, 2019. This data does not include orders for non-transparent ETFs.

[539] ETFs generally have obtained similar exemptive relief under these orders. However, over time, our exemptive orders generally have increased the maximum number of days that an ETF holding foreign investments can delay the satisfaction of redemptions as part of the relief from section 22(e) of the Act (from 12 days to 15 days).

[540] *See supra* footnote 225.

[541] The samples were randomly drawn from all index-based ETFs and all actively managed ETFs currently trading according to Bloomberg. We recognize that the selection of ETFs examined overweights the sample of actively managed ETFs relative to the entire population of actively managed ETFs. Our sampling procedure was done to avoid small sample bias as equally proportioned sampling would call for a survey of approximately 2 actively managed funds. Commenters did not disagree with statements in the proposing release that ETFs that can rely on the rule maintain a website and provide the ETF's complete daily portfolio holdings.

[542] *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.236–241 and accompanying text.

[543] *See supra* footnote 5.

[544] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.6.c. Substantially all exemptive orders starting in 2008 include a requirement for daily website disclosures of NAV, closing price, and premiums and discounts—each as of the end of the prior business day.

[545] One actively managed ETF provided a price based on the midpoint between the bid and ask prices, while the remainder of the actively managed ETFs and all index-based ETFs provided closing prices.

[546] Commenters did not disagree with a statement in the proposing release that all ETFs that can rely on the rule currently provide this information on their website.

[547] Beginning July 30, 2018, ETFs started reporting information on authorized participants in response to Item E.2 of Form N–CEN. As of July 26, 2019, 1,739 ETFs had filed the form.

[548] An active AP is an authorized participant that engaged in creation or redemption activity during the reporting period. Some market makers and other market participants engage in creation and redemptions indirectly through authorized participants. *See supra* section I.B. Data on the number of such market participants is not reported on Form N–CEN.

[549] *See* Rochelle Antoniewicz & Jane Heinrichs, *The Role and Activities of Authorized Participants of Exchange-Traded Funds,* ICI Report (Mar. 2015) (''Antoniewicz II''). The study also points out that NSCC is the sole provider of clearing services for ETF primary market transactions and that whether a creation or redemption order is eligible to be processed through NSCC depends on the eligibility for NSCC processing of the securities in the ETF's basket. *See also* 2019 ICI Factbook, *supra* footnote 3 (''On average, 90 percent of the total daily activity in ETFs occurs on the secondary market.'').

registered market makers for an ETF was 4.[550]

ETF shares are mainly traded on national securities exchanges.[551] Table 4 lists the 9 exchanges with the largest average daily ETF trading volume, measured over the 30 business days ending on March 7, 2019. The data shows that NYSE Arca handles the largest portion of ETF trades ($15.3 billion), followed by Cboe BZX Exchange ($6.6 billion), and Cboe EDGX Exchange ($4.5 billion).

TABLE 4—ETFS TRADED ON NATIONAL EXCHANGES AND THEIR TRADING VOLUME

Exchange	Number of ETFs	Trading volume (billion)
NYSE Arca, Inc	1,939	$15.3
Cboe BZX Exchange, Inc	1,813	6.6
Cboe EDGX Exchange, Inc	1,815	4.5
Cboe BYX Exchange, Inc	1,721	3.6
The Nasdaq Stock Market LLC	348	2.6
Cboe EDGA Exchange, Inc	1,668	2.1
Nasdaq PHLX LLC	1,070	1.9
Nasdaq BX, Inc	1,671	1.5
NYSE Chicago, Inc	184	1.2

The table reports the number of ETFs traded at each exchange and the average daily ETF trading volume, measured over the 30 business days ending on March 7, 2019. Trading volume is calculated as trade price multiplied by the number of shares relating to each price by exchange. The figures reflect an analysis by Commission staff using data obtained through a subscription to Bloomberg.

Both institutional and retail investors participate in the ETF secondary market. As shown in Table 5 below, from the first quarter of 2015 to the fourth quarter of 2017, we estimate that institutions own, on average, 43% of ETF shares, when calculating the average using equal weights for all ETFs, and 57% when calculating the average using total net assets (''TNA'')—based weights. The difference between the equal-weighted and TNA-weighted average institutional ownership numbers—43% vs. 57%—suggests that institutional investors tend to hold larger ETFs. In addition, there is considerable variation in the degree to which ETF shares are held by institutions, ranging from an average for the 5th percentile of 6% to an average for the 95th percentile of 90%.[552] However, we observe that the average institutional holding did not change considerably over time during the sample period.

TABLE 5—INSTITUTIONAL OWNERSHIP OF ETFS

Quarter	Equal-weighted average (%)	TNA-weighted average (%)	SD (%)	P5 (%)	P25 (%)	P50 (%)	P75 (%)	P95 (%)
2015Q1	41	54	24	5	22	38	58	85
2015Q2	42	55	25	6	23	40	60	91
2015Q3	44	56	26	7	25	41	62	94
2015Q4	44	57	26	5	24	43	62	92
2016Q1	44	57	26	5	24	42	62	92
2016Q2	43	56	26	6	23	41	61	92
2016Q3	43	56	26	5	24	41	62	91
2016Q4	44	57	25	6	24	42	61	91
2017Q1	43	58	25	6	24	42	61	91
2017Q2	44	55	25	6	25	42	61	90
2017Q3	43	61	25	6	24	42	61	88
2017Q4	44	58	24	7	25	43	61	87
Average	43	57	25	6	24	41	61	90

The table reports the quarterly institutional ownership ratio of ETFs, measured as the total number of shares owned by institutional investors divided by the total shares outstanding adjusted for share splits. SD refers to standard deviation. Columns P5 to P95 refer to the 5th to 95th percentiles. All descriptive stats are equal-weighted except TNA-Weighted Average. The figures reflect an analysis by the Commission staff using data from 2015Q1 to 2017Q4 obtained through a subscription to WRDS SEC Analytics Suite and the Center for Research in Security Prices (CRSP).

Further analysis shows that institutional ownership varies considerably by the type of ETF. Using Morningstar Categories, for the fourth quarter of 2017, Table 6 below shows that ETFs' equal-weighted average institutional ownership ranges from 20% for alternative ETFs to 56% for taxable bond ETFs. We also find that

[550] *See* Antoniewicz II, *supra* footnote 550; *see also* 2019 ICI Factbook, *supra* footnote 3.

[551] In the first quarter of 2019, 64% of ETF trading by dollar volume was executed on exchanges, 26% over the counter without using alternative trading systems (ATSs), and 10% over the counter using ATSs, based on Trade and Quote (TAQ) data provided by the New York Stock Exchange, Trade Reporting Facility (TRF) data provided by FINRA, and ATS information made publicly available on the FINRA website.

[552] The data we use is from Form 13F filings, which does not capture all institutional positions because Form 13F does not require reporting of short positions (which would lead to an overstatement of institutional ownership) and not all institutional investors are required to file the form (which would lead to an understatement of institutional ownership).

TNA-weighted average institutional ownership is higher than equal-weighted average institutional ownership for international equity, municipal bond, sector equity, taxable bond, and U.S. ETFs, suggesting that institutional investors tend to hold larger ETFs within these categories. The converse is true for allocation, alternative, and commodity ETFs. The table also shows that there is large variation within categories.[553]

TABLE 6—INSTITUTIONAL OWNERSHIP OF ETFS BY MORNINGSTAR CATEGORY FOR 2017:Q4

Category	Equal-weighted average (%)	TNA-weighted average (%)	SD (%)	P5 (%)	P25 (%)	P50 (%)	P75 (%)	P95 (%)
Allocation	46	40	27	10	22	41	67	94
Alternative	20	11	20	2	6	13	26	64
Commodities	43	40	16	16	39	39	57	61
International Equity	48	62	22	10	33	49	66	85
Municipal Bond	52	63	16	22	40	51	64	74
Sector Equity	43	59	21	12	27	42	57	82
Taxable Bond	56	63	20	24	43	56	69	89
U.S. Equity	46	59	21	10	31	44	61	87

The table reports the institutional ownership ratio of ETFs, measured as the total number of shares owned by institutional investors divided by the total shares outstanding adjusted for share splits, by Morningstar Category. SD refers to standard deviation. Columns P5 to P95 refer to the 5th to 95th percentiles. All descriptive stats are equal-weighted except TNA-Weighted Average. The figures reflect an analysis by the Commission staff using data for 2017Q4 obtained a through subscription to WRDS SEC Analytics Suite and the CRSP.

4. Secondary Market Trading, Arbitrage, and ETF Liquidity

Unlike shares of open-end funds, ETF shares are traded in the secondary market at prices that may deviate from the ETF's NAV. As a result, ETF investors may trade shares at prices that do not necessarily reflect the NAV of the underlying ETF assets.[554] As discussed above, however, authorized participants engage in primary market arbitrage activity that brings the market price of ETF shares and the NAV of the ETF's portfolio closer together.[555] Market participants also can engage in arbitrage activity in the secondary market by taking offsetting positions in the ETF shares and the underlying basket assets.

Using data from Bloomberg, we find that ETFs, on average, have closing prices slightly higher than the NAV per share (*i.e.,* trade at a premium at market close), as shown in Table 7 below. The equal-weighted and TNA-weighted average premium/discount over the last 15 years for all ETFs in the dataset are 0.07% and 0.06%, respectively, and the median is 0.02%, indicating that the closing prices of ETF shares are, on average, higher than the NAV per share. One study finds similar results and concludes that, on average, ETF market prices tend to reflect NAV per share closely.[556] However, consistent with the study, we find that ETF premiums/discounts vary significantly.[557] For example, we find that the (weighted) average premium/discount ranges from 0.02% in 2018 to 0.14% in 2009, and the standard deviation of premiums/discounts ranges from 0.16% in 2017 to 0.59% in 2008. Moreover, not all ETF shares trade at a premium. For example, the table shows, in a given year, *at least* 25% of ETF shares trade at a discount, on average.

TABLE 7—TIME-SERIES AVERAGES OF CROSS-SECTIONAL DESCRIPTIVE STATISTICS OF PREMIUM/DISCOUNT (%) USING DAILY DATA

Year	Equal-weighted average	TNA-weighted average	SD	P5	P25	P50	P75	P95
2004	0.10	0.04	0.26	−0.26	−0.06	0.02	0.09	0.55
2005	0.06	0.08	0.28	−0.22	−0.04	0.04	0.11	0.62
2006	0.07	0.08	0.34	−0.34	−0.04	0.03	0.14	0.67
2007	0.14	0.08	0.38	−0.39	−0.06	0.03	0.20	0.64
2008	0.09	0.10	0.59	−0.77	−0.14	0.05	0.34	1.03
2009	0.12	0.14	0.53	−0.55	−0.08	0.02	0.34	1.02
2010	0.07	0.07	0.35	−0.43	−0.05	0.02	0.16	0.63
2011	0.04	0.07	0.41	−0.54	−0.04	0.02	0.17	0.76

[553] Morningstar Category is assigned based on the underlying securities in each portfolio. Per Morningstar, funds in *allocation* categories seek to provide both income and capital appreciation by investing in multiple asset classes, including stocks, bonds, and cash. Funds in *alternative* strategies employ investment approaches (similar to those used by hedge funds) designed to offer returns different than those of the long-only investments in the stock, bond, or commodity markets. *International equity* portfolios expand their focus to include stocks domiciled in diverse countries outside the United States though most invest primarily in developed markets. *Municipal bond* strategies are generally defined by state or national focus and duration exposure. A fund is considered state-specific if at least 70% of its assets are invested in municipal securities issued by the various government entities of a single state. *Sector-specific equity* funds are usually equity funds, in that they maintain at least 85% exposure to equity. *Fixed-Income/Taxable bond* portfolios invest at least 80% of assets in securities that provide bond or cash exposure. *U.S. equity* portfolios are defined as maintaining at least 85% exposure to equity and investing at least 70% of assets in U.S.-domiciled securities.

[554] It is possible for both the ETF's NAV per share and its share price to deviate from the intrinsic value of the ETF's underlying portfolio. In addition, there may be cases in which the ETF's share price is closer to the intrinsic value of the ETF's portfolio than its NAV per share. *See, e.g.,* Ananth Madhavan & Aleksander Sobczyk, *Price Dynamics and Liquidity of Exchange-Traded Funds,* Journal of Investment Management, Second Quarter 2016, at 1.

[555] *See supra* section I.B.

[556] *See* Antti Petajisto, *Inefficiencies in the Pricing of Exchange-Traded Funds,* Financial Analysts Journal, First Quarter 2017, at 24.

[557] Commenters to our 2015 ETP Request for Comment, *supra* footnote 19, reported qualitatively similar results. *See, e.g.,* Comment Letter of Eaton Vance Corp. to Request for Comment on Exchange-Traded Products (File No. S7–11–15) (Aug. 17, 2015).

TABLE 7—TIME-SERIES AVERAGES OF CROSS-SECTIONAL DESCRIPTIVE STATISTICS OF PREMIUM/DISCOUNT (%) USING DAILY DATA—Continued

Year	Equal-weighted average	TNA-weighted average	SD	P5	P25	P50	P75	P95
2012	0.06	0.07	0.28	−0.31	−0.02	0.02	0.14	0.58
2013	0.06	0.03	0.28	−0.35	−0.03	0.02	0.09	0.43
2014	0.05	0.04	0.22	−0.25	−0.01	0.02	0.08	0.35
2015	0.04	0.04	0.23	−0.25	−0.01	0.02	0.08	0.40
2016	0.03	0.04	0.23	−0.22	−0.01	0.01	0.09	0.39
2017	0.07	0.06	0.16	−0.10	−0.01	0.02	0.09	0.33
2018	0.03	0.02	0.22	−0.32	−0.03	0.01	0.07	0.36
Average	0.07	0.06	0.31	−0.35	−0.04	0.02	0.14	0.57

The table reports time-series averages of cross-sectional descriptive statistics of premiums/discounts (%). The TNA-Weighted Average is weighted based on an ETF's previous month's total net assets. SD refers to standard deviation. Columns P5 to P95 refer to the 5th to 95th percentiles. Premiums or discounts are from daily Bloomberg data covering 2,235 ETFs for a total of 3,319,782 daily observations. Per Bloomberg, premium/discount (%) is the difference between the ETF's closing price on the day of the most recent NAV and the NAV of the fund on that day. The data covers the period from 01/02/2004 to 12/31/2018.

Premiums and discounts to NAV per share also vary considerably by the types of assets held by the ETF.[558] We use Morningstar Investment Categories to divide ETFs into groups of similar assets and, in Table 8 below, report the time-series averages of cross-sectional descriptive statistics for premiums/discounts in the different Morningstar Investment Categories. We find that the TNA-weighted average premium/discount ranges from as low as 0.002% for alternative ETFs to 0.183% for taxable bond ETFs. The results are qualitatively similar for the equal-weighted average premium/discount.

TABLE 8—TIME-SERIES AVERAGES OF CROSS-SECTIONAL DESCRIPTIVE STATISTICS OF PREMIUM/DISCOUNT (%) BY MORNINGSTAR INVESTMENT CATEGORY

Category	Equal-weighted average	TNA-weighted average	SD	P5	P25	P50	P75	P95
Allocation	0.068	0.077	0.222	−0.124	−0.039	0.046	0.222	0.287
Alternative	0.006	0.002	0.317	−0.388	−0.119	−0.004	0.110	0.444
Commodities	0.199	0.105	0.446	−0.501	0.009	0.079	0.150	0.924
International Equity	0.176	0.181	0.422	−0.467	−0.071	0.192	0.438	0.799
Municipal Bond	0.071	0.059	0.290	−0.351	−0.097	0.050	0.241	0.477
Sector Equity	0.030	0.012	0.183	−0.234	−0.070	0.005	0.081	0.294
Taxable Bond	0.192	0.183	0.196	−0.075	0.080	0.175	0.257	0.506
U.S. Equity	0.003	0.006	0.076	−0.098	−0.033	0.008	0.046	0.109

The table reports time-series averages of cross-sectional descriptive statistics of premiums/discounts (%). The ETFs are first divided into groups based on Morningstar Categories. The TNA-Weighted Average is weighted based on an ETF's previous month's total net assets. SD refers to standard deviation. Columns P5 to P95 refer to the 5th to 95th percentiles. Premiums or discounts are from daily Bloomberg data covering 2,235 ETFs for a total of 3,319,782 daily observations. Per Bloomberg, premium/discount (%) is the difference between the fund's closing price on the day of the most recent NAV and the NAV of the fund on that day. The data covers the period from 01/02/2004 to 12/31/2018.

When the ETF arbitrage mechanism functions effectively, ETFs also should trade at smaller bid-ask spreads.[559] As shown in Table 9 below, the TNA-weighted average bid-ask spread, as a percentage of the mid-price, has been relatively constant over the years, ranging from highs of 0.37% in 2012 and 2016 to a low of 0.31% in 2018.[560] Equal-weighted average bid-ask spreads averaged 0.33% and were considerably higher than TNA-weighted bid-ask spreads, which averaged 0.04%, reflecting that larger ETFs tend to have smaller bid-ask spreads. The table also shows that the bid-ask spread varies considerably between ETFs, with an average of the 5th percentile of bid-ask spreads of 0.01% and an average of the 95th percentile of bid-ask spreads at 0.16%.

TABLE 9—TIME-SERIES AVERAGES OF CROSS-SECTIONAL DESCRIPTIVE STATISTICS OF RELATIVE BID-ASK SPREAD (%)

Year	Equal-weighted average	TNA-weighted average	SD	P5	P25	P50	P75	P95
2012	0.37	0.06	0.12	0.01	0.02	0.02	0.05	0.27
2013	0.33	0.05	0.10	0.01	0.01	0.02	0.05	0.21

[558] *See, e.g.,* Robert Engle & Debojyoti Sarkar, *Premiums-Discounts and Exchange Traded Funds,* Journal of Derivatives, Summer 2006, at 27 (observing that premiums and discounts for domestic ETFs are generally small and highly transient, and that while premiums and discounts are larger and more persistent in international ETFs, they are smaller and less persistent than the premiums and discounts of international closed-end funds).

[559] *See, e.g.,* Joanne M. Hill, Dave Nadig, & Matt Hougan, *Comprehensive Guide to Exchange-Traded Funds (ETFS),* CFA Institute Research Foundation (2015), available at *https://www.cfapubs.org/doi/pdf/10.2470/rf.v2015.n3.1* (''CFA Guide'').

[560] This analysis starts in 2012 because the available data begins in that year.

TABLE 9—TIME-SERIES AVERAGES OF CROSS-SECTIONAL DESCRIPTIVE STATISTICS OF RELATIVE BID-ASK SPREAD (%)—Continued

Year	Equal-weighted average	TNA-weighted average	SD	P5	P25	P50	P75	P95
2014	0.27	0.04	0.06	0.01	0.01	0.02	0.04	0.11
2015	0.32	0.04	0.07	0.00	0.01	0.02	0.05	0.12
2016	0.37	0.04	0.07	0.01	0.01	0.02	0.04	0.11
2017	0.34	0.03	0.07	0.00	0.01	0.02	0.03	0.11
2018	0.31	0.05	0.09	0.01	0.01	0.02	0.04	0.16
Average	0.33	0.04	0.08	0.01	0.01	0.02	0.04	0.16

This table reports time-series averages of cross-sectional descriptive statistic of relative bid-ask spreads (%). The TNA-Weighted Average is weighted based on an ETF's previous month's total net assets. SD refers to standard deviation. Columns P5 to P95 refer to the 5th to 95th percentiles. Bid-ask spreads are from daily Bloomberg data covering 2,235 ETFs for a total of 2,477,272 daily bid-ask spreads. Per Bloomberg, the bid-ask spread (%) is the average of all bid/ask spreads taken as a percentage of the mid-price. The data covers the period from 01/02/2004 to 12/31/2018.

Table 10 below reports bid-ask spreads for ETF shares by Morningstar Category. U.S. Equity ETFs have the smallest average bid-ask spread of 0.03%, whereas allocation ETFs—ETFs that seek to provide both income and capital appreciation by investing in multiple asset classes, including stocks, bonds, and cash strategy—have the largest average bid-ask spread of 0.21%.

TABLE 10—TIME-SERIES AVERAGES OF CROSS-SECTIONAL DESCRIPTIVE STATISTICS OF RELATIVE BID-ASK SPREAD (%) BY MORNINGSTAR INVESTMENT CATEGORY

Category	Equal-weighted average	TNA-weighted average	SD	P5	P25	P50	P75	P95
Allocation	0.57	0.21	0.30	0.06	0.07	0.14	0.22	0.64
Alternative	0.38	0.10	0.16	0.02	0.03	0.05	0.09	0.33
Commodities	0.30	0.06	0.07	0.02	0.02	0.02	0.08	0.14
International Equity	0.43	0.07	0.11	0.02	0.02	0.03	0.08	0.21
Municipal Bond	0.29	0.10	0.11	0.03	0.04	0.06	0.10	0.30
Sector Equity	0.28	0.06	0.09	0.01	0.02	0.04	0.06	0.20
Taxable Bond	0.29	0.04	0.08	0.01	0.01	0.02	0.04	0.15
U.S. Equity	0.21	0.03	0.04	0.01	0.01	0.01	0.03	0.09

This table reports time-series averages of cross-sectional descriptive statistic of relative bid-ask spreads (%). The ETFs are first divided into groups based on Morningstar Categories. The mean is weighted based on an ETF's previous month TNA and the data covers the period from 01/03/2012 to 12/31/2018. SD, Min and Max refer to standard deviation, minimum and maximum. Columns P5 to P95 refer to the 5th to 95th percentiles. Bid-ask spreads are from daily Bloomberg data covering 2,235 ETFs for a total of 2,477,272 daily bid-ask spreads. Per Bloomberg, the bid-ask spread (%) is the average of all bid/ask spreads taken as a percentage of the mid-price.

The summary statistics presented thus far in this section suggest that the arbitrage mechanism generally functions effectively during normal market conditions. However, the Commission has observed periods of market stress during which the arbitrage mechanism has functioned less effectively and during which there were significant deviations for some ETFs between market price and NAV per share and when bid-ask spreads widened considerably. These conditions only persisted for very short periods of time for the periods of market stress we have observed, suggesting that the arbitrage mechanism recovered quickly.[561]

C. Benefits and Costs of Rule 6c–11 and Form Amendments

The Commission is sensitive to the economic effects that can result from rule 6c–11 and amendments to Forms N–1A and N–8B–2, including benefits and costs. Where possible, the Commission quantifies the likely economic effects; however, the Commission is unable to quantify certain economic effects because it lacks the information necessary to provide estimates or ranges. In some cases, quantification is particularly challenging due to the difficulty of predicting how market participants will act under the conditions of the rule. Nevertheless, as described more fully below, the Commission is providing both a qualitative assessment and quantified estimate of the economic effects, including the initial and ongoing costs of the additional disclosure requirements, where feasible.

1. Rule 6c–11

Rule 6c–11 will allow ETFs to operate in reliance on a rule rather than individual exemptive orders if they meet the requirements and conditions of the rule. In addition, we are rescinding all existing ETF exemptive orders, with the exception of: (i) The section 12(d)(1) relief included in those orders that permit certain fund of funds arrangements;[562] and (ii) orders relating to UIT ETFs, leveraged/inverse ETFs, share class ETFs, and non-transparent ETFs. This section first evaluates the general considerations associated with the rulemaking and then discusses the

[561] *See, e.g.,* Ananth Madhavan, *Exchange-Traded Funds, Market Structure, and the Flash Crash,* Financial Analysts Journal, July/Aug. 2012, at 20.

[562] We will, however, rescind relief from sections 12(d)(1) and 17(a)(1) and (2) that have been provided to allow master-feeder arrangements for those ETFs that do not currently rely on the relief. *See supra* section II.F. In addition, we will grandfather existing master-feeder arrangements involving ETF feeder funds, but prevent the formation of new ones under existing orders, by amending relevant exemptive orders. *See id.*

effects of the specific requirements and conditions of the rule.

a. General Considerations

Rule 6c–11 will grant exemptive relief from the provisions of the Act that otherwise prohibit several features essential to the ETF structure. This section evaluates the overall effect of reducing the expense and delay of operating certain new ETFs by granting this exemptive relief as part of a rule rather than through the individual exemptive order process.

As the requirements and conditions of the rule are either similar to those contained in existing exemptive orders, consistent with market practice, or generally provide more flexibility, we anticipate that the rule and the related rescission of ETF exemptive relief will not require any existing ETFs whose exemptive relief will be rescinded to significantly change the way they operate. Conversely, some ETFs whose exemptive orders contain conditions that are more restrictive than those contained in the rule may decide to change the way they operate in order to make use of such increased flexibility.

Relative to the baseline, rule 6c–11 will eliminate the costs associated with applying to the Commission for an exemptive order to form and operate as an ETF for funds relying on the rule. Specifically, the process of forming new ETFs in reliance on the rule will be quicker, more predictable, less complex, and therefore less costly than obtaining an exemptive order as new ETFs that cannot rely on existing orders are currently required to do. ETFs that cannot rely on the rule will continue to be required to apply for an exemptive order to form and operate, unless they have an existing exemptive order that includes future fund relief.[563]

As described above in section IV.B.2, we estimate that the cost for a typical unleveraged ETF of filing for exemptive relief is $100,000. In addition, based on our review of exemptive orders that granted relief for unleveraged ETFs between January 2007 and early April 2019, the median processing time from the filing of an initial application to the issuance of an order was 213 days, although there was considerable variation. Thus, any new ETF planning to operate within the parameters set forth by the rule will save this expected cost and avoid this delay. In addition, such ETFs would avoid the uncertainty about the length of the delay associated with the exemptive order process, allowing each sponsor to better control the timetable for launching a new ETF product in a way that maximizes benefits to its business. Conversely, funds that are not able to comply with the conditions of the rule will continue to need to apply for an exemptive order. Assuming that the number of new ETFs seeking to form and operate under the rule that would otherwise need to apply for exemptive relief is equal to the annual average number of ETFs that have applied for exemptive relief since 2007, these cost and time savings would accrue to approximately 29 ETFs per year.[564] Using this assumption, the annual costs savings to this group of ETF sponsors are approximately $2.9 million.[565] We are unable to quantify the benefit a new ETF will derive from avoiding the delay and the uncertainty about the length of the delay associated with the exemptive order process as the cost of a delayed registration for a new ETF is inherently difficult to measure.[566]

By eliminating the need for ETFs that can rely on the rule to seek an exemptive order from the Commission, the rule will also eliminate certain indirect costs associated with the exemptive application process. Specifically, ETFs that apply for an order forgo potential market opportunities until they receive the order, while others forgo the market opportunity entirely rather than seek an exemptive order because they have concluded that the cost of seeking an exemptive order would exceed the anticipated benefit of the market opportunity.

In addition, we believe that the rule will make it easier for some fund complexes to ensure that each ETF in the complex is in compliance with regulations. Specifically, we anticipate that it will be easier, and thus less costly, for ETF complexes that today operate funds under multiple exemptive orders to ensure compliance with a single set of requirements and conditions contained in the rule rather than with multiple exemptive orders to the extent that the orders vary in the requirements and conditions they contain.

We acknowledge that fund complexes may initially incur costs associated with assessing the requirements of the rule. However, we believe that these costs will be relatively small.[567] In addition, we anticipate that it will be more efficient for third-party providers, such as lawyers and compliance consultants, to offer services that help ETFs ensure compliance with the rule, which will have broad applicability, than is currently the case with ETFs relying on exemptive orders with varying conditions. As a result, third party service providers may be able to reduce the price of their services, compared to the baseline, for ETFs that can rely on the rule, which may partially or fully offset the initial costs of studying the requirements of the rulemaking that ETFs may incur.

We expect that the rule also will benefit ETF investors to the extent that it will remove a possible disincentive for sponsors to form and operate new ETFs that provide investors with additional investment choices if they currently do not have relief. As noted above, the direct and indirect costs of the exemptive application process may discourage potential sponsors, particularly sponsors interested in offering smaller, more narrowly focused ETFs that may serve the particular investment needs of certain investors.

As we discuss below in section IV.D.2, we believe that the rule could increase competition in the ETF market as a whole, which could also lead to lower fees. Any effect of increased

[563] *See supra* footnote 42 (noting that UIT ETFs' orders do not include relief for future ETFs formed pursuant to the same order). As discussed below, some ETFs will incur additional costs as a result of the rule's requirement to adopt and implement written policies and procedures that govern the construction of basket assets and the process that will be used for the acceptance of basket assets, the rule's additional website disclosure requirements, and the amendments to Forms N–1A and N–8B–2. The operation of such ETFs may therefore become more costly, on balance, to the extent that these costs are not offset by the benefits from the other parts of the rule, such as the increased basket flexibility and, for certain new ETFs, the reduced costs of forming the fund.

[564] Compared to the baseline, these cost and time savings will only accrue to new ETFs whose sponsors have not received exemptive relief that would allow such ETFs to operate.

[565] This estimate is based on the following calculation: 29 × $100,000 = $2,900,000.

[566] Costs arising from the delay and the uncertainty associated with the exemptive order process include primarily forgone profits and costs associated with missed business opportunities. We do not have access to data on ETFs' profits, and commenters did not provide such data. Additionally, forgone profits associated with missed business opportunities, such as forgoing a ''first-mover advantage,'' can be highly variable and dependent on specific circumstances.

[567] We estimate that assessing the requirements of the final rule will require 5 hours of a compliance manager ($309 per hour) and 5 hours of a compliance attorney ($365 per hour), resulting in a cost of $3,370 (5 × $309 + 5 × $365) per fund. The total cost for all 1,735 ETFs that can rely on the rule will thus be $5,846,950 (1,735 × $3,370). The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (''SIFMA Report'').

competition on fees will likely be larger for segments of the ETF market that currently may be less competitive (*e.g.,* actively managed ETFs) and smaller for segments of the market that currently may be more competitive (*e.g.,* index-based ETFs tracking major stock indices).

By eliminating the need for individual exemptive relief, we anticipate that the rule will, over time, increase the number of ETFs and thus reinforce the current growth trend in the ETF industry. In addition, the rule will increase demand for such ETFs, to the extent that such ETFs lower their fees to investors and investors are sensitive to fees.[568] To the extent that some ETFs will experience larger reductions in trading costs (*e.g.,* fixed-income, international, and actively managed ETFs, as discussed below in section IV.C.1.b.i.) or larger increases in competition (*e.g.,* actively managed ETFs, as discussed above in this section), demand for these types of ETFs will likely increase more than for other types of ETFs. The increased demand will likely be due in part to investors substituting away from comparable types of funds, such as mutual funds, and possibly due to investors increasing the rate at which they save.[569] Consequently, the rule could increase total assets of ETFs and could decrease total assets of other funds. The size of these effects will depend on the degree to which ETFs will lower their fees or experience reduced trading costs, as well as on the sensitivity of investor demand for ETFs and other funds to changes in ETF fees and trading costs. We are unable to quantify these effects on investor demand, in part, because we cannot estimate the extent to which funds will lower their fees or experience reduced trading costs and how lower fees and trading costs will change investor demand.

Since ETFs are traded in the secondary market, an increase in total assets of ETFs will likely coincide with larger trade volumes for the exchanges where ETFs are traded, as well as for the clearing agencies and broker-dealers involved in these trades. To the extent that these market participants are compensated by volume, the rule will thus benefit them by leading to an increase in revenues.[570]

In addition, we expect the rule to reduce the number of applications for ETF exemptive relief. This will allow Commission staff more time to review applications for exemptive relief from registered investment companies, including those for more complex or novel ETFs that will continue to require exemptive relief. To the extent that this speeds up the processing time for these remaining applications, the rule may reduce the indirect costs of forming and operating for ETFs that seek to operate outside its parameters and for other registered investment companies that require exemptive relief to operate and, as a result, may promote innovation among these types of funds.

b. Conditions for Reliance on Rule 6c–11

Rule 6c–11 contains several conditions that are designed to facilitate an effective arbitrage mechanism, reduce costs, and inform and protect investors. Beyond the general impact of reducing the expense and delay of new ETFs, many of the conditions in rule 6c–11 do not offer additional benefits or costs when measured against the baseline, as they are generally codifications of the current regulatory practice. However, some conditions are departures from current exemptive orders or current market practice and we discuss the effects of these departures in more detail below.

i. Conditions That May Facilitate an Effective Arbitrage Mechanism

Arbitrage is the practice of buying and selling equivalent or similar assets (or portfolios of assets) in different markets to take advantage of a price difference.[571] As a consequence, arbitrageurs generate price pressure that works to equalize the prices of these assets across different markets. This is important for investors as it helps ensure that asset prices reflect market fundamentals (*i.e.,* are efficient) irrespective of the market in which they are traded.

There are several factors that are important for arbitrageurs to consider in order to determine the existence of arbitrage opportunities and execute an arbitrage strategy effectively. First, when the assets involved in the arbitrage are similar but not the same, as is the case for ETFs, arbitrage will be more effective the more closely the prices of the two assets track each other and the more transparency arbitrageurs have into any factors that may cause price differences between the two assets. In addition, arbitrage requires that arbitrageurs have the ability to enter into the trades necessary to execute the arbitrage strategy, and arbitrage is more effective the smaller and more predictable the associated trading costs are.[572] The rule contains conditions that take these considerations into account and are designed to promote the effective functioning of the arbitrage mechanism for ETFs.

The rule will require ETFs relying on the rule to adopt and implement written policies and procedures that govern the construction of basket assets and the process that will be used for the acceptance of basket assets, including policies and procedures specific to the creation of custom baskets if the ETF uses custom baskets.

Although current exemptive orders contain varying provisions for basket flexibility, we do not believe that the rule will require existing ETFs to change how they construct baskets. Instead, the

[568] There is research to support that fund investors are sensitive to fees. For instance, one paper (Erik R. Sirri & Peter Tufano, *Costly Search and Mutual Fund Flows,* 53 Journal of Finance 1589 (1998)) finds that ''lower-fee funds and funds that reduce their fees grow faster.'' However, we acknowledge that there are studies that suggest that investors' sensitivity to fees may be limited. One experimental study (James J. Choi, David Laibson, & Brigitte C. Madrian, *Why Does the Law of One Price Fail? An Experiment on Index Mutual Funds,* 23 Review of Financial Studies 1405 (2010)) finds that investors may not always pick the lowest-fee fund when presented with a menu of otherwise identical funds to choose from. In addition, other studies (*e.g.,* Michael J. Cooper, Michael Halling, & Wenhao Yang, *The Mutual Fund Fee Puzzle* (Working Paper, 2016)) find evidence of significant fee dispersion among mutual funds, even after controlling for other observable differences between funds. While these studies investigate the sensitivity of investors to fees of mutual funds rather than ETFs, we believe that these results are likely to hold for ETFs as well. We are not aware of any studies that specifically study the sensitivity of ETF investors to fees.

[569] Investments in ETFs are one of many ways for investors to allocate savings. If investors choose to increase their investment in ETFs, there can be two sources for this additional investment: (1) An increase in overall savings; and (2) a decrease in savings allocated to other investments, such as mutual funds. These two sources are not mutually exclusive, so that an increase in ETF investments can be accompanied by both an increase in overall savings and a decrease in savings invested elsewhere.

[570] To the extent that investors substitute away from products that are comparable to ETFs, such as mutual funds, an increase in revenue for entities facilitating ETF transactions may be offset by a decrease in revenue for entities facilitating fewer transactions in those other products.

[571] *See, e.g.,* Jonathan B. Berk & Peter DeMarzo, Corporate Finance (3rd ed. 2013).

[572] Authorized participants, other market participants, and arbitrageurs acting in secondary markets may incur costs and be exposed to risk when engaging in arbitrage. The costs include bid-ask spreads and transaction fees associated with the arbitrage trades. In addition, during the time it takes arbitrageurs to execute these trades, they are exposed to the risk that the prices of the basket assets and the ETF shares change. As a consequence, arbitrageurs are likely to decide to wait for any deviation between the market price of ETF shares and NAV per share to widen until the expected profit from arbitrage is large enough to compensate for any additional costs and risks associated with engaging in the transaction.

rule will give some ETFs more flexibility for constructing baskets than what is allowed by their existing exemptive orders, provided they adopt and implement custom basket policies and procedures.

We believe that fixed-income, international, and actively managed ETFs will particularly benefit from the increased basket flexibility under the rule if they currently operate under exemptive orders that do not allow custom baskets. For example, the increased basket flexibility should allow fixed-income ETFs to avoid losing hard-to-find bonds when meeting redemptions or to use sampling techniques to construct baskets that are composed of fewer individual bonds, thus reducing trading costs for authorized participants. Similarly, international ETFs will be able to tailor their creation and redemption baskets to accommodate difficulties in transacting in certain international securities. In addition, actively managed ETFs will, in certain instances, be able to use the increased basket flexibility to acquire or dispose of securities by adjusting the composition of the creation or redemption basket rather than by directly purchasing or selling the securities. In these instances, actively managed funds will be able to reduce certain transaction costs, such as those associated with bid-ask spreads.

For these reasons, we believe that, to the extent that ETFs are able to implement procedures that facilitate the arbitrage mechanism or reduce costs for those ETFs, the rule will benefit ETFs that use the increased basket flexibility the rule affords and will ultimately benefit their investors. One commenter submitted results from an empirical analysis that supported this assessment.[573] For example, the commenter observes that fixed-income ETFs that currently have increased basket flexibility exhibit smaller bid-ask spreads and reduced premiums and discounts to NAV, particularly during times of market stress.[574] Due to a lack of data, we are unable to quantify the number of ETFs that would choose to implement custom basket policies and procedures, and thus the potential benefits accruing to ETFs and their investors.

To the extent that existing ETFs do not already have policies and procedures governing basket assets in place or that existing policies and procedures are not consistent with the requirements of the rule, ETFs will incur costs associated with developing and implementing such policies and procedures. However, such costs may be partially or totally offset by the basket flexibility discussed above. We estimate that an average ETF will incur an initial cost of $10,718 [575] associated with establishing and implementing standard and custom basket policies and procedures. In addition, we estimate that an average ETF will incur an ongoing cost of $4,135 [576] each year to review and update its basket policies and procedures. We thus estimate that the total industry cost associated with the policies and procedures requirement in the rule for ETFs that can rely on the rule in the first year will equal $25,769,955.[577]

Finally, although the rule's custom basket policies and procedures requirements are designed to reduce the potential for cherry-picking, dumping, and other potential abuses, we acknowledge that this principles-based approach may not be effective at preventing all such abuses. However, ETFs will be required to maintain records related to the custom baskets used, which will allow the Commission to examine for potential abuses.

As proposed, the rule also will require an ETF to disclose prominently on its website the portfolio holdings that will form the basis for the next calculation of NAV per share. This information allows authorized participants and other arbitrageurs to identify arbitrage opportunities and execute arbitrage trades that reduce premiums and discounts to NAV per share, ultimately benefiting all investors. In addition, we agree with a commenter who stated that portfolio transparency helps investors to better discern differences between ETFs that track similar indexes or have similar investment objectives.[578]

The requirements for portfolio transparency in existing exemptive orders have varied. However, based on a staff review of ETFs' websites, we understand that all ETFs that can rely on the rule currently provide daily full portfolio transparency. Thus, ETFs that can rely on the rule already bear the ongoing costs associated with maintaining such disclosures.[579] We believe that the ETFs that can rely on the rule will incur a one-time cost associated with reviewing whether their current portfolio disclosure is compliant with the requirements of proposed rule 6c–11 and, if necessary, make changes to the information that is presented on their website.[580] We estimate this one-time cost to be $1,997 for the average ETF, resulting in an aggregate one-time cost of $3,463,928 for all ETFs that can rely on the rule.[581]

Some commenters raised concerns that providing daily portfolio information on an ETF's website could expose the fund and its investors to

[573] *See* ICI Comment Letter (providing the results of an empirical analysis indicating that fixed-income ETFs with basket flexibility had narrower bid-ask spreads, lower tracking differentials, and traded at smaller discounts than fixed-income ETFs without basket flexibility). The commenter conducted a survey to identify fixed-income ETFs that currently have increased basket flexibility. While the commenter provided the results of an empirical analysis based on this data, the commenter did not provide the Commission with the survey responses themselves.

[574] Conversely, another commenter stated that increased basket flexibility may reduce arbitrage efficiency for fixed-income ETFs, particularly during market stress. *See* Bluefin Comment Letter. This commenter observes that such ETFs may choose to include less liquid portfolio holdings in redemption baskets in greater than pro-rata proportions, thereby increasing trading costs for arbitrageurs and leading to larger premiums and discounts. While we acknowledge this concern, ETFs generally are incentivized to choose custom baskets that reduce premiums and discounts for the benefit of transacting shareholders. In addition, as discussed above in section II.C.5.a, we believe that requiring fixed-income ETFs to establish detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders addresses the risks associated with custom baskets.

[575] This estimate is based on the following calculations: 12 hours × $329 per hour (senior manager) + 7 hours × $530 (chief compliance officer) + 2 hours × $365 (compliance attorney) + 5 hours × $466 (assistant general counsel) = $10,718. *See infra* section V.B.3, Table 13.

[576] This estimate is based on the following calculations: 5 hours × $329 per hour (senior manager) + 2.5 hours × $530 (chief compliance officer) + 2.5 hours × $466 (assistant general counsel) = $4,135. *See infra* section V.B.3, Table 13.

[577] This estimate is based on the following calculation: ($10,718 + $4,135) × 1,735 ETFs = $25,769,955. This estimate may be an over-estimate in that it assumes that all ETFs, regardless of their actual use of custom baskets, would implement policies and procedures for custom basket assets. It also may overestimate costs because some fund complexes may use the same basket policies and procedures for all ETFs within the complex.

[578] *See* CSIM Comment Letter.

[579] In the 2018 ETF Proposing Release, we estimated that an ETF that does not currently maintain daily portfolio holdings on its website would spend approximately 5 hours of professional time to update the relevant web page daily at a cost of $1,405.50 each year. Because we believe all ETFs that can rely on the rule already provide this information on their websites, we believe that very few, if any, ETFs would have to bear these additional costs.

[580] The rule will require ETFs to provide certain information for each portfolio holding. These item requirements are a more limited set of the information currently required by the listing exchanges' generic listing standards for actively managed ETFs.

[581] This estimate is based on the following calculations: 1.5 hours × $284 (senior systems analyst) + 1.5 hours × $331 (senior programmer) + 1 hour × $309 (compliance manager) + 1 hour × $365 (compliance attorney) + $400 for external website development = $1,997. The industry cost is 1,735 × $1,997 = 3,463,928. This estimate is conservative as it does not assume a cost reduction for actively managed ETFs that already comply with the listing standards on which the item requirements for the portfolio holding disclosure under the rule are based.

costs associated with ''front-running'' and, in the case of actively managed ETFs, ''piggybacking.'' [582] However, based on our understanding that all ETFs that can rely on the rule currently provide daily full portfolio transparency, the rule will not change the degree to which ETFs and their investors are exposed to such costs compared to the baseline.

As proposed, rule 6c–11 would have required that an ETF's portfolio holdings disclosure be made on each business day: (1) Before the opening of regular trading on the primary listing exchange of the ETF's shares; and (2) before the ETF starts accepting orders for the purchase or redemption of creation units. The rule will omit the second requirement in order to accommodate the current industry practice of T–1 creation and redemption orders.[583] We agree with commenters that T–1 orders facilitate ETF arbitrage for certain ETFs holding foreign securities by allowing arbitrageurs to align the execution time of underlying securities with the NAV calculation of the order.[584] Compared to the proposal, we therefore believe that this aspect of the rule will lead to narrower bid-ask spreads and smaller premiums and discounts, benefiting investors in these ETFs.

Compared to the proposal, the rule will require ETFs to present enumerated information regarding each portfolio holding (which are a more limited set of the disclosures currently required by the listing exchanges' generic listing standards for actively managed ETFs), rather than the description, amount, value, and unrealized gain/loss of each position in the manner prescribed by Article 12 of Regulation S–X. As discussed above in section II.C.4.b, we believe that this information will focus the disclosure on the pieces of information that are most relevant to investors while reducing the burden for ETFs of complying with the disclosure requirement. As a result, we believe that the disclosure format under the rule will provide similar benefits to investors at lower costs to ETFs.[585]

ii. Other Cost Savings From the Rule

Under the terms of the exemptive orders, ETFs are required to disclose in their registration statement that redemptions may be postponed for foreign holidays. Rule 6c–11 does not contain such a requirement and will thus eliminate the cost of preparing and updating this disclosure for existing ETFs. This information is already covered by the agreement between the ETF and the authorized participant.[586]

The terms of the exemptive orders also require an ETF to identify itself in any sales literature as an ETF that does not sell or redeem individual shares and explain that investors may purchase or sell individual ETF shares through a broker via a national securities exchange. The rule will not include such a requirement, as we no longer believe that it is necessary given that markets have become familiar with ETFs in the multiple decades they have been available. The omission of such a requirement will lead to cost savings for existing and future ETFs associated with preparing and reviewing this disclosure for sales literature.[587]

iii. Intraday Indicative Value

The rule will not require an ETF to disseminate its IIV, as is currently required under all exemptive orders and current exchange listing standards. To the extent that current exchange listing standards require IIV to be disseminated, the rule's omission of such a requirement will not represent a change from the baseline and will not result in any costs or benefits to market participants.

We believe, and commenters agreed, that many sophisticated institutional market participants do not rely on the IIV to value an ETF's assets, as discussed above in section II.C.3. In addition, the IIV may not reflect the intrinsic value of certain ETFs' assets (*e.g.,* for funds that invest in foreign securities whose markets are closed during the ETF's trading day or funds whose assets trade infrequently, as is the case for certain bond funds).[588] An investor who relies on stale or inaccurate IIV information to purchase or sell ETF shares could be exposed to price risk until the position is closed and could incur the trading costs associated with these trades. Furthermore, as discussed above in section II.C.3, based on a staff review of the websites of the ten largest ETFs by assets under management and of several publicly available free websites, we do not believe that investors have easy access to IIV through free, publicly available websites.

Some commenters stated that retail investors relying on IIV could see their ability to evaluate ETFs reduced without this metric.[589] As we stated in the proposing release, we agree that the IIV may provide a reasonably accurate estimate of the value of certain ETFs' portfolios, including those ETFs whose underlying assets are very liquid and frequently traded during the ETF's trading day. However, as discussed above in section II.C.3, we have concerns regarding the accuracy of IIV estimates and the lack of uniform methodology requirements. Moreover, retail investors do not have easy access to IIV through free, publicly available websites today even for those assets classes where IIV may be more reliable. Therefore, we do not believe that IIV provides information that retail investors can reliably use when making investment decisions and thus do not believe that it is a necessary condition for ETFs that are operating in reliance on rule 6c–11.

iv. Website Disclosure Provisions

Rule 6c–11 will require an ETF to disclose certain information prominently on its website.[590] The goal of these disclosure requirements is to provide investors with key metrics to evaluate their trading and investment decisions in a location that is easily accessible and frequently updated.[591]

[582] *See supra* section II.C.4.

[583] *See supra* section II.C.4.a. This timing requirement is consistent with the transparency requirements of our existing exemptive orders.

[584] *See id.*

[585] The cost estimates in this section of the economic analysis reflect the cost reduction, compared to the proposal, associated with the change in the format of the disclosure. *See* also *infra* footnote 684 and accompanying text.

[586] We believe that authorized participants would share this information with other market participants as necessary. For example, an authorized participant acting as agent typically would share this information with its customer if it is a necessary part of the creation or redemption process.

[587] We estimate that the omission of this requirement will save 0.25 hours of a compliance attorney ($365 per hour), resulting in a cost savings of $91 (0.25 × $365) per fund each year. The total cost savings for all 1,735 ETFs that can rely on the rule will thus be $158,319 (1,735 × $91).

[588] Commenters agreed that traditional IIV can have significant limitations, for example for ETFs holding fixed-income securities. *See, e.g.,* ICI Comment Letter. *See also supra* footnote 203.

[589] *See, e.g.,* Angel Comment Letter; Nasdaq Comment Letter; IDS Comment Letter.

[590] *See supra* footnote 226.

[591] According to the most recent U.S. census data, approximately 77.2% of U.S. households had some form of internet access in their home in 2015 and 86.8% have a computer (*e.g.,* desktop, laptop, tablet or smartphone). *See* Camille Ryan & Jamie M. Lewis, *Computer and Internet Usage in the United States: 2015,* U.S. Census Bureau ACS–37 (Sept. 2017), available at *https://www.census.gov/content/dam/Census/library/publications/2017/acs/acs-37.pdf; see also* Sarah Holden, Daniel Schrass, & Michael Bogdan, *Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2017,* ICI Research Perspective (Oct. 2017), available at *https://www.ici.org/pdf/per23-07.pdf* (stating that ''[i]n mid-2017, 95 percent of households owning mutual funds had internet access, up from about two-thirds in 2000'' and ''86 percent of mutual fund-owning households with a household head aged 65 or older had internet access in mid-2017''); Andrew Perrin & Maeve Duggan, *Americans' Internet Access: 2000–2015,*

Continued

Based on a staff review of ETFs' websites, we believe that all ETFs that can rely on the rule currently have a website and currently provide daily website disclosures of NAV, closing price, and premiums or discounts.[592] As a consequence, existing ETFs generally will not incur any additional cost associated with the creation and technical maintenance of a website or these specific website disclosure requirements.

Our exemptive orders have not included requirements for line graph and tabular historical information regarding premiums and discounts. While Form N–1A contains tabular website disclosures related to historical premiums/discounts in Items 11(g)(2) and 27(b)(7)(iv), which we are eliminating for ETFs that will rely on rule 6c–11, we anticipate that all existing ETFs that fall within the scope of the rule will still incur some additional costs associated with these disclosures.[593] We believe that substantially all ETFs already have the required data available to them as part of their regular operations (as it is required by Form N–1A and allows ETFs to monitor the trading behavior of their shares), and have systems (such as computer equipment, an internet connection, and a website) in place that can be used for processing this data and uploading it to their websites. However, these ETFs will incur the costs associated with establishing and following (potentially automated) processes for processing and uploading this data to their websites. We estimate that an average ETF will incur a one-time cost of $1,997 [594] for implementing this website disclosure and an ongoing cost of $491[595] per year for updating the relevant web page with this information. We thus estimate the total cost, in the first year, to ETFs that can rely on the rule for providing this website disclosure, of $4,315,379.[596]

Our exemptive orders have not included a requirement for ETFs to provide disclosure if an ETF's premium or discount is greater than 2% for more than seven consecutive trading days and the factors that materially contributed to a premium or discount, if known. As a result, under the rule those ETFs that experience such a premium or discount will incur additional costs associated with determining what factors contributed to the premiums or discounts and drafting and uploading a discussion to their website.

Based on a staff analysis of historical data on ETF premiums and discounts from 2008 to 2018 using Bloomberg data, we believe that, on average, 4.5% of ETFs that can rely on the rule will trigger this disclosure requirement each year.[597] As suggested by commenters, this disclosure requirement is likely to affect certain categories of ETFs more than others.[598] For example, in 2018, we estimate that the reporting requirement would not have been triggered for any allocation ETFs, commodity ETFs, or municipal bond ETFs, while it would have been triggered for 0.3% of taxable bond ETFs, 0.6% of sector equity ETFs, 3.1% of U.S. equity ETFs, 4.2% of international equity ETFs, and 4.8% of alternative ETFs. We estimate that an ETF required to make such a disclosure in a given year will incur an average cost of $1,504, yielding a total annual industry cost of $117,405.[599]

The rule also will require additional disclosure by the ETF of the median bid-ask spread for the most recent 30-day period on its website. This requirement is modified from the proposal, which would have required an ETF to disclose the median bid-ask spread for the ETF's most recent fiscal year on its website and in its prospectus.

We believe that the rule's disclosure requirement will further inform investors about the expected cost of trading an ETF and facilitate comparison of transaction costs across ETFs. As such, the disclosure of median bid-ask spreads could reduce investors' uncertainty about the trading environment. We agree with commenters that actual bid-ask spreads paid by ETF investors can be influenced by a variety of factors, including order size, market conditions, as well as the broker-dealer used.[600] Nevertheless, we believe that requiring the disclosure of bid-ask spread information is still valuable to investors as it is indicative of the general magnitude of an ETF's trading costs attributable to bid-ask spreads. In addition, we believe bid-ask spreads can help investors rank ETFs in terms of expected execution costs, as an ETF with historically larger bid-ask spreads can be expected to be more costly to trade than an ETF with historically lower bid-ask spreads, when holding other factors that impact execution costs, such as order size, market conditions, and the broker-dealer, constant.

Existing exemptive orders do not require ETFs to disclose median bid-ask spreads. As a result, we assume that all ETFs operating under the final rule will have to implement processes and systems to compute the median bid-ask spreads and will have to accommodate a new data point on their web page to report this information.[601] We estimate that an ETF will incur a one-time estimated cost of $8,294 to comply with this requirement.[602] In addition, we estimate that an ETF that purchases

Pew Research Center (June 2015), available at *http://assets.pewresearch.org/wp-content/uploads/sites/14/2015/06/2015-06-26_internet-usage-across-demographics-discover_FINAL.pdf* (finding in 2015, 84% of all U.S. adults use the internet). We acknowledge that the benefits of the website disclosure requirement would be attenuated for those investors who lack internet access or otherwise are not able to access ETFs' websites.

[592] *See supra* section IV.B.4.

[593] *See supra* section II.H.2.b.

[594] This estimate is based on the following calculations: 1.5 hours × $284 (senior systems analyst) + 1.5 hours × $331 (senior programmer) + 1 hour × $309 (compliance manager) + 1 hour × $365 (compliance attorney) + $400 for external website development = $1,997.

[595] This estimate is based on the following calculations: 0.25 hours × $284 (senior systems analyst) + 0.25 hours × $331 (senior programmer) + 0.5 hour × $309 (compliance manager) + 0.5 hour × $365 (compliance attorney) = $491.

[596] This estimate is based on the following calculation: ($1,997 + $491) × 1,735 ETFs = $4,315,379.

[597] This estimate represents the average of the percentage of ETFs for which the reporting requirement was triggered at least once in a given year, for those ETFs that could rely on the rule. During the sample period from 2008 to 2018, the percentage of ETFs for which the reporting requirement was triggered at least once varied from 1.5% (2010) to 10% (2008).

[598] *See supra* footnote 359 and accompanying text.

[599] We believe that such disclosure will require 1.25 hours for a compliance attorney and the compliance manager to determine if this requirement has been triggered and produce a draft of the required disclosures + 0.75 hours for a senior programmer and a senior systems analyst to include the information on the website, at a time cost of (1.25 hours × $365 compliance attorney hourly rate) + (1.25 hours × $309 compliance manager hourly rate) + (0.75 hours × $331 senior programmer hourly rate) + (0.75 hours × $284 senior systems analyst hourly rate) in addition to $200 for external website development = $1,504. The annual cost of this requirement for those ETFs that can rely on the rule is calculated as 4.5% × 1,735 ETFs × $1,504 = $117,405. This estimate includes costs for website development, which would only be incurred by an ETF making this disclosure for the first time.

[600] *See, e.g.,* Vanguard Comment Letter (also pointing out that, in certain circumstances, broker-dealers can obtain price improvements leading to market orders being executed either within the NBBO or at midpoint or better).

[601] Based on a review of 150 randomly selected ETFs, which included 100 index-based ETFs and 50 actively managed ETFs, 10 percent of index-based ETFs and 1.5 percent of actively managed ETFs provided some information on bid-ask spreads. However, all ETFs that provided such information displayed bid-ask spreads only for a particular point in time (for example as of the time the prior day's NAV was struck) rather than median bid-ask spreads computed for the most recent 30-day period, as required by the rule.

[602] This estimate is based on the following calculations: 6.5 hours × $284 (senior systems analyst) + 6.5 hours × $331 (senior programmer) + 4 hour × $309 (compliance manager) + 4 hour × $365 (compliance attorney) + $1,600 for external website development = $8,294.

NBBO information to compute bid-ask spread will incur an additional ongoing annual cost of $4,042.[603] Assuming that all ETFs will have to purchase data to satisfy this requirement, we estimate an upper bound for the total industry cost in the first year of $21,401,659.[604]

The requirement of disclosures on ETFs' websites we are adopting will enable investors to more readily obtain certain key information for individual ETFs, potentially resulting in better informed trading decisions.[605] The conditions standardize certain content requirements to facilitate investor analysis of information while allowing ETFs to select a layout for displaying the required information that the individual ETF finds most efficient and appropriate for its website. Because the information will be made available on individual websites, in the layout chosen by the ETF, we acknowledge that an investor's ability to efficiently extract information from website disclosures for purposes of aggregation, comparison, and analysis across multiple ETFs and time periods may be limited. Investors seeking to compare multiple ETFs will have to visit the website of every ETF, navigate to the relevant section of the website, and extract the information provided in the layout chosen by the fund. Depending on the manner in which a typical fund investor will use the website disclosures, these considerations may decrease the information benefits of the new disclosures. However, we recognize that investors may rely on third-party providers that aggregate such information for all ETFs into a structured format that investors can more easily access and process for the purpose of statistical and comparative analyses. While investors may incur costs of obtaining information from third-party service providers, it will likely be lower than the cost they would incur if they performed the collection themselves, and the cost of such services may otherwise be reduced as a result of competition among service providers. Overall, we believe that requiring ETFs to provide this information on their websites will ultimately provide an efficient means for facilitating investor access to information.

c. Recordkeeping

The rule will require ETFs to preserve and maintain copies of all written authorized participant agreements for at least five years, the first two years in an easily accessible place. This requirement will provide Commission examination staff with a basis to evaluate whether the authorized participant agreement is in compliance with the rule and other provisions of the Investment Company Act and the rules thereunder, and also will promote internal supervision and compliance.[606] As the agreement forms the contractual foundation on which authorized participants engage in arbitrage activity, compliance of the agreement with applicable rules is important for the arbitrage mechanism to function properly.

We also are requiring ETFs to maintain information regarding the baskets exchanged with authorized participants on each business day, including a record identifying any custom basket and stating that the custom basket complies with the ETF's custom basket policies and procedures. We believe that these records will help our examination staff understand how baskets are being used by ETFs, evaluate compliance with the rule and other provisions of the Act and rules thereunder and other applicable law, and examine for potential overreach by ETFs in connection with the use of custom baskets or transactions with affiliates.

Existing exemptive orders have not required ETFs to preserve and maintain copies of authorized participant agreements or information about basket composition, or to prepare and maintain a record identifying each custom basket and stating that custom baskets comply with the custom basket policies and procedures. However, we believe that most ETFs, as a matter of established business practice, already preserve and maintain copies of authorized participant agreements as well as data on baskets used.[607]

As discussed below in section V.B.2, we estimate the average annual cost for an ETF to comply with these recordkeeping requirements is $393 per year.[608] Assuming that (1) 80% of ETFs already preserve and maintain copies of authorized participant agreements as well as information on basket composition; (2) no ETF currently maintains records identifying any custom basket and stating that the custom basket complies with the ETF's custom basket policies and procedures; and (3) 25% of the total annual recordkeeping costs can be attributed to the new recordkeeping requirements for custom baskets, the total industry cost for ETFs that can rely on the rule will be $544,790 per year.[609]

d. Master-Feeder Relief

We will rescind the master-feeder relief granted to ETFs, with the exception of master-feeder relief that funds relied on as of the date of the 2018 ETF Proposing Release (June 28, 2018). We are rescinding such relief because there generally is a lack of industry interest in ETF master-feeder arrangements, and certain master-feeder arrangements raise policy concerns, as discussed above in section II.F. While there are currently many exemptive orders that contain the master-feeder relief, it is our understanding that only one fund complex currently relies on this relief to structure master-feeder arrangements with one master and one feeder fund each.[610] We will grandfather existing master-feeder arrangements involving ETF feeder funds, but prevent the formation of new ones under existing orders, by amending relevant exemptive orders.[611] As a result, we do

[603] In the 2018 ETF Proposing Release, we stated that we believed ETFs currently maintain a record of historical price data as a matter of current business practices which could be used to satisfy the requirement to compute bid-ask spreads at a nominal cost. *See* 2018 ETF Proposing Release, *supra* footnote 7, at section III.C.1. Some commenters, however, suggested that some ETFs would incur costs to purchase data collected by third parties, although these commenters did not provide specific estimates of such costs. *See, e.g.,* BNY Mellon Comment Letter; John Hancock Comment Letter. Assuming a data cost of $2,500 per year, we estimate that an ETF that would need to purchase the data will incur the following ongoing cost: 1 hours × $284 (senior systems analyst) + 1 hours × $331 (senior programmer) + 1.375 hours × $309 (compliance manager) + 1.375 hours × $365 (compliance attorney) + $2,500 (data) = $4,042.

[604] This estimate is based on the following calculation: ($8,294 + $4,042) × 1,735 ETFs = $21,401,659.

[605] *See supra* footnote 226.

[606] ETFs already are required to provide some information about authorized participants on Form N–CEN, including the name of each authorized participant, additional identifying information, and the dollar values of the fund shares the authorized participant purchased and redeemed during the reporting period. However, this information alone would not be sufficient for Commission staff to evaluate whether a fund's authorized participant agreements are in compliance with the rule.

[607] One commenter stated that ETFs generally already implement robust recordkeeping programs. *See* Invesco Comment Letter.

[608] *See infra* section V.B.3, Table 12. An average ETF would have to maintain and store 24 authorized participant agreements. *See also supra* footnotes 548–550 and accompanying text.

[609] This estimate is based on the following calculation: 1,735 ETFs × (20% + 80% * 75%) × $393 = $544,790. The final rule will require ETFs to maintain additional information on basket composition (ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket). We believe that this additional requirement does not present a significant additional recordkeeping cost.

[610] *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.339 and accompanying text. *See also supra* footnote 449 and accompanying text.

[611] Without this relief, the affected funds could continue operating by effecting creation and redemption transactions between authorized

Continued

not expect that the rescission of the existing master-feeder relief will impose costs on ETFs that currently rely on the relief to structure master-feeder arrangements. However, to the extent that an ETF without a grandfathered master-feeder arrangement would apply for an exemptive order that grants master-feeder relief, such an ETF would incur costs associated with the exemptive order application.[612] At the same time, the rescission of the relief may benefit investors in prospective feeder ETFs to the extent that it protects them from any concerns associated with feeder ETFs discussed above.[613]

2. Amendments to Forms N–1A, N–8B–2, and N–CEN

The amendments to Forms N–1A and N–8B–2 are designed to provide investors with tailored information regarding the costs associated with investing in ETFs.[614] As discussed in section II.H above, we believe that the new disclosures will benefit investors by helping them better understand and compare specific funds, potentially resulting in more informed investment decisions, more efficient allocation of investor capital, and greater competition for investor capital among funds.

We are amending Forms N–1A and N–8B–2 to include information on ETF trading and associated costs that we anticipate will help investors better understand costs specific to ETFs, such as bid-ask spreads.[615] In a departure from the proposal, we are eliminating the Q&A format for these disclosures, which will allow ETFs to determine the format for conveying the required disclosures to investors. In addition, the narrative disclosures will be streamlined and included in Item 6 of Form N–1A, whereas the proposed disclosure in Q&A format would have been included in Item 3. As discussed above in section II.H, we believe that the updated format and location will improve the usefulness of the disclosure to ETF investors.

ETFs will incur costs associated with these new disclosures on Forms N–1A and N–8B–2.[616] ETFs structured as open-end funds are currently required to disclose information about premiums and discounts to NAV per share in reports on Form N–1A. However, UIT ETFs, which file reports with the Commission on Form N–8B–2, are not required to make such disclosures. We estimate that this reporting requirement will increase the incremental cost for UIT ETFs compared to ETFs structured as open-end funds. In addition, ETFs that rely on rule 6c–11 will be exempt from the Form N–1A disclosure requirements related to bid-ask spreads and premiums and discounts to NAV per share (as such disclosures will be required under rule 6c–11 to be provided on their websites), which reduces the incremental cost we estimate for open-end funds that can rely on the rule compared to those that cannot. Taking these considerations into account, we estimate that each ETF that is structured as an open-end fund will incur a one-time cost of $3,799[617] and an ongoing cost of $1,899[618] per year if it can rely on rule 6c–11, and a one-time cost of $6,960[619] and an ongoing cost of $3,480[620] per year if it cannot rely on rule 6c–11. We estimate that a UIT ETF will incur a one-time cost of $8,352[621] and an ongoing cost of $3,480[622] per year. We thus estimate that the total industry cost for this requirement for ETFs in the first year would equal $12,434,736.[623]

As proposed, we are amending Form N–CEN to require identification of ETFs that are relying on rule 6c–11.[624] We believe that this requirement will allow the Commission to better monitor reliance on rule 6c–11 and assist us with our accounting, auditing, and oversight functions, including compliance with the Paperwork Reduction Act. We believe that the incremental cost of this requirement to ETFs is minimal.

D. Effects on Efficiency, Competition, and Capital Formation

This section evaluates the impact of rule 6c–11 and the amendments to Forms N–1A, N–8B–2, and N–CEN on efficiency, competition, and capital formation. However, as discussed in further detail below, the Commission is unable to quantify the effects on efficiency, competition and capital formation either because they are inherently difficult to quantify or because it lacks the information necessary to provide a reasonable estimate.

1. Efficiency

The rule will likely increase total assets of ETFs, as a result of reducing the expense and delay of forming and operating new ETFs organized as open-end funds, reducing the cost for certain ETFs to monitor their own compliance with regulations, and increasing competition among ETFs as discussed below. At the same time, the rule could

participants and the feeder fund (as well as the transactions between the master and feeder fund) in cash rather than in kind. As cash creations and redemptions can be less efficient than in-kind transactions for certain ETFs, this could impose a cost on the ETFs that are part of the fund family. Cash redemptions and creations could also affect the current relationships that funds have with authorized participants if the authorized participants would be unwilling to perform the arbitrage function when receiving cash instead of baskets of securities, which could have unintended spillover effects on the secondary market trading of these funds' shares. Alternatively, these feeder funds may opt to pursue their investment objectives through direct investments in securities and/or other financial instruments, rather than through investments in master funds. Such a restructuring of the funds involved would also lead to costs (primarily associated with legal and accounting work) on the ETFs that are part of the fund family. As a result, if this change would require portfolio transactions to occur at the fund, there could be additional costs, such as lower overall total returns to the fund or investors finding the fund to be a less attractive investment.

[612] One commenter indicated that it has invested resources exploring various approaches to an ETF master-feeder structure. *See* Fidelity Comment Letter.

[613] *See supra* section II.F.

[614] As proposed, we also are amending Forms N–1A and N–8B–2 to include narrative disclosures for both mutual funds and ETFs that will clarify that the fees and expenses reflected in the expense table may be higher for investors if they sell shares of the fund. *See supra* section II.H.2.a.

[615] Rule 6c–11 will require ETFs that rely on the rule to provide the median bid-ask spread for the last thirty calendar days and certain disclosures regarding premiums and discounts on their websites. Our amendments to Forms N–1A and N–8B–2 will require ETFs that do not rely on rule 6c–11 to disclose median bid-ask spread information on their websites or in their prospectus and exclude only those ETFs that provide premium/discount disclosures in accordance with rule 6c–11 from the premium and discount disclosure requirements in Form N–1A.

[616] As discussed in more detail below in section V.E, the ongoing costs of complying with the proposed amendments to Form N–8B–2 for all UIT ETFs, as well as the one-time initial costs for existing UIT ETFs, would accrue to Form S–6.

[617] This estimate is based on the following calculations: 5.46 hours × $365 (compliance attorney) + 5.46 hours × $331 (senior programmer) = $3,799.

[618] This estimate is based on the following calculations: 2.73 hours × $365 (compliance attorney) + 2.73 hours × $331 (senior programmer) = $1,899.

[619] This estimate is based on the following calculations: 10 hours × $365 (compliance attorney) + 10 hours × $331 (senior programmer) = $6,960.

[620] This estimate is based on the following calculations: 5 hours × $365 (compliance attorney) + 5 hours × $331 (senior programmer) = $3,480.

[621] This estimate is based on the following calculations: 12 hours × $365 (compliance attorney) + 12 hours × $331 (senior programmer) = $8,352.

[622] This estimate is based on the following calculations: 5 hours × $365 (compliance attorney) + 5 hours × $331 (senior programmer) = $3,480.

[623] This estimate is based on the following calculation: 1,735 ETFs structured as an open-end fund that can rely on the rule × ($3,799 + $1,899) + 235 ETFs structured as an open-end fund that cannot rely on the rule ($6,960 + $3,480) + 8 UIT ETFs ($8,352 + $3,480) = $12,434,736.

[624] We also are changing the definition of ''authorized participant'' in Form N–CEN to conform the definition with rule 6c–11 by excluding specific reference to an authorized participant's participation in DTC (Item E.2 of Form N–CEN).

lead to a decrease in total assets of other fund types that investors may regard as substitutes, such as certain mutual funds.[625] As a result, ETF ownership (as a percentage of market capitalization) for some securities, such as stocks and bonds, will likely increase, and ownership by other funds, such as mutual funds, will likely decrease. We are aware of only a limited amount of academic literature regarding ETFs. This literature suggests that such a shift in ownership could have a limited effect on the price efficiency (*i.e.,* the extent to which an asset price reflects all public information at any point in time) and liquidity of these portfolio securities.[626]

The literature also suggests that a shift in stock ownership towards ETFs may somewhat improve certain dimensions of price efficiency while possibly attenuating price efficiency along other dimensions. Specifically, the results in one paper suggest that stock prices incorporate systematic information more quickly when they are held in ETF portfolios.[627] The evidence in this paper thus indicates that ETF activity increases stock market efficiency with regard to systematic information, *i.e.,* information relating to market-wide risks. On the other hand, some studies find that an increase in ETF ownership may introduce non-fundamental volatility into stock prices, *i.e.,* cause temporary deviations of stock prices from their fundamental values. For example, one paper finds that ownership by U.S. equity index ETFs is associated with moderately higher volatility among component stocks and asserts that the increased volatility is non-fundamental.[628] Another paper finds that higher authorized participant arbitrage activity in U.S. equity ETFs is associated with a moderately higher correlation of returns among stocks in the ETF's portfolio.[629] The authors observed that changes in the prices of these stocks tend to partially revert over the next trading day and state that the increased co-movement in returns is thus a sign of excessive price movement due to non-fundamental shocks that ETF trading helps propagate.

To a limited extent, the rule could decrease the liquidity of stocks held by ETFs, as one study finds that higher ownership of a stock by U.S. equity ETFs is associated with somewhat lower liquidity as measured by market impact.[630] Conversely, the academic literature offers mixed evidence regarding the impact of ETFs on bond liquidity. While one paper finds that increased ETF ownership is associated with lower bond liquidity for investment grade bonds,[631] another study finds that bonds included in ETFs experience improvements in their liquidity.[632]

A shift in stock ownership towards ETFs could also have an effect on the co-movement of liquidity for stocks held by ETFs. Specifically, one paper observes that the liquidity of a stock with high ETF ownership co-moves with the liquidity of other stocks that also have high ETF ownership.[633] The authors assert that this co-movement in liquidity exposes investors to the possibility that multiple assets in their portfolio will be illiquid at the same time.

Since we do not know the degree to which the rule will increase ETF ownership of stocks and bonds, we are unable to quantify the rule's effects on price efficiency and liquidity. However, the effects documented in the literature surveyed above are generally small, so that we do not anticipate that the rule would have a significant effect on the price efficiency or liquidity of assets held by ETFs.

As a result of the rule's allowance of increased basket flexibility, some ETFs that did not already have this flexibility in their baskets may choose to increase the weight of more liquid securities and decrease the weight of less liquid securities in their baskets compared to their portfolios.[634] During normal market conditions, this may lead those ETFs' shares to trade at smaller bid-ask spreads, thus benefiting investors. Such a reduction in bid-ask spreads by over-weighting more liquid securities may not continue to be possible during stressed market conditions, however, if a large proportion of such an ETF's portfolio securities become less liquid.[635] As a result, the gap between bid-ask spreads of some ETFs' shares during normal and stressed market periods may grow as a result of the rule, which some investors may not anticipate and fail to fully take into account when making their investment decisions.[636]

Finally, the amendments to Forms N–1A and N–8B–2 as well as the additional website disclosures required by rule 6c–11 we are adopting will allow investors and other market participants to better understand and compare ETFs using more relevant and standardized disclosure. For example, the amendments to Item 6 of Form N–1A will add a requirement for ETFs to include a statement that ETF investors may be subject to other expenses that are specific to ETF trading, including

[625] The disclosure requirements will also serve to increase investors' awareness of ETF trading costs, which can be substantial in some cases. As a result, investors who may previously not have been fully aware of these costs may shift their demand away from ETFs and towards other types of funds, such as mutual funds. We believe, however, that the rulemaking as a whole is likely to increase demand for ETFs rather than decrease it.

[626] In documenting the impact of ETF arbitrage on price efficiency and liquidity, the academic literature does not generally distinguish ETFs that could rely on the rule from those that could not. However, these studies investigate a broad range of ETFs with varying degrees of relief including basket flexibility. Therefore, we believe that the subsample of ETFs that could rely on the rule is representative of those used in the academic literature. As a result, we believe that inferences from the academic research generally apply to ETFs that can rely on the rule.

[627] Lawrence Glosten, Suresh Nallareddy, & Yuan Zou, *ETF Trading and Informational Efficiency of Underlying Securities* (Columbia Business School, Research Paper No. 16–71, 2016).

[628] *See* Itzhak Ben-David, Francesco Franzoni & Rabih Moussawi, *Do ETFs Increase Volatility?* (Swiss Finance Institute, Research Paper No. 11–66, 2017). This paper also finds that mutual fund ownership is associated with higher volatility in the underlying indexes. Thus, to the extent that part of the increase in ETF assets would be accompanied by a decrease in mutual fund assets, the net effect on price efficiency would be unclear.

[629] Zhi Da & Sophie Shive, *Exchange Traded Funds and Asset Return Correlations* (Working Paper, 2016).

[630] *See* Sophia J.W. Hamm, *The Effect of ETFs on Stock Liquidity* (Working Paper, 2014). However, the study also finds the same relationship for ownership by index mutual funds. Thus, to the extent that part of the increase in ETF assets would be accompanied by a decrease in mutual fund assets, the net effect on price efficiency would be unclear.

[631] Caitlin Dillon Dannhauser, *The Impact of Innovation: Evidence from Corporate Bond ETFs,* Journal of Financial Economics (forthcoming 2016) (''Dannhauser Article'').

[632] Jayoung Nam, *Market Accessibility, Corporate Bond ETFs, and Liquidity* (Working Paper, 2017).

[633] Vikas Agarwal et al., *Do ETFs Increase the Commonality in Liquidity of Underlying Stocks* (Working Paper, 2017).

[634] This would be the case for those ETFs that hold less liquid securities in their portfolios.

[635] Under rule 22e–4 under the Act, an ETF is required to consider: (i) The relationship between portfolio liquidity and the way in which, and the prices and spreads at which, ETF shares trade, including, the efficiency of the arbitrage mechanism and the level of active participation by market participants (including authorized participants); and (ii) the effect of the composition of baskets on the overall liquidity of the ETF's portfolio as part of its assessment, management and review of liquidity risk. *See* LRM Adopting Release, *supra* footnote 123.

[636] Conversely, some ETFs may choose to decrease, rather than increase, the weight of more liquid securities and increase the weight of less liquid securities in their basket compared to their portfolio in order to reduce transaction costs borne by an ETF's existing/remaining shareholders when the ETF must buy and sell portfolio holdings. This would lead to a reduction in transaction costs for existing/remaining shareholders and to an increase in transactions costs for authorized participants and, ultimately, investors buying and selling ETF shares. We believe that most funds would choose to limit such behavior as they would likely find it to be in their best interest to balance costs imposed on transacting and existing/remaining shareholders.

bid-ask spreads.[637] These costs are not currently required to be disclosed as part of the prospectus. Since these costs are incurred by ETF investors and not mutual fund investors, we believe that adding this disclosure requirement will help investors and other market participants better assess and compare fees and expenses between certain funds and fund types, such as ETFs and mutual funds. Thus, the final rule could help investors make more informed investment decisions that are more suited to their investment objectives. The degree to which investors will benefit from the ability to make more informed investment decisions is inherently difficult to quantify, so we are unable to estimate the size of this benefit.

2. Competition

The rule will likely increase competition among ETFs that can rely on the rule. The first channel through which the rule will likely foster competition is by reducing the costs for ETF sponsors to form new ETFs that comply with the conditions set by the rule. This cost reduction will lower the barriers to entering the ETF market, which will likely lead to increased competition among ETFs that can rely on the rule.

In addition, new ETFs that enter the market in reliance on the rule, as well as those existing ETFs that will have their exemptive relief rescinded and replaced by the rule, will no longer be subject to requirements that vary among exemptive orders.[638] Instead, these ETFs will operate under uniform requirements, which will help promote competition among ETFs that can rely on the rule. An increase in competition among ETFs that can rely on the rule will likely also lead to an increase in competition among those ETFs, ETFs that cannot rely on the rule, and other types of funds and products that investors may perceive to be substitutes for ETFs.[639]

Furthermore, the new website disclosures and amendments to Forms N–1A and N–8B–2 will allow investors to better compare ETFs and mutual funds, which can further foster competition among these types of funds as well as between these types of funds and other types of funds that investors may perceive to be substitutes for ETFs and mutual funds, such as closed-end funds and certain ETPs.

Increased competition will likely lead to lower fees for investors, encourage financial innovation, and increase consumer choice in the markets for ETFs, mutual funds, and other types of funds that investors may perceive to be substitutes.[640] Due to the limited availability of data, however, we are unable to quantify these effects.

To the extent the rule will increase the number and total assets of ETFs, more authorized participants or other market participants that engage in ETF arbitrage, such as hedge funds and principal trading firms, may enter the market. This may lead to increased competition among authorized participants or other market participants and result in authorized participants or other market participants exploiting arbitrage opportunities sooner (*i.e.,* when premiums/discounts to NAV per share are smaller). As a result, bid-ask spreads may tighten and premiums/discounts to NAV per share for ETF shares may decrease. We would expect new entries of authorized participants or other arbitrageurs as a result of the rule to be limited, however, and any effects on bid-ask spreads and premiums/discounts to NAV per share to be small.

3. Capital Formation

The rule may lead to increased capital formation. Specifically, an increase in the demand for ETFs, to the extent that it increases demand for intermediated assets as a whole, will likely spill over into primary markets for equity and debt securities. As a consequence, companies may be able to issue new debt and equity at higher prices in light of the increased demand for these assets in secondary markets created by ETFs and the cost of capital for firms could fall, facilitating capital formation.

The conclusion that an increase in the demand for ETFs may lower the firm's cost of capital is further supported by a paper[641] that finds that bonds with a higher share of ETF ownership have lower expected returns.[642] Due to the limited availability of data, however, we are unable to quantify these effects of the rule on capital formation.

E. Reasonable Alternatives

1. Website Disclosure of Basket Information

Rule 6c–11 does not include a basket publication requirement. As an alternative, we considered requiring an ETF to post on its website one ''published'' basket each business day before the opening of trading of the ETF's shares, as we proposed. This disclosure would allow smaller institutional investors and retail investors that are not NSCC members and do not currently have access to basket information to compare the ETF's ''published basket'' with its portfolio holdings.[643] However, we agree with commenters that the benefit of this information to these investors is likely to be limited, as secondary market arbitrage typically does not require information regarding an ETF's basket composition.[644] In addition, ETFs would incur additional costs associated with this disclosure.[645]

[637] James J. Angel, Todd J. Broms, & Gary L. Gastineau, *ETF Transaction Costs Are Often Higher Than Investors Realize,* Journal of Portfolio Management, Spring 2016, at 65, find that the cost of trading ETF shares depends both on bid-ask spreads as well as premiums and discounts to NAV per share.

[638] Some fund sponsors that operate ETFs outside the scope of rule 6c–11 may voluntarily decide to comply with certain provisions of the rule. For example, one sponsor that operates share class ETFs stated that it intends to modify its current practices, as necessary, to be consistent with the custom basket requirements contemplated by the proposed rule for all its U.S. ETFs. *See* Vanguard Comment Letter.

[639] The types of funds and products that investors may consider substitutes for ETFs would depend on an individual investor's preferences and investment objectives. Other types of products that some investors may consider to be substitutes for ETFs include mutual funds, closed-end funds, and other ETPs, such as exchange-traded notes and commodity pools.

[640] The rule will likely lead to increased competition both among ETFs that can rely on the rule. as well as between ETFs that can rely on the rule and those that cannot, to the extent that investors perceive these ETFs as substitutes. While we believe that increased competition generally is conducive to innovation, any increased competition in the ETF market resulting from the rule will be more likely to involve novel ETFs that will continue to need to obtain exemptive relief from the Commission.

[641] Dannhauser Article, *supra* footnote 632.

[642] We acknowledge that there is research (*see* Yakov Amihud & Haim Mendelson, *Asset Pricing and the Bid-Ask Spread,* 17 Journal of Financial Economics 223 (1986)) that provides evidence that expected returns of an asset are positively associated with its liquidity. As discussed above, the academic literature suggests that stocks with a higher share of ETF ownership have lower liquidity (whereas the evidence on the effect of underlying bonds is mixed). Thus, there may be an offsetting effect that could weaken the potential benefits of the rule for capital formation through new equity issuances by firms.

[643] Commenters stated that authorized participants already have access to basket information through the daily portfolio composition file provided to NSCC. In addition, other institutional investors that use basket information for hedging purposes, such as an investor using an authorized participant as an agent, have access to this information through the NSCC, an intermediary (such as an authorized participant), or the ETF itself. *See supra* section II.C.5.c.

[644] *See, e.g.,* CSIM Comment Letter; ICI Comment Letter.

[645] Our exemptive orders have not included requirements for daily website disclosures of ETF baskets, though some exemptive orders contemplate disclosure of daily basket assets through NSCC. Since specifying basket assets is part of the regular operation of an ETF, we believe that all ETFs already have the required data available to them. In addition, we believe that most ETFs already have systems (such as computer equipment, an internet connection, and a website) in place that can be used

We also considered requiring an ETF to publish information regarding every custom basket used by the ETF after the close of trading on each business day. This information could reveal whether an authorized participant has pressured an ETF into accepting illiquid securities in exchange for liquid ETF shares (*i.e.,* dumping) or into giving the authorized participant desirable securities in exchange for ETF shares tendered for redemption (*i.e.,* cherry-picking) by comparing an ETF's portfolio assets and published basket to the baskets used by various authorized participants throughout the day.

However, the rule contains conditions for basket policies and procedures, which seek to prevent overreaching. Moreover, the rule will require an ETF to maintain records regarding the baskets used, which will allow Commission staff to examine an ETF's use of basket flexibility. We also agree with commenters that requiring publication of all baskets could disadvantage an ETF and its shareholders by allowing market participants to front-run trades by authorized participants (or other arbitrageurs that use an authorized participant as an agent) in basket securities, particularly for those ETFs that have more frequent primary market transactions.[646]

Consequently, we believe that the risk for abusive practices under the rule will be low while, at the same time, the rule will avoid additional operational and compliance costs for ETFs to post and review the information as well as potential costs associated with front-running trades in basket securities under the alternative.

2. Disclosure of ETF Premiums or Discounts Greater Than 2%

As proposed, the rule will require any ETF whose premium or discount was greater than 2% for more than seven consecutive trading days to post that information on its website, along with a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount. One commenter suggested that we raise the threshold for the size of the premiums or discounts to five or ten percent while shortening the period over which the premium or discount has to be sustained for the requirement to trigger.[647] Based on this suggestion, we considered an alternative that would require any ETF whose premium or discount was greater than five percent for more than three consecutive trading days to post that information on its website, along with a discussion as required under the rule.

Under both the rule and the alternative, ETFs with premiums or discounts greater than five percent for more than seven consecutive trading days would provide the disclosure. The disclosure threshold under the rule will also capture ETFs with premiums or discounts greater than two and up to five percent for more than seven consecutive trading days, which would not be captured under the alternative. Conversely, the disclosure threshold under the alternative would also capture ETFs with premiums or discounts greater than five percent for between three and six consecutive trading days, which will not be captured under the rule.

We estimate that 1.7 percent of those ETFs that can rely on the rule would trigger the alternative disclosure threshold per year, compared to 4.5 percent under the rule. From 2008 and 2018, the percentage of ETFs that would have triggered the requirement would have been largest in 2008. In that year, 4.6 percent of ETFs that could have relied on the rule would have triggered the alternative threshold, compared to 10 percent under the rule.[648] In addition, an ETF that triggers the reporting requirement under the alternative would make its disclosure sooner after the premium or discount first exceeds the threshold, as the measurement period is shorter compared to the rule.

The lower incidence of reporting under the alternative would decrease the costs incurred by ETFs associated with making the disclosure,[649] but also reduce the reporting of persistent premiums and discounts available to investors in that it would eliminate reporting of discounts below the 5% threshold. While the shorter observation period under the alternative would make the information about premiums and discounts available to investors sooner, rule 6c–11 will require ETFs to disclose the prior day's premium/discount to NAV per share on its website every day, so that timely information about the size of ETF's premiums/discounts will still be available to investors under the rule.

Another commenter suggested that we adopt a materiality standard rather than a fixed numerical threshold to trigger the reporting requirement.[650] We considered an alternative under which each ETF would make its own determination as to when a premium/discount to NAV per share is material and thus would be reported. As a result, ETFs would almost certainly differ in the size and duration of a premium/discount that they would consider to be material. In addition, ETFs might adopt varying criteria to determine whether a premium/discount is deemed material based on the asset class of the ETF or general market conditions. While we are unable to predict how the alternative would impact the frequency of reporting compared to the rule, we believe that the alternative might lead to inconsistent reporting practices among ETFs, which would likely reduce the usefulness of the requirement to investors, compared to the rule.

3. Website and Prospectus Disclosure of the Median Bid-Ask Spread Calculated Over the Most Recent 1-Year Period

Rule 6c–11 will require an ETF to disclose the median bid-ask spread calculated over the most recent 30-day period on its website.[651] As an alternative, we considered requiring an ETF to disclose the median bid-ask spread for the ETF's most recent fiscal year on its website and in its prospectus, as proposed.

We agree with commenters that computing the median bid-ask spread over a 30-day rolling period, rather than over the proposed 1-year lookback period, may provide a more accurate predictor of trading costs for newly launched ETFs whose bid-ask spreads may tighten as the ETFs mature.[652] In addition, as an ETF's prospectus cannot be updated every day, we believe it is appropriate to require ETFs to make this

for processing this data and uploading it to their websites. However, these ETFs would still incur the costs associated with establishing and following (potentially automated) processes for processing and uploading this data to their websites.

[646] *See, e.g.,* ICI Comment Letter; SSGA Comment Letter I; Vanguard Comment Letter.

[647] Nasdaq Comment Letter.

[648] *See supra* footnote 598 and accompanying text. Our estimate of the percentage of ETFs that would have to satisfy the requirement under the alternative is based on the same methodology and data as our estimate for the rule's reporting threshold.

[649] We estimate a total annual industry cost of $47,457,745 (= 1.7% × 1,735 ETFs × $1,609). This estimate uses the same assumptions as our estimate of the cost of this requirement under the rule. *See supra* footnote 600 and accompanying text.

[650] John Hancock Comment Letter (recommending a materiality standard instead of a 2% threshold).

[651] Our amendments to Form N–1A will provide ETFs that do not rely on rule 6c–11 with the option to provide the same information on its website or the median bid-ask spread over the ETF's most recent fiscal year in its prospectus. *See supra* section II.H.2.b.

[652] *See supra* footnote 381 and accompanying text. Conversely, there may also be instances where future bid-ask spreads may be better predicted by the median bid-ask spread computed over a 1-year lookback period, as compared to a 30-day rolling period (*e.g.,* when recent bid-ask spreads are not representative of how an ETF typically has traded.

disclosure on their websites. As a result, we believe that requiring ETFs to disclose the median bid-ask spread over the most recent 30-day period on their websites will increase the benefits of the bid-ask spread disclosure to investors compared to the alternative, particularly for newly-launched ETFs.

4. Additional Disclosures Showing the Impact of Bid-Ask Spreads

We considered amending Forms N–1A and N–8B–2 to require an ETF to provide: (1) Examples in the ETF's prospectus showing how bid-ask spreads impact the return on a hypothetical investment for both buy-and-hold and frequent traders; and (2) an interactive calculator on the ETF's website that would allow an investor to customize the hypothetical bid-ask spread calculations to its specific investing situation, as proposed. Some investors may find the additional disclosures under this alternative useful to understand the effect of transaction costs resulting from bid-ask spreads on their investments; however, we agree with commenters that this benefit could be diminished by over-concentrating investor focus on bid-ask spreads, thereby potentially obscuring the importance of other components of ETF transaction costs (*e.g.,* order size, market conditions, and the extent to which a broker-dealer improves upon quoted bid-ask spreads).[653] In addition, the omission of these requirements will save ETFs the costs associated with providing examples showing how bid-ask spreads impact the return on a hypothetical investment and implementing the interactive calculator on its website.

5. Website Disclosure of a Modified IIV

As proposed, rule 6c–11 will not require ETFs to disseminate IIV as a condition for reliance on the rule. As an alternative, we considered requiring an ETF to publicly disseminate a modified IIV on its website on a real time basis as a condition to rule 6c–11, requiring ETFs to calculate IIVs more frequently and in a more accessible manner. We also considered creating a methodology that takes into account circumstances when market prices for underlying assets are not available or should not be used to reflect the ETF's intraday value. As we discussed above in section II.C.3, such a modified IIV would benefit retail and less sophisticated institutional investors by allowing them to better evaluate the value of an ETF intra-day. However, we are concerned that these modifications would not cure the shortcomings of IIV for ETFs in a uniform manner. We encourage the ETF industry to undertake efforts to develop intraday value metrics targeted at these investors as we believe that ETFs are in a position to consider and develop tailored metrics for ETFs holding different asset classes in a format that is useful for retail investors.

6. The Use of a Structured Format for Additional Website Disclosures and the Filing of Additional Website Disclosures in a Structured Format on EDGAR

The rule will require ETFs to post on their websites certain disclosures to enable investors to more readily obtain certain key metrics for individual ETFs. As an alternative, we considered requiring ETFs to post the disclosures in a structured format on their websites. Structured disclosures are made machine-readable by having reported disclosure items labeled (tagged) using a markup language that can be processed by software for analysis.[654] The resulting standardization under this alternative would allow for extraction, aggregation, comparison, and analysis of reported information through significantly more automated means than is possible with unstructured formats such as HTML.[655] This alternative would facilitate the extraction and analysis through automated means of an individual fund's disclosures over time which would offer the greatest benefit for higher-frequency ETF disclosures and potentially the comparison of disclosures across a small number of ETFs. However, requiring a structured disclosure format would not lower the burden on investors and other data users of separately visiting each website to obtain each ETF's disclosure.

The structured data requirement could impose a cost on ETFs of tagging the information in a structured format, particularly to the extent that ETFs do not otherwise structure this data in this manner for their own purposes.[656] However, we believe that if the XML format, for example, were used for structuring the additional disclosure, the incremental cost of tagging information in each such disclosure would likely be relatively modest.[657]

As another alternative, we considered requiring ETFs to make the additional website disclosures available in a centralized repository in a structured format, such as by filing them on EDGAR.[658] Making the information available in a structured format on EDGAR would likely improve its accessibility and the ability of investors, the Commission, and other data users, such as third-party data aggregators, to efficiently extract information for purposes of aggregation, comparison, and analysis of information across multiple funds and time periods.[659] Requiring the information to be filed on EDGAR also would enable data users to retain access to such historical information in the event that such information is subsequently removed from the fund's website.[660] We recognize that filers might incur

[653] *See, e.g.,* Vanguard Comment. *See also* Eaton Vance Comment Letter.

[654] Structured information can be stored, shared, and presented in different systems or platforms. Standardized markup languages, such as XML or XBRL, use sets of data element tags for each required reporting element, referred to as taxonomies.

[655] Several commenters agreed with our assessment of the benefits of a structured disclosure format. One commenter stated that ''having such information submitted in a standardized, structured format to the Commission and available publicly would aid comparison and analysis.'' The commenter further indicated that such information should be provided in the XBRL format on a daily basis. *See* Morningstar Comment Letter. Another commenter expressed general support for having ''standardized basket reporting in XBRL.'' *See* Angel Comment Letter. Another commenter recommended that ETFs ''be required to disclose their daily portfolio holdings using a common downloadable or machine-readable format specified by the Commission.'' *See* Eaton Vance Comment Letter. A different commenter recommended that ''portfolio holdings information be supplied in a standard file format with comma-separated value.'' See SSGA Comment Letter I.

[656] *See, e.g.,* CSIM Comment Letter (stating that ''[t]he alternatives described in the proposal, including the use of structured disclosures, will not be user-friendly for individual investors and will incur unnecessary costs to the ETF.'').

[657] For example, based on staff experience with XML filings, the costs of tagging the information in XML are minimal given the technology that would be used to structure the data. XML is a widely used data format, and based on the Commission's understanding of current practices, most reporting persons and third party service providers have production systems already in place to report schedules of investments and other information. Therefore, we believe systems would be able to accommodate XML data without significant costs, and large-scale changes would likely not be necessary to output structured data files.

[658] The Commission has previously adopted rules requiring the structuring of certain information disclosed by funds. *See, e.g.,* Reporting Modernization Adopting Release, *supra* footnote 263; Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10059 (Mar. 4, 2010)]; Interactive Data for Mutual Fund Risk/Return Summary, Investment Company Act Release No. 28617 (Feb. 11, 2009) [74 FR 7747 (Feb. 19, 2009)].

[659] One commenter agreed with the assessment in the 2018 ETF Proposing Release of the benefits of making the additional website disclosures available in a centralized repository in a structured format, stating that ''[a]ll holdings and basket information should be filed in a central location (such as EDGAR) in a common format. It is too difficult to search many funds groups for this information and then putting it in a common format for analysis.'' *See* Reagan Comment Letter.

[660] *See* Reagan Comment Letter.

additional costs under this alternative, compared to the requirement in the rule to post the additional disclosures in an unstructured format on fund websites.[661] Such costs would likely vary across filers, depending on the systems and processes they currently have in place, such as for internal reporting, posting of website updates, and submission of regulatory filings, and the manner in which filers currently maintain data required for the additional disclosures under the final rule.[662]

7. Pro Rata Baskets

Rule 6c–11 will require ETFs relying on the rule to adopt and implement written policies and procedures that govern the construction of basket assets and the process that will be used for the acceptance of basket assets. As an alternative, we considered requiring that an ETF's basket generally correspond *pro rata* to its portfolio holdings, while identifying certain limited circumstances under which an ETF may use a non-*pro rata* basket, as we have done in our exemptive orders since approximately 2006.[663]

The requirement included in these orders was designed to address the risk that an authorized participant or other market participant could take advantage of its relationship with the ETF (*i.e.,* engage in cherry picking or dumping). However, we believe that the rule's additional policies and procedures requirements for custom baskets will provide a principles-based approach that is designed to limit potential abuses so that they would be unlikely to cause significant harm to investors. In addition, we believe that the increased basket flexibility under the rule will benefit the effective functioning of the arbitrage mechanism, particularly benefiting fixed-income, international, and actively managed ETFs.[664]

8. Treatment of Existing Exemptive Relief

As proposed, we will rescind the exemptive relief we have issued to ETFs that will be permitted to rely on the rule. As an alternative, we considered allowing ETFs with existing exemptive relief in orders that do not contain a self-termination clause to continue operating under their relief rather than requiring them to operate in reliance on the rule.

The Commission believes that allowing ETFs to continue operating under their existing relief would create differences in the conditions under which funds that would otherwise be subject to rule 6c–11 operate. Specifically, some ETFs that determine they do not need the additional flexibility (*e.g.,* basket flexibility) the rule will provide could choose to continue operating under their existing relief rather than in reliance on conditions of the rule, such as standardized presentation of portfolio holdings. This self-selection would perpetuate existing disparity in the conditions under which these ETFs are allowed to operate.

Measured against the baseline, the alternative would thus have smaller benefits arising from improved disclosure. For example, an ETF that chose to continue to operate under its existing exemptive relief would not be required to present its portfolio holdings in the standardized format prescribed by rule 6c–11. As discussed in section IV.C.1.b.i above, we believe that this requirement will benefit investors of ETFs that are subject to rule 6c–11 by allowing them to more easily identify arbitrage opportunities and compare ETFs that have similar investment objectives. In addition, the alternative would not level the playing field among ETFs subject to rule 6c–11 with regard to these conditions and thus not be as effective at promoting product competition as the rule. One commenter agreed, stating that the rescission of the orders will further the Commission's regulatory goal of creating a consistent regulatory framework for ETFs.[665] In addition, it would be more difficult for the Commission to evaluate compliance with applicable law under the alternative compared to the rule, as some of the ETFs whose exemptive relief we will rescind could choose to continue to operate under their exemptive relief. The Commission also believes that the costs to funds associated with rescinding the existing exemptive relief would be minimal, as we anticipate that substantially all ETFs whose relief will be rescinded will be able to continue operating with only minor adjustments, other than being required to develop basket asset policies and procedures.[666]

9. ETFs Organized as UITs

Rule 6c–11 will be available only to ETFs that are organized as open-end funds.[667] As an alternative, we considered including ETFs organized as UITs in the scope of the rule. However, as discussed above in section II.A.1, we believe that the terms and conditions of the existing exemptive orders for UITs are appropriately tailored to address the unique features of the UIT structure.

In addition, as ETFs have greater investment flexibility under the open-end fund structure than the UIT structure, we believe that most new ETFs entering into the market will prefer to operate under the open-end fund structure rather than the UIT structure. No new UIT ETFs have come to market in recent years, and we do not think that there would be significant economic benefits to including UITs in the scope of the rule.[668]

10. Treatment of Leveraged/Inverse ETFs

As discussed in section II.A.3 above, leveraged/inverse ETFs will not be able to rely on final rule 6c–11. As an alternative, we considered permitting leveraged/inverse ETFs to rely on the rule, while maintaining the status quo of existing exemptive orders with respect to the amount of leveraged market exposure that leveraged/inverse ETFs may obtain (*i.e.,* 300% of the return or inverse return).[669]

This alternative could benefit competition among leveraged/inverse ETFs as compared to the baseline, as fund sponsors that currently do not have an exemptive order permitting them to operate this type of ETF could enter the market. As a result, fees for leveraged/inverse ETFs would likely decrease and their assets could increase.

[661] *See* Invesco Comment Letter (supporting dissemination via the ETF sponsor's website and opposing any additional dissemination requirements, such as filing on EDGAR, stating that building a separate data feed would involve additional costs and internal resources).

[662] Such costs would also depend on the specific nature of the EDGAR filing requirement under this alternative.

[663] ETFs whose orders we are rescinding and that are operating under exemptive orders issued before approximately 2006, which included few explicit restrictions, would have reduced basket flexibility under the alternative compared to the baseline in that they are required to adopt custom basket policies and procedures under rule 6c–11.

[664] Section IV.C.1.b.i *supra* discusses the possibility that some ETFs may use the increased basket flexibility of the rule to over- or under-weight securities in their baskets compared to their portfolios based on the liquidity of these securities. Such a practice would not be possible under the alternative that would require an ETF's basket to generally correspond *pro rata* to its portfolio holdings.

[665] *See supra* footnote 455 and accompanying text.

[666] Under the alternative, some ETFs may volunarily change operational or compliance functions in order to be able to operate under the rule, if this provides the ETFs increased basket flexibility compared to operating under their existing exemptive orders.

[667] While the vast majority of ETFs currently in operation are organized as open-end funds, some early ETFs, which currently have a significant amount of assets, are organized as UITs. Examples include SPDR S&P 500 ETF Trust (SPY) and PowerShares QQQ Trust, Series 1 (QQQ).

[668] ETFs sponsors that plan to launch a new ETF organized as a UIT will continue to be able to rely on the exemptive order process.

[669] *See supra* footnote 72.

However, as discussed in detail in section II.A.3 above, while leveraged/inverse ETFs are structurally and operationally similar to other types of ETFs within the scope of rule 6c–11, we believe it is premature to permit sponsors to form and operate leveraged/inverse ETFs in reliance on the rule without first addressing the investor protection purposes and concerns underlying section 18 of the Act. We therefore believe that the Commission should first complete its broader consideration of the use of derivatives by registered funds before considering allowing leveraged/inverse ETFs to rely on the rule.

V. Paperwork Reduction Act

A. Introduction

Rule 6c–11 will result in new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[670] In addition, the amendments to Form N–1A, Form N–8B–2, and Form N–CEN will impact the collection of information burden under those forms and Form S–6.[671] Rule 6c–11 also will impact the current collection of information burden of rule 0–2 under the Act.[672]

The titles for the existing collections of information are: ''Form N–1A under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration Statement for Open-End Management Companies'' (OMB No. 3235–0307); ''Form N–8B–2 under the Investment Company Act of 1940, Registration Statement of Unit Investment Trusts Which are Currently Issuing Securities'' (OMB No. 3235–0186); ''Form S–6 [17 CFR 239.19], for registration under the Securities Act of 1933 of Unit Investment Trusts registered on Form N–8B–2'' (OMB Control No. 3235–0184); ''Form N–CEN'' (OMB Control No. 3235–0730); and ''Rule 0–2 under the Investment Company Act of 1940, General Requirements of Papers and Applications'' (OMB Control No. 3235–0636). The title for the new collection of information would be: ''Rule 6c–11 under the Investment Company Act of 1940, 'Exchange-traded funds.' '' The Commission is submitting these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

We published notice soliciting comments on the collection of information requirements in the 2018 ETF Proposing Release and submitted the proposed collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. We received no comments on the collection of information requirements. We discuss below the collection of information burdens associated with rule 6c–11 and its impact on rule 0–2 as well as the amendments to Forms N–1A, N–8B–2, S–6 and N–CEN.

B. Rule 6c–11

Rule 6c–11 will permit ETFs that satisfy certain conditions to operate without first obtaining an exemptive order from the Commission. The rule is designed to create a consistent, transparent, and efficient regulatory framework for such ETFs and facilitate greater competition and innovation among ETFs. The rule attempts to eliminate historical distinctions and conditions that we no longer believe are necessary and thus appropriately level the playing field for open-end ETFs that pursue the same or similar investment strategies.

Rule 6c–11 will require an ETF to disclose certain information on its website, to maintain certain records, and to adopt and implement written policies and procedures governing its constructions of baskets, as well as written policies and procedures that set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders. These requirements are collections of information under the PRA.

The respondents to rule 6c–11 will be ETFs registered as open-end management investment companies other than share class ETFs, leveraged/inverse ETFs, or non-transparent ETFs. This collection will not be mandatory, but will be necessary for those ETFs seeking to operate without individual exemptive orders, including all ETFs whose existing exemptive orders will be rescinded. In the 2018 ETF Proposing Release, we estimated that 1,635 ETFs would likely rely on rule 6c–11.[673] We did not receive public comment on this estimate, but are updating the estimate to 1,735 ETFs to reflect industry data as of December 31, 2018.[674] Information provided to the Commission in connection with staff examinations or investigations will be kept confidential subject to the provisions of applicable law.

1. Website Disclosures

Rule 6c–11 will require an ETF to disclose on its website, each business day, the portfolio holdings that will form the basis for each calculation of NAV per share.[675] The rule will require that the portfolio holdings information contain specified information, including description and amount of each position.[676] Additionally, the rule will require an ETF to disclose on its website: (i) The ETF's NAV per share, market price, and premium or discount, each as of the end of the prior business day; (ii) a tabular chart and line graph showing the ETF's premiums and discounts for the most recently completed calendar year and the most recently completed calendar quarters of the current year (or for the life of the fund if shorter); and (iii) the ETF's median bid-ask spread over the last thirty calendar days.[677]

Rule 6c–11(c)(1)(vi) also will require any ETF whose premium or discount was greater than 2% for more than seven consecutive trading days to post that information on its website, along with a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount.[678] Given the threshold for this requirement, we do not believe that many ETFs will be required to disclose this information on a routine basis. In the 2018 ETF Proposing Release, we estimated that all ETFs will be required to make this disclosure only once in their lifetime.[679] Therefore, we believed that this requirement will impose only initial costs and that there will be no ongoing costs associated with it.[680]

[670] 44 U.S.C. 3501–3520.

[671] 17 CFR 274.11A; 17 CFR 274.12; 17 CFR part 101; 17 CFR 239.16.

[672] 17 CFR 270.0–2.

[673] 2018 ETF Proposing Release, *supra* footnote 7, at section IV.B. This estimate did not include UIT ETFs, share class ETFs, leveraged/inverse ETFs, or non-transparent ETFs. *Id.*

[674] This figure is based on a staff analysis of Bloomberg data.

[675] Rule 6c–11(c)(1)(i).

[676] Rule 6c–11(c)(1)(i).

[677] Rule 6c–11(c)(1)(ii)–(v).

[678] Rule 6c–11(c)(1)(vi). This information would be posted on the trading day immediately following the eighth consecutive trading day on which the ETF had a premium or discount greater than 2% and be maintained on the ETF's website for at least one year following the first day it was posted. *See supra* section II.C.6.c.

[679] 2018 ETF Proposing Release, *supra* footnote 7, at section IV.B.1.

[680] For purposes of this analysis, we estimate that 1,735 ETFs would be required to make this disclosure at least once in their lifetime.

TABLE 11—WEBSITE DISCLOSURE PRA ESTIMATES

	Initial hours	Annual hours [1]		Wage rate [2]	Internal time costs	Initial external cost burden	Annual external cost burden
Proposed Estimates [3]							
Website development	7.5	2.5 hours	×	$274 (senior systems analyst)	$685	$2,000	$666.65
	7.5	2.5 hours	×	$319 (senior programmer)	$797.50.		
Review of website disclosures	5	1.7 hours	×	$298 (compliance manager)	$506.60.		
	5	1.7 hours	×	$352 (compliance attorney)	$598.40.		
Website updates		1 hour	×	$274 (senior systems analyst)	$274.		
		1 hour	×	$319 (senior programmer)	$319.		
Review of updated website disclosure.		1.25 hours	×	$298 (compliance manager)	$372.50.		
		1.25 hours	×	$352 (compliance attorney)	$440.		
Total annual burden per ETF.	25	13.3 hours			$3,971.30	$2,000	$666.65
Number of ETFs		× 1,635			× 1,635	× 1,635	× 1,635
Total annual burden		21,745.5 hours			$6,493,075.50	$3,270,000	$1,089,972.75
Final Estimates							
Website development	[4] 11.25	3.75 hours	×	$284 (senior systems analyst) [5].	$1,065	$3,000 [4]	$1,000
	[4] 11.25	3.75 hours	×	$331 (senior programmer) [5]	$1,241.25.		
Review of website disclosures	[4] 7.5	2.5 hours	×	$309 (compliance manager) [5]	$772.50.		
	[4] 7.5	2.5 hours	×	$365 (compliance attorney) [5]	$912.50.		
Website updates		1.5 hours [4]	×	$284 (senior systems analyst) [5].	$426.		
		1.5 hours [4]	×	$331 (senior programmer) [5]	$496.50.		
Review of updated website disclosure.		1.875 hours [4]	×	$309 (compliance manager) [5]	$579.38.		
		1.875 hours [4]	×	$365 (compliance attorney) [5]	$684.36.		
Total annual burden per ETF.	37.5	19.25 hours			$6,177.49	$3,000	$1,000
Number of ETFs		× 1,735 [5]			× 1,735 [5]	× 1,735 [5]	× 1,735 [5]
Total annual burden		33,398.75 hours			$10,717,945.15	$5,205,000	$1,735,000

Notes:
[1] Includes initial burden estimates annualized over a three-year period.
[2] *See supra* footnote 568.
[3] 2018 Proposing Release, *supra* footnote 7, at section IV.B.1.
[4] Estimate revised to reflect modifications from the proposal.
[5] Estimate revised to reflect updated industry data.

Table 11 above summarizes the proposed PRA estimates included in the 2018 ETF Proposing Release and the final PRA estimates associated with the website disclosures in rule 6c–11.[681] We did not receive public comment on our proposed estimates, but we have revised them as a result of updated industry data and modifications from the proposal. Specifically, we are increasing the initial and ongoing internal and external burden estimates by 50 percent each to account for our modification to the proposal that will require ETFs to disclose median bid-ask spread information on their websites as part of rule 6c–11, partially offset by the elimination of the proposed published basket requirement and the modification to the proposed requirement to disclose portfolio holdings related to timing and presentation of those holdings.[682] In addition, we are revising the estimated wage rates and estimated number of ETFs that will be subject to the rule to reflect updated industry data.

2. Recordkeeping

Rule 6c–11 will require an ETF to preserve and maintain copies of all written authorized participant agreements.[683] Additionally, the rule will require ETFs to maintain records setting forth the following information for each basket exchanged with an authorized participant: (i) Ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket; (ii) if applicable, identification of the basket as a ''custom basket'' and a record stating that the custom basket complies with the ETF's custom basket policies and procedures (if applicable); (iii) cash balancing amounts (if any); and (iv) the identity of the authorized participant conducting the transaction.[684] ETFs would have to maintain these records for at least five years, the first two years in an easily accessible place.[685]

[681] 2018 ETF Proposing Release, *supra* footnote 7, at section IV.B.1.

[682] *See supra* section II.C.6.d, section II.C.5.c.

[683] *See* rule 6c–11(d).

[684] *See supra* footnote 411 and accompanying text. Although we have modified the recordkeeping requirement from the proposal, we do not believe the modified requirements would increase the time or cost burdens set forth in the 2018 ETF Proposing Release. *See* 2018 ETF Proposing Release, *supra* footnote 7, at section IV.B.2.

[685] *Id.*

TABLE 12—RECORDKEEPING PRA ESTIMATES

	Initial hours	Annual hours		Wage rate [1]	Internal time costs	Initial external cost burden	Annual external cost burden
Proposed Estimates [2]							
Recordkeeping	0	2.5 hours	×	$60 (general clerk)	$150.		
	0	2.5 hours	×	$92 (senior computer operator).	$230.		
Total annual burden per ETF.	0	5 hours			$380.		
Number of ETFs		× 1,635			× 1,635.		
Total annual burden	0	8,175 hours			$621,300.00	$0	$0
Final Estimates							
Recordkeeping	0	2.5 hours	×	$62 (general clerk) [3]	$155.		
	0	2.5 hours	×	$95 (senior computer operator) [3].	$237.50.		
Total annual burden per ETF.	0	5 hours			$392.50.		
Number of ETFs		× 1,735 [3]			× 1,735.		
Total annual burden		8,675 hours			$680,987.50	$0	$0

Notes:
[1] Based on SIFMA Report, *supra* footnote 568, as modified by Commission staff.
[2] *See* 2018 ETF Proposing Release at section IV.B.2.
[3] Estimate revised to reflect updated industry data.

Table 12 above summarizes the proposed PRA estimates included in the 2018 ETF Proposing Release and the final PRA estimates associated with the recordkeeping requirements in rule 6c–11.[686] We did not receive public comment on our proposed estimates, but we have revised the estimates as a result of updated industry data. Specifically, we have updated the estimated wage rates and the estimated number of ETFs that will be subject to the rule and thus the recordkeeping requirement. We do not estimate that there will be any initial or ongoing external costs associated with the recordkeeping requirement.

3. Policies and Procedures

As proposed, rule 6c–11 will require ETFs relying on the rule to adopt and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of basket assets.[687] Additionally, to use custom baskets, an ETF would be required to adopt and implement written policies and procedures setting forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders.[688] These policies and procedures also may include a periodic review requirement in order to ensure that the ETF's custom basket procedures are being consistently followed.[689] Finally, as discussed above, an ETF using custom baskets would be required to maintain records detailing the composition of each custom basket.

TABLE 13—POLICIES AND PROCEDURES PRA ESTIMATES

	Initial hours	Annual hours [1]		Wage rate [2]	Internal time costs	Initial external cost burden	Annual external cost burden
Proposed Estimates [3]							
Establishing and implementing standard baskets policies and procedures.	3	1 hour	×	$317 (senior manager)	$317.		
	2	.67 hours	×	$511 (chief compliance officer).	$340.67.		
	1	.33 hours	×	$352 (compliance attorney)	$117.33.		
Establishing and implementing custom baskets policies and procedures.	9	3 hours	×	$317 (senior manager)	$951.		
	5	1.67 hours	×	$449 (ass't general counsel)	$748.33.		
	5	1.67 hours	×	$511 (chief compliance officer).	$851.67.		
	1	.33 hours	×	$352 (compliance attorney)	$117.33.		
Reviewing and updating baskets policies and procedures.		5 hours	×	$317 (senior manager)	$1,585.		
		2.5 hours	×	$449 (ass't general counsel)	$1,122.50.		
		2.5 hours	×	$511 (chief compliance officer).	$1,277.50.		

[686] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section IV.B.2.

[687] *See* rule 6c–11(c)(3).

[688] *See* rule 6c–11(c)(3).

[689] *See supra* text following footnote 294.

TABLE 13—POLICIES AND PROCEDURES PRA ESTIMATES—Continued

	Initial hours	Annual hours [1]		Wage rate [2]	Internal time costs	Initial external cost burden	Annual external cost burden
Total annual burden per ETF.	.....	18.67 hours			$7,428.33.		
Number of ETFs	.....	× 1,635			× 1,635.		
Total annual burden	.....	30,525 hours [4] ...			$12,145,320 [4]	$0	$0
Final Estimates							
Establishing and implementing standard baskets policies and procedures.	3	1 hour	×	$329 (senior manager) [5]	$329.		
	2	.67 hours	×	$530 (chief compliance officer) [5].	$353.33.		
	1	.33 hours	×	$365 (compliance attorney) [5]	$121.67.		
Establishing and implementing custom baskets policies and procedures.	9	3 hours	×	$329 (senior manager) [5]	$987.		
	5	1.67 hours	×	$466 (ass't general counsel) [5]	$776.67.		
	5	1.67 hours	×	$530 (chief compliance officer) [5].	$883.33.		
	1	.33 hours	×	$365 (compliance attorney) [5]	$121.67.		
Reviewing and updating baskets policies and procedures.		5 hours	×	$329 (senior manager) [5]	$1,645.		
		2.5 hours	×	$466 (ass't general counsel) [5]	$1,165.		
		2.5 hours	×	$530 (chief compliance officer) [5].	$1,325.		
Total annual burden per ETF.		18.67 hours			$7,707.67	$0	$0
Number of ETFs		× 1,735 [5]			× 1,735.		
Total annual burden		32,392.45 hours			$13,372,807.45		

Notes:
[1] Includes initial burden estimates annualized over a three-year period.
[2] Based on SIFMA Report, *supra* footnote 568, as modified by Commission staff.
[3] *See* 2018 ETF Proposing Release at section IV.B.3.
[4] The proposed estimates shown here for the total annual hour and cost burdens (30,525 hours and $12,145,320) are not identical to the totals provided in the 2018 ETFs Proposing Release. *See supra* footnote 7, at section IV.B.2 (estimating total hour and cost burdens of 30,520 hours and $12,111,525). This discrepancy is due to our calculation of the annual hours in the 2018 ETF Proposing Release, in which the total initial burden hours were calculated before being amortized over 3 years (*i.e.,* divided by 3). Here, the initial burden hours were amortized over 3 years before we calculated the total annual hour and cost burdens, resulting in slightly higher totals. This does not affect the final estimates set forth above.
[5] Estimate revised to reflect updated industry data.

Table 13 above summarizes the proposed PRA estimates included in the 2018 ETF Proposing Release and the final PRA estimates associated with the policies and procedures requirements in rule 6c–11.[690] We did not receive public comment on our proposed estimates, but we are revising the estimates as a result of updated industry data. Specifically, we have updated the estimated wage rates and the estimated number of ETFs that will be subject to the rule and thus the policies and procedures requirement. We do not estimate that there will be any initial or ongoing external costs associated with this requirement.

4. Estimated Total Burden

TABLE 14—RULE 6c–11 TOTAL PRA ESTIMATES

	Internal hour burden	Internal burden time cost	External cost burden
Website disclosure	33,398.75 hours	$10,717,945.15	$1,735,000
Recordkeeping	8,675 hours	$680,987.50	$0
Developing policies and procedures	32,392.45 hours	$13,372,807.45	$0
Total annual burden	74,466.2 hours	$24,771,740.10	$1,735,000
Number of ETFs	÷ 1,735	÷ 1,735	÷ 1,735
Average annual burden per ETF	42.92 hours	$14,277.66	$1,000

As summarized in Table 14 above, we estimate that the total hour burdens and time costs associated with rule 6c–11, including the burden associated with website disclosure, recordkeeping, and developing policies and procedures will result in an average aggregate annual burden of 74,466.2 hours and an average aggregate time cost of $24,771,740.10. We also estimate that there are external costs of $1,735,000 associated with this collection of information. Therefore,

[690] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section IV.B.2.

each ETF will incur an annual burden of approximately 42.92 hours, at an average time cost of approximately $14,277.66, and an external cost of $1,000 to comply with rule 6c–11.

C. Rule 0–2

Section 6(c) of the Act provides the Commission with authority to conditionally or unconditionally exempt persons, securities or transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Rule 0–2 under the Act, entitled ''General Requirements of Papers and Applications,'' prescribes general instructions for filing an application seeking exemptive relief with the Commission.[691]

As discussed above, rule 6c–11 will permit ETFs that satisfy the conditions of the rule to operate without the need to obtain an exemptive order from the Commission under the Act. Therefore, rule 6c–11 will alleviate some of the burdens associated with rule 0–2 because it will reduce the number of entities that require exemptive relief in order to operate.[692] Based on staff experience, we estimate that approximately one-third (rounded in the 2018 ETF Proposing Release and here to 30%) of the annual burdens associated with rule 0–2 are attributable to ETF applications.

TABLE 15—RULE 0–2 PRA ESTIMATES

	Annual hours	Annual internal time cost	Annual external cost burden
Rule 0–2 burdens currently approved	x = 5,340	y = $2,029,200.60	z = $14,090,000
Estimated effect of rule 6c–11 on rule 0–2 burdens	−0.3(x)	−0.3(y)	−0.3(z)
Revised estimated burden	3,738 hours	$1,420,440.42	$9,863,000

Table 15 above summarizes the proposed estimates included in the 2018 ETF Proposing Release.[693] We did not receive public comment on these estimates, and we have not revised them.

D. Form N–1A

Form N–1A is the registration form used by open-end management investment companies. The respondents to the amendments to Form N–1A are open-end management investment companies registered or registering with the Commission. Compliance with the disclosure requirements of Form N–1A is mandatory for open-end funds (to the extent applicable) including all ETFs organized as open-end funds. Responses to the disclosure requirements are not confidential. We currently estimate for Form N–1A a total hour burden of 1,642,490 burden hours and external cost of $131,139,208.[694]

We are adopting amendments to Form N–1A designed to provide investors who purchase open-end ETF shares in secondary market transactions with tailored information regarding ETFs, including information regarding purchasing and selling shares of ETFs.[695] Specifically, the amendments to Form N–1A will require new narrative disclosures regarding ETF trading and associated costs.[696] In addition, we are requiring an ETF that does not rely on rule 6c–11 to disclose median bid-ask spread information on their websites or in their prospectuses.[697] The amendments also exclude ETFs that provide premium/discount disclosures on their websites in accordance with rule 6c–11 from the premium discount disclosure requirements in Form N–1A.[698] We also are adopting amendments to Form N–1A designed to eliminate certain disclosures for ETFs that are no longer necessary.[699]

Form N–1A generally imposes two types of reporting burdens on investment companies: (i) The burden of preparing and filing the initial registration statement; and (ii) the burden of preparing and filing post-effective amendments to a previously effective registration statement (including post-effective amendments filed pursuant to rule 485(a) or 485(b) under the Securities Act, as applicable).

[691] *See* Supporting Statement of Rule 0–2 under the Investment Company Act of 1940, General Requirements of Paper Applications (Nov. 23, 2016), *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201602-3235-008* (summarizing how applications are filed with the Commission in accordance with the requirements of rule 0–2).

[692] We expect to continue to receive applications for complex or novel ETF exemptive relief that are beyond the scope of the rule. *See supra* at text following footnote 570.

[693] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section IV.B.2.

[694] This estimate is based on the last time the form's information collection was submitted for PRA approval in 2019. When we issued the 2018 ETF Proposing Release, the current estimate for Form N–1A was a total burden hour of 1,579,974 burden hours, with an estimated internal cost of $129,338,408, and external cost of $124,820,197.

[695] *See supra* section II.H.

[696] *See supra* section II.H.2.a.

[697] *See supra* section II.H.2.b.

[698] *See supra* section 0.

[699] *See supra* section II.H.3.

TABLE 16—FORM N–1A PRA ESTIMATES

	Initial hours	Annual hours [1]		Wage rate [2]	Internal time costs	Annual external cost burden
Proposed Estimates [3]						
Draft and finalize disclosure and amend registration statement.		1.67 hours	×	$352 (compliance attorney)	$587.84.	
	5	1.67 hours	×	$319 (senior programmer)	532.73.	
Bid-ask spread and interactive calculator requirements.	5	1.67 hours	×	$352 (compliance attorney)	587.84.	
	5	1.67 hours	×	$319 (senior programmer)	532.73.	
Review and update disclosures		2.5 hours	×	$352 (compliance attorney)	880.	
		2.5 hours	×	$319 (senior programmer)	797.50.	
Maintain bid-ask spread and interactive calculator.		2.5 hours	×	$352 (compliance attorney)	880.	
		2.5 hours	×	$319 (senior programmer)	797.50.	
Total new annual burden per ETF	20	16.67 hours × 1,892			5,591.67 × 1,892.	
Number of ETFs.						
Total new annual burden		31,596.4 hours			10,579,307.20.	
Final Estimates						
Draft and finalize disclosure and amend registration statement.	5	1.67 hours	×	$365 (compliance attorney) [4]	609.55.	
	5	1.67 hours	×	$331 (senior programmer) [4]	552.77.	
Bid-ask spread and premium or discount requirements.	[5] 1	0.33 hours	×	$365 (compliance attorney) [4]	121.67.	
	[5] 1	0.33 hours	×	$331 (senior programmer) [4]	110.33.	
Review and update disclosures		2.5 hours	×	$365 (compliance attorney) [4]	912.50.	
		2.5 hours	×	$331 (senior programmer) [4]	827.50.	
Maintain bid-ask spread requirements		0.5 hours [5]	×	$365 (compliance attorney) [4]	182.50.	
		0.5 hours [5]	×	$331 (senior programmer) [4]	165.50.	
Total new annual burden per ETF	7	10 hours × 1,970 [4]			3,482.32 × 1,970 [4].	
Number of ETFs.						
Total new annual burden		19,700 hours			6,860,170.40	$ 0
Current burden estimates		+ 1,642,490 hours.				+ $131,139,208
Revised burden estimates		1,662,190 hours				$131,139,208

Notes:
[1] Includes initial burden estimates annualized over a three-year period.
[2] See *supra* footnote 568.
[3] 2018 Proposing Release, *supra* footnote 7, at section IV.D.
[4] Estimate revised to reflect updated industry data.
[5] Estimate revised to reflect modifications from the proposal.

Table 16 above summarizes the proposed PRA estimates included in the 2018 ETF Proposing Release and the final PRA estimates associated Form N–1A as amended.[700] We did not receive public comment on our proposed PRA estimates, but we are revising our estimates as a result of updated industry data and modifications from the proposal. Specifically, we are decreasing the initial and ongoing internal and external burden estimates associated with the bid-ask spread and interactive calculator requirements by 80 percent each to account for our elimination of the hypothetical example and interactive calculator requirements and our decision to apply the prospectus bid-ask spread requirements only to those ETFs that do not comply with the website disclosure requirements in rule 6c-11, partially offset by the additional premium or discount requirements.[701] In addition, we are revising the estimated wage rates and estimated number of ETFs that will be subject to the rule to reflect updated industry data.

As summarized in Table 16 above, we estimate that the total hour burdens and time costs associated with the amendments to Form N–1A will result in an average aggregate annual burden of 19,700 hours at an average aggregate time cost of $6,860,170.40. We do not estimate any change in external cost. Therefore the revised aggregate estimates for Form N–1A, including the new amendments, are 1,662,190 hours and $131,338,208 in external costs.

E. Forms N–8B–2 and S–6

Form N–8B–2 is used by UITs to initially register under the Investment Company Act pursuant to section 8 thereof.[702] UITs are required to file Form S–6 in order to register offerings of securities with the Commission under the Securities Act.[703] As a result, UITs file Form N–8B–2 only once when the UIT is initially created and then use Form S–6 to file all post-effective amendments to their registration statements in order to update their prospectuses.[704] We currently estimate for Form S–6 a total burden of 107,245

[700] 2018 Proposing Release, *supra* footnote 7, at section IV.B.1.

[701] *See supra* sections II.H.

[702] *See* Form N–8B–2 [17 CFR 274.12].

[703] *See* Form S–6 [17 CFR 239.16]. Form S–6 is used for registration under the Securities Act of securities of any UIT registered under the Act on Form N–8B–2.

[704] Form S–6 incorporates by reference the disclosure requirements of Form N–8B–2 and allows UITs to meet the filing and disclosure requirements of the Securities Act.

hours, with an internal cost burden of approximately $34,163,955, and an external cost burden estimate of $68,108,956.[705] Additionally, we currently estimate for Form N–8B–2 a total burden of 10 hours, with an internal cost burden of approximately $3,360, and an external burden estimate of $10,000.[706]

To assist investors with better understanding the total costs of investing in a UIT ETF, we are adopting disclosure requirements in Form N–8B–2 that mirror those disclosures we are adopting for Form N–1A.[707] All UIT ETFs will be subject to these disclosure requirements. For existing UIT ETFs, the one-time and ongoing costs of complying with the amendments to Form N–8B–2 will accrue on Form S–6.

TABLE 17—FORM S–6 PRA ESTIMATES

	Initial hours	Annual hours [1]		Wage rate [2]	Internal time costs	Annual external cost burden
Proposed Estimates [3]						
Draft and finalize disclosure and amend Form S–6.	10	3.33 hours	×	$352 (compliance attorney)	$1,173.32	
	10	3.33 hours	×	$319 (senior programmer)	1,063.33	
Review and update disclosures on Form S-6.		5 hours	×	$352 (compliance attorney)	1,760	
		5	×	$319 (senior programmer)	1,595	
Total new annual burden per UIT ETF.	20	16.67 hours			5,591.65	
Number of UIT ETFs		× 8			× 8	
Total new annual burden		133.36 hours			44,733.20	
Final Estimates						
Draft and finalize disclosure and amend Form S-6.	[4] 12	4 hours	×	$365 (compliance attorney) [5]	1,460	
	[4] 12	4 hours	×	$331 (senior programmer) [5]	1,324	
Review and update disclosures on Form S-6.		5 hours	×	$365 (compliance attorney) [5]	1,825	
		5 hours	×	$331(senior programmer)	$1,655	
Total new annual burden per ETF	24	18 hours			$6,264	
Number of UIT ETFs		× 8			× 8	
Total new annual burden		114 hours			$50,112	$ 0
Current burden estimates		+ 107,245 hours				+ $68,108,956
Revised burden estimates		107,359 hours				$68,108,956

Notes:
[1] Includes initial burden estimates annualized over a three-year period.
[2] See *supra* footnote 568.
[3] 2018 Proposing Release, *supra* footnote 7, at Section IV.E.
[4] Estimate revised to reflect modifications from the proposal.
[5] Estimate revised to reflect updated industry data.

TABLE 18—FORM N–8B–2 PRA ESTIMATES

	Initial hours	Annual hours [1]		Wage rate [2]	Internal time costs	Annual external cost burden
Proposed Estimates [3]						
Draft and finalize disclosure and file Form N–8B–2.	10	3.33 hours	×	$352 (compliance attorney)	$1,173.32	
	10	3.33 hours	×	$319 (senior programmer)	$1,063.33	
Complete Form N–8B–2		5 hours	×	$352 (compliance attorney)	$1,760	
		5 hours	×	$319 (senior programmer)	$1,595	
Total new annual burden per UIT ETF.	20	16.67 hours			$5,591.65	
Number of new UIT ETFs		× 1			× 1	
Total new annual burden		16.67 hours			$5,591.65	
Final Estimates						
Draft and finalize disclosure and file Form N–8B–2.	[4] 12	4 hours	×	$365 (compliance attorney) [5]	$1,460	
	[4] 12	4 hours	×	$331 (senior programmer) [5]	$1,324	
Complete Form N–8B–2		5 hours	×	$365 (compliance attorney) [5]	$1,825	
		5 hours	×	$331 (senior programmer) [5]	$1,655	
Total new annual burden per UIT ETF.	24	18 hours			$6,264	
Number of new UIT ETFs		× 1			× 1	

[705] This estimate is based on the last time the form's information collection was submitted for PRA revision in 2019.

[706] This estimate is based on the last time the form's information collection was submitted for PRA renewal in 2018.

[707] *See supra* section II.I.

TABLE 18—FORM N–8B–2 PRA ESTIMATES—Continued

	Initial hours	Annual hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
Total new annual burden		18 hours		$6,264	$0
Current burden estimates		+10 hours			+ $10,000
Revised burden estimates		28 hours			$10,000

Notes:
[1] Includes initial burden estimates annualized over a three-year period.
[2] See *supra* footnote 568.
[3] 2018 Proposing Release, *supra* footnote 7, at section IV.E.
[4] Estimate revised to reflect modifications from the proposal.
[5] Estimate revised to reflect updated industry data.

Table 17 and Table 18 above summarize the proposed PRA estimates included in the 2018 ETF Proposing Release and the final PRA estimates associated with Forms S–6 and N–8B–2, respectively.[708] We did not receive public comment on our proposed estimates, but we are revising our estimates as a result of updated industry data and modifications from the proposal. Specifically, we are increasing the initial internal burden estimate for both Form S–6 and Form N–8B–2 by 20 percent to account for the additional premium and discount requirement, partially offset by the modifications to the proposed fee and expense requirements, including those relating to bid-ask spreads.[709] In addition, we are revising the estimated wage rates to reflect updated industry data.[710]

As summarized in Table 17 above, we estimate that the total hour burdens and time costs associated with the amendments to Form S–6 will result in an average aggregate annual burden of 114 hours at an average aggregate time cost of $50,112. We do not estimate any change in external cost. Therefore, the revised aggregate estimates for Form S–6, including the new amendments, are 107,359 hours and $68,108,956 in external costs.

As summarized in Table 18 above, we estimate that the total hour burdens and time costs associated with the amendments affecting Form N–8B–2 will result in an average aggregate annual burden of 18 hours at an average aggregate time cost of $6,264. We do not estimate any change in external cost. Therefore, the revised aggregate estimates for Form N–8B–2, including the new amendments, are 28 hours and $10,000 in external costs.

F. Form N–CEN

As discussed above, Form N–CEN is a structured form that requires registered funds to provide census-type information to the Commission on an annual basis.[711] Today, the Commission is adopting amendments to Form N–CEN to require ETFs to report if they are relying on rule 6c–11.[712] We currently estimate for Form N–CEN total burden hours of 74,425 and external costs of $2,088,176.[713]

TABLE 19—FORM N–CEN PRA ESTIMATES

	Annual hours	Annual external cost burden
Proposed Estimates [1]		
Report reliance on rule 6c–11	0.1 hours	
Number of ETFs	× 1,635	
Total new annual burden	163.5 hours	
Final Estimates		
Report reliance on rule 6c–11	0.1 hours	
Number of ETFs	× 1,735 [2]	
Total new annual burden	173.5 hours	$ 0
Current burden estimates	+ 74,425 hours	+ $2,088,176
Revised burden estimates	74,598 hours	$2,088,176

Notes:
[1] 2018 Proposing Release, *supra* footnote 7, at section IV.F.
[2] Estimate revised to reflect updated industry data.

Table 19 above summarizes the proposed estimates included in the 2018 ETF Proposing Release and the final PRA estimates associated with Form N–CEN as amended.[714] We did not receive public comment on these estimates, but we are revising our proposed estimates as a result of updated industry data. Specifically, we are revising the estimated number of ETFs that will be subject to the rule to reflect updated industry data. As summarized in Table 19, we estimate that the total hour burdens and time costs associated with the amendments to Form N–CEN will result in an average aggregate annual burden of 173.5 hours. We do not estimate any change in external cost.

[708] 2018 ETF Proposing Release, *supra* footnote 7, at section IV.E.

[709] *See supra* section II.I.

[710] After reviewing updated industry data, no revisions to the estimated number of UIT ETFs that will be subject to the form are necessary.

[711] *See* Reporting Modernization Adopting Release, *supra* footnote 263.

[712] *See supra* section II.J.

[713] This estimate is based on the last time the form's information collection was submitted for PRA approval in 2017.

[714] 2018 ETF Proposing Release, *supra* footnote 7, at section IV.F.

Therefore the revised aggregate estimates for Form N–CEN, including the new amendments, are 74,598 hours and $2,088,176 in external costs.

VI. Final Regulatory Flexibility Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') in accordance with section 4(a) of the Regulatory Flexibility Act (''RFA''),[715] regarding new rule 6c–11 and amendments to Form N–1A, Form N–8B–2, and Form N–CEN. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and included in the 2018 ETF Proposing Release.[716]

A. Need for and Objectives of the Rule and Form Amendments

As described more fully above, rule 6c–11 will allow ETFs that meet the conditions of the rule to form and operate without the expense and delay of obtaining an exemptive order from the Commission. The Commission's objective is to create a consistent, transparent and efficient regulatory framework for ETFs and to facilitate greater competition and innovation among ETFs. The Commission also believes the amendments to Forms N–1A and N–8B–2 will provide useful information to investors who purchase and sell ETF shares in secondary markets. Finally, the Commission believes the amendments to Form N–CEN will allow the Commission to better monitor reliance on rule 6c–11 and will assist the Commission with its accounting, auditing and oversight functions.

All of these requirements are discussed in detail in section II above. The costs and burdens of these requirements on small ETFs are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the costs and burdens on all ETFs.

B. Significant Issues Raised by Public Comments

In the 2018 ETF Proposing Release, we requested comment on every aspect of the IRFA, including the number of small entities that would be affected by the proposed rule and amendments, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis and how to quantify the impact of the proposed rule and amendments. We also requested comment on the broader impact of the proposed rule and amendments on all relevant entities, regardless of size. After consideration of the comments we received on the proposed rule and amendments, we are adopting the rule and amendments with several modifications that are designed to reduce certain operational challenges that commenters identified, while maintaining protections for investors and providing investors with useful information regarding ETFs. However, none of the modifications were significant to the small-entity cost burden estimates discussed below. Revisions to the estimates are instead based on updated figures regarding the number of small entities impacted by the new rule and amendments and updated estimated wage rates.

C. Small Entities Subject to the Rule

An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[717] Commission staff estimates that, as of December 2018, there are approximately 9 open-end ETFs that may be considered small entities.[718] Commission staff estimates there are no UIT ETFs that would be considered small entities subject to the proposed disclosures for Form N–8B–2.[719]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The new rule and amendments will impact current reporting, recordkeeping and other compliance requirements for ETFs considered small entities.

1. Rule 6c–11

Rule 6c–11 will require an ETF to disclose on its website: (i) Portfolio holding information each business day; (ii) the ETF's current NAV per share, market price, and premium or discount, each as of the end of the prior business day; (iii) if an ETF's premium or discount is greater than 2% for more than seven consecutive trading days, to post that information and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount; (iv) a table and line graph showing the ETF's premiums and discounts; and (v) the ETF's median bid-ask spread over the last thirty calendar days.[720] The new rule also will require that ETFs preserve and maintain copies of all written authorized participant agreements, as well as records setting forth the following information for each basket exchanged with an authorized participant: (i) Ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket; (ii) identification of the basket as a ''custom basket'' and a record stating that the custom basket complies with the ETF's policies and procedures (if applicable); (iii) cash balancing amounts (if any); and (iv) the identity of the authorized participant conducting the transaction.[721] Additionally, rule 6c–11 will require ETFs relying on the rule to adopt and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of basket assets.[722] ETFs using custom baskets under the rule must adopt custom basket policies and procedures that include certain enumerated requirements.[723]

We estimate that approximately 9 ETFs are small entities that will comply with rule 6c–11, and we do not believe that their costs would differ from other ETFs. As discussed above, we estimate that an ETF will incur an annual burden of approximately 36.97 hours, at an average time cost of approximately $11,758.97, and an external cost of $1,000.00.[724]

As we discuss in greater detail in section IV.C.1 above, we expect rule 6c–11 to have other, generally unquantifiable economic effects. For example, by eliminating the need for ETFs that can rely on the rule to seek an exemptive order from the Commission, the rule will also eliminate certain indirect costs associated with the exemptive application process.[725] Specifically, ETFs that apply for an order forgo potential market opportunities until they receive the order, while others forgo the market opportunity entirely rather than seek an exemptive order because they have concluded that the cost of seeking an exemptive order would exceed the anticipated benefit of the market opportunity.[726] We also believe that the rule could increase competition in the

[715] *See* 5 U.S.C. 603.

[716] *See* 2018 ETF Proposing Release, *supra* footnote 7, at section V.

[717] 17 CFR 270.0–10(a).

[718] This estimate is derived from an analysis of data reported on Form N–1A with the Commission for the period ending December, 2018.

[719] This estimate is derived from an analysis of data reported on Forms S–6 and N–8B–2 with the Commission for the period ending December 2018.

[720] *See* rule 6c–11(c)(1).

[721] *See* rule 6c–11(d).

[722] Rule 6c–11(c)(3).

[723] Rule 6c–11(c)(3).

[724] *See supra* Table 13.

[725] *See supra* section IV.C.1.

[726] *See id.*

ETF market as a whole, which could also lead to lower fees.[727]

2. Other Disclosure and Reporting Requirements

The amendments to Form N–1A and Form N–8B–2 are designed to provide investors who purchase ETF shares in secondary market transactions with tailored information regarding ETFs, including information regarding costs associated with an investment in ETFs. Specifically, the amendments to Form N–1A will: (i) Require new disclosure regarding ETF trading and associated costs; (ii) require ETFs that are not subject to rule 6c–11 to disclose median bid-ask spread information on their websites or in their prospectuses; and (iii) exclude ETFs that provide premium/discount disclosures in accordance with rule 6c–11 from the premium and discount disclosure requirements in the form.[728] Amendments to Form N–8B–2 mirror proposed disclosures for Form N–1A. In addition, amendments to Form N–CEN will require ETFs to report on Form N–CEN whether they are relying on rule 6c–11 to assist us with monitoring reliance on rule 6c–11 as well with our accounting, auditing and oversight functions, including compliance with the PRA.

All ETFs (including ETFs that do not rely on rule 6c–11) will be subject to the amended Form N–1A or Form N–8B–2 (depending on the ETF's structure as an open-end fund or UIT), and Form N–CEN disclosure and reporting requirements, including ETFs that are small entities. We estimate that 9 ETFs are small entities that will be required to comply with the requirements on Form N–1A and Form N–CEN.[729] We estimate that each ETF, including ETFs that are small entities, will incur a one-time burden of 7 hours, at a time cost of $4,176 to draft and finalize the required disclosure and amend its registration statement.[730] We also estimate that each ETF, including ETFs that are small entities, will incur an ongoing burden of an additional 3 hours, at a time cost of an additional $2,088, to comply with the Form N–1A disclosure requirements.[731] We do not estimate any change to the external costs associated with the amendments to Form N–1A.[732] The total administrative cost for of the Form N–CEN disclosure requirement to ETFs is .1 hours.[733]

As we discuss in greater detail in section IV.C.2 above, we expect the new disclosure amendments to have other, generally unquantifiable economic effects. For example, we believe that the new disclosures will benefit investors by helping them better understand and compare specific funds, potentially resulting in more informed investment decisions, more efficient allocation of investor capital, and greater competition for investor capital among funds.[734] We also believe the amendment to Form N–CEN will allow the Commission to better monitor reliance on rule 6c–11 and assist us with our accounting, auditing, and oversight functions, including compliance with the Paperwork Reduction Act.[735]

E. Agency Action To Minimize Effect on Small Entities

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant economic impact on small entities. We considered the following alternatives for small entities in relation to the adopted regulations:

- Exempting ETFs that are small entities from the disclosure, reporting or recordkeeping requirements, to account for resources available to small entities;
- establishing different disclosure, reporting or recordkeeping requirements or different frequency of these requirements, to account for resources available to small entities;
- clarifying, consolidating, or simplifying the compliance requirements under the amendments for small entities; and
- using performance rather than design standards.

We do not believe that exempting any subset of ETFs, including small entities, from rule 6c–11 or the related form amendments will permit us to achieve our stated objectives. Nor do we believe establishing different disclosure, reporting or recordkeeping requirements or different frequency of these requirements for small entities would permit us to achieve our stated objectives. Similarly, we do not believe that we can establish simplified or consolidated compliance requirements for small entities under the rule without compromising our objectives. As discussed above, the conditions necessary to rely on rule 6c–11 and the reporting, recordkeeping and disclosure requirements are designed to provide investor protection benefits, including, among other things, tailored information regarding ETFs, including information regarding costs associated with an investment in ETFs. These benefits should apply to investors in smaller funds as well as investors in larger funds. Similarly, we do not believe it would be in the interest of investors to exempt small ETFs from the disclosure and reporting requirements or to exempt small ETFs from the recordkeeping requirements. We believe that all ETF investors, including investors in small ETFs, will benefit from disclosure and reporting requirements that permit them to make investment choices that better match their risk tolerances. Additionally, the current disclosure requirements for reports on Form N–1A and Form N–8B–2 do not distinguish between small entities and other funds.[736]

Finally, we believe that rule 6c–11 and related disclosure and reporting requirements appropriately use a combination of performance and design standards. Rule 6c–11 provides ETFs that satisfy the requirements of the rule with exemptions from certain provisions of the Act necessary for ETFs to operate. Because the provisions of the Act from which ETFs would be exempt provide important investor and market protections, the conditions of the rule must be specifically designed to ensure that these investor and market protections are maintained. However, where we believe that flexibility is beneficial, we adopted performance-based standards that provide a regulatory framework, rather than prescriptive requirements, to give funds the opportunity to adopt policies and procedures tailored to their specific needs without raising investor or market protection concerns.[737]

[727] *See id.*

[728] *See supra* section II.H.2.

[729] *See supra* footnotes 720 and 721. As discussed above, the amendments to Form N–8B–2 mirror those made to Form N–1A. We therefore believe that UIT ETFs will incur the same costs as all ETFs associated with updating their registration statements. However, none of the UIT ETFs are small entities.

[730] *See supra* Table 16.

[731] *See id.*

[732] *See id.*

[733] *See supra* Table 19.

[734] *See supra* section IV.C.2.

[735] *See id.*

[736] *See* Reporting Modernization Adopting Release, *supra* footnote 263, at section V.E (noting that small entities currently follow the same requirements that large entities do when filing reports on Form N–SAR, Form N–CSR, and Form N–Q, and stating that the Commission believes that establishing different reporting requirements or frequency for small entities (including with respect to proposed Form N–PORT and proposed Form N–CEN) would not be consistent with the Commission's goal of industry oversight and investor protection).

[737] *See e.g., supra* section II.C.5. (noting that rule 6c–11 will provide an ETF with the flexibility to use ''custom baskets'' if the ETF has adopted written policies and procedures that set forth detailed parameters for the construction and

Continued

VII. Statutory Authority

The Commission is adopting new rule 6c–11 pursuant to the authority set forth in sections 6(c), 22(c), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–22(c), and 80a–37(a)]. The Commission is adopting amendments to registration Forms N–1A and N–CSR under the authority set forth in sections 6, 7(a), 10 and 19(a) of the Securities Act of 1933 [15 U.S.C. 77f, 77g(a), 77j, 77s(a)], and sections 8(b), 24(a), and 30 of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–24(a), and 80a–29]. The Commission is adopting amendments to registration Form N–8B–2 under the authority set forth in section 8(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b) and 80a–37(a)]. The Commission is adopting amendments to Form N–CEN and Form N–PORT under the authority set forth sections 8(b), 30(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–29(a), and 80a–37(a)]. The Commission is adopting amendments to Regulation S–X under the authority set forth in sections 7, 8, 10, and 19 of the Securities Act [15 U.S.C. 77g, 77h, 77j, 77s], and sections 8(b), 30(a), 31, and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–29(a), 80a–30, and 80a–37(a)]. The Commission is providing relief in Section II.G, permitting ETFs relying on rule 6c–11 to enter into fund of funds arrangements, pursuant to the authority set forth in sections 6(c), 12(d)(1)(J) and 17(b).

List of Subjects

17 CFR Part 210

Accounting, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rules and Form Amendments

Correction

■ In final rule FR Doc. 2016–25349, published in the issue of Friday, November 18, 2016 (81 FR 81870), make the following correction:

On page 82019, in the second column, remove amendatory instruction 23 for § 232.401, which was to be effective August 1, 2019, but was delayed until May 1, 2020, in a rule published on December 14, 2017 (82 FR 58731).

For reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78ll, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

§ 210.12–14 [Amended]

■ 2. Amend § 210.12–14 by removing the phrase in footnote 1 ''(5) balance at close of period as shown in Column E'' and adding in its place ''(5) balance at close of period as shown in Column F''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 3. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107 Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 4. The authority citation for part 270 is revised by adding a sectional authority for § 270.6c–11 in numerical order to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Section 270.6c–11 is also issued under 15 U.S.C. 80a–6(c) and 80a–37(a).

* * * * *

■ 5. Section 270.6c–11 is added to read as follows:

§ 270.6c–11 Exchange-traded funds.

(a) *Definitions.* (1) For purposes of this section:

Authorized participant means a member or participant of a clearing agency registered with the Commission, which has a written agreement with the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.

Basket means the securities, assets or other positions in exchange for which an exchange-traded fund issues (or in return for which it redeems) creation units.

Business day means any day the exchange-traded fund is open for business, including any day when it satisfies redemption requests as required by section 22(e) of the Act (15 U.S.C. 80a–22(e)).

Cash balancing amount means an amount of cash to account for any difference between the value of the basket and the net asset value of a creation unit.

Creation unit means a specified number of exchange-traded fund shares that the exchange-traded fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount if any.

Custom basket means:

(A) A basket that is composed of a non-representative selection of the exchange-traded fund's portfolio holdings; or

(B) A representative basket that is different from the initial basket used in transactions on the same business day.

Exchange-traded fund means a registered open-end management company:

(A) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and

(B) Whose shares are listed on a national securities exchange and traded at market-determined prices.

Exchange-traded fund share means a share of stock issued by an exchange-traded fund.

Foreign investment means any security, asset or other position of the ETF issued by a foreign issuer as that term is defined in § 240.3b–4 of this title, and that is traded on a trading market outside of the United States.

Market price means:

(A) The official closing price of an exchange-traded fund share; or

(B) If it more accurately reflects the market value of an exchange-traded fund share at the time as of which the exchange-traded fund calculates current net asset value per share, the price that is the midpoint between the national best bid and national best offer as of that time.

National securities exchange means an exchange that is registered with the

acceptance of custom baskets that are in the best interests of the ETF and its shareholders).

Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

Portfolio holdings means the securities, assets or other positions held by the exchange-traded fund.

Premium or discount means the positive or negative difference between the market price of an exchange-traded fund share at the time as of which the current net asset value is calculated and the exchange-traded fund's current net asset value per share, expressed as a percentage of the exchange-traded fund share's current net asset value per share.

(2) Notwithstanding the definition of exchange-traded fund in paragraph (a)(1) of this section, an exchange-traded fund is not prohibited from selling (or redeeming) individual shares on the day of consummation of a reorganization, merger, conversion or liquidation, and is not limited to transactions with authorized participants under these circumstances.

(b) *Application of the Act to exchange-traded funds.* If the conditions of paragraph (c) of this section are satisfied:

(1) *Redeemable security.* An exchange-traded fund share is considered a ''redeemable security'' within the meaning of section 2(a)(32) of the Act (15 U.S.C. 80a-2(a)(32)).

(2) *Pricing.* A dealer in exchange-traded fund shares is exempt from section 22(d) of the Act (15 U.S.C. 80a-22(d)) and § 270.22c–1(a) with regard to purchases, sales and repurchases of exchange-traded fund shares at market-determined prices.

(3) *Affiliated transactions.* A person who is an affiliated person of an exchange-traded fund (or who is an affiliated person of such a person) solely by reason of the circumstances described in paragraphs (b)(3)(i) and (ii) of this section is exempt from sections 17(a)(1) and 17(a)(2) of the Act (15 U.S.C. 80a–17(a)(1) and (a)(2)) with regard to the deposit and receipt of baskets:

(i) Holding with the power to vote 5% or more of the exchange-traded fund's shares; or

(ii) Holding with the power to vote 5% or more of any investment company that is an affiliated person of the exchange-traded fund.

(4) *Postponement of redemptions.* If an exchange-traded fund includes a foreign investment in its basket, and if a local market holiday, or series of consecutive holidays, or the extended delivery cycles for transferring foreign investments to redeeming authorized participants prevents timely delivery of the foreign investment in response to a redemption request, the exchange-traded fund is exempt, with respect to the delivery of the foreign investment, from the prohibition in section 22(e) of the Act (15 U.S.C. 80a-22(e)) against postponing the date of satisfaction upon redemption for more than seven days after the tender of a redeemable security if the exchange-traded fund delivers the foreign investment as soon as practicable, but in no event later than 15 days after the tender of the exchange-traded fund shares.

(c) *Conditions.* (1) Each business day, an exchange-traded fund must disclose prominently on its website, which is publicly available and free of charge:

(i) Before the opening of regular trading on the primary listing exchange of the exchange-traded fund shares, the following information (as applicable) for each portfolio holding that will form the basis of the next calculation of current net asset value per share:

(A) Ticker symbol;

(B) CUSIP or other identifier;

(C) Description of holding;

(D) Quantity of each security or other asset held; and

(E) Percentage weight of the holding in the portfolio;

(ii) The exchange-traded fund's current net asset value per share, market price, and premium or discount, each as of the end of the prior business day;

(iii) A table showing the number of days the exchange-traded fund's shares traded at a premium or discount during the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);

(iv) A line graph showing exchange-traded fund share premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);

(v) The exchange-traded fund's median bid-ask spread, expressed as a percentage rounded to the nearest hundredth, computed by:

(A) Identifying the exchange-traded fund's national best bid and national best offer as of the end of each 10 second interval during each trading day of the last 30 calendar days;

(B) Dividing the difference between each such bid and offer by the midpoint of the national best bid and national best offer; and

(C) Identifying the median of those values; and

(vi) If the exchange-traded fund's premium or discount is greater than 2% for more than seven consecutive trading days, a statement that the exchange-traded fund's premium or discount, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount, which must be maintained on the website for at least one year thereafter.

(2) The portfolio holdings that form the basis for the exchange-traded fund's next calculation of current net asset value per share must be the ETF's portfolio holdings as of the close of business on the prior business day.

(3) An exchange-traded fund must adopt and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of baskets; *provided, however,* if the exchange-traded fund utilizes a custom basket, these written policies and procedures also must:

(i) Set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the exchange-traded fund and its shareholders, including the process for any revisions to, or deviations from, those parameters; and

(ii) Specify the titles or roles of the employees of the exchange-traded fund's investment adviser who are required to review each custom basket for compliance with those parameters.

(4) The exchange-traded fund may not seek, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time.

(d) *Recordkeeping.* The exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place:

(1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units;

(2) For each basket exchanged with an authorized participant, records setting forth:

(i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units;

(ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of this section;

(iii) Cash balancing amount (if any); and

(iv) Identity of authorized participant transacting with the exchange-traded fund.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 6. The general authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 7. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended as follows:

■ a. In General Instruction A, revising the definition of ''Exchange-Traded Fund.''

■ b. In General Instruction A, revising the definition of ''Market Price.''

■ c. In General Instruction B.4.(a), removing the phrases ''[17 CFR 230.400–230.497]'' and ''rules 480–485 and 495–497 of Regulation C'' and adding in their place ''[17 CFR 230.400–230.498]'' and ''rules 480–485 and 495–498 of Regulation C.''

■ d. In General Instruction B.4.(d), removing the phrase ''Regulation S–T [17 CFR 232.10–232.903]'' and adding in its place ''Regulation S–T [17 CFR 232.10–232.501].''

■ e. In Item 3, revising the first paragraph under the heading ''Fees and Expenses of the Fund''.

■ f. Revising Instruction 1(e) of Item 3, Item 6(c), and Items 11(a)(1) and 11(g).

■ g. In instruction 4(b) to Item 13, removing the sentence ''If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of rule 6–07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for periods ending after September 1, 1995.''

■ h. Revising Item 27(b)(7)(iv), Instruction 1(e)(ii) of Item 27(d)(1), and Item 27(d)(3).

The additions and revisions read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the *Code of Federal Regulations.*

Form N–1A

* * * * *

GENERAL INSTRUCTIONS

* * * * *

A. Definitions

* * * * *

''Exchange-Traded Fund'' means a Fund or Class, the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order granted by the Commission or in reliance on rule 6c–11 [17 CFR 270.6c–11] under the Investment Company Act.

* * * * *

''Market Price'' has the same meaning as in rule 6c–11 [17 CFR 270.6c–11] under the Investment Company Act.

* * * * *

Item 3. Risk/Return Summary: Fee Table

* * * * *

Fees and Expenses of the Fund

This table describes the fees and expenses that you may pay if you buy, hold, and sell shares of the Fund. You may pay other fees, such as brokerage commissions and other fees to financial intermediaries, which are not reflected in the tables and examples below. You may qualify for sales charge discounts if you and your family invest, or agree to invest in the future, at least $[ ] in [name of fund family] funds. More information about these and other discounts is available from your financial intermediary and in [identify section heading and page number] of the Fund's prospectus and [identify section heading and page number] of the Fund's statement of additional information.

* * * * *

Instructions

* * * * *

1. *General*

* * * * *

(e) If the Fund is an Exchange-Traded Fund, exclude any fees charged for the purchase and redemption of the Fund's creation units.

* * * * *

Item 6. Purchase and Sale of Fund Shares

* * * * *

(c) *Exchange-Traded Funds.* If the Fund is an Exchange-Traded Fund, the Fund may omit the information required by paragraphs (a) and (b) of this Item and must disclose:

(1) That Individual Fund shares may only be bought and sold in the secondary market through a broker or dealer at a market price;

(2) That because ETF shares trade at market prices rather than net asset value, shares may trade at a price greater than net asset value (premium) or less than net asset value (discount);

(3) That an investor may incur costs attributable to the difference between the highest price a buyer is willing to pay to purchase shares of the Fund (bid) and the lowest price a seller is willing to accept for shares of the Fund (ask) when buying or selling shares in the secondary market (the ''bid-ask spread'');

(4) If applicable, how to access recent information, including information on the Fund's net asset value, Market Price, premiums and discounts, and bid-ask spreads, on the Exchange-Traded Fund's website; and

(5) The median bid-ask spread for the Fund's most recent fiscal year.

Instructions

1. A Fund may omit the information required by paragraph (c)(5) of this Item if it satisfies the requirements of paragraph (c)(1)(v) of Rule 6c–11 [17 CFR 270.6c–11(c)(1)(v)] under the Investment Company Act.

2. An Exchange-Traded Fund that had its initial listing on a national securities exchange at or before the beginning of the most recently completed fiscal year must include the median bid-ask spread for the Fund's most recent fiscal year. For an Exchange-Traded Fund that had an initial listing after the beginning of the most recently completed fiscal year, explain that the Exchange-Traded Fund did not have a sufficient trading history to report trading information and related costs. Information should be based on the most recently completed fiscal year end.

3. Bid-Ask Spread (Median). Calculate the median bid-ask spread by dividing the difference between the national best bid and national best offer by the mid-point of the national best bid and national best offer as of the end of each ten-second interval throughout each trading day of the Exchange-Traded Fund's most recent fiscal year. Once the bid-ask spread for each ten-second interval throughout the fiscal year is determined, sort the spreads from lowest to highest. If there is an odd number of spread intervals, then the median is the middle number. If there is an even number of spread intervals, then the median is the average between the two middle numbers. Express the spread as a percentage, rounded to the nearest hundredth percent.

4. A Fund may combine the information required by Item 6(c)(4) into the information required by Item 1(b)(1) and Rule 498(b)(1)(v) [17 CFR 230.498(b)(1)(v)] under the Securities Act.

* * * * *

Item 11. Shareholder Information

(a) *Pricing of Fund Shares.* Describe the procedures for pricing the Fund's shares, including:

(1) An explanation that the price of Fund shares is based on the Fund's net asset value and the method used to value Fund shares (market price, fair value, or amortized cost); except that if the Fund is an Exchange-Traded Fund, an explanation that the price of Fund shares is based on a market price.

* * * * *

(g) *Exchange-Traded Funds.* If the Fund is an Exchange-Traded Fund:

(1) The Fund may omit from the prospectus the information required by Items 11(a)(2), (b), and (c).

(2) Provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (*i.e.,* premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund may omit the information required by this paragraph if it satisfies the requirements of paragraphs (c)(1)(ii)–(iv) and (c)(1)(vi) of Rule 6c–11 [17 CFR 270.6c–11(c)(1)(ii)–(iv) and

(c)(1)(vi)] under the Investment Company Act.

* * * * *

Item 27. Financial Statements

* * * * *

(b) * * *

(7) * * *

* * * * *

(iv) Provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (*i.e.,* premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund may omit the information required by this paragraph if it satisfies the requirements of paragraphs (c)(1)(ii)–(iv) and (c)(1)(vi) of Rule 6c–11 [17 CFR 270.6c–11(c)(1)(ii)–(iv) and (c)(1)(vi)] under the Investment Company Act.

* * * * *

(d) * * *

(1) * * *

Instructions

* * * * *

1. *General.*

* * * * *

(e) If the fund is an Exchange-Traded Fund:

* * * * *

(ii) Exclude any fees charged for the purchase and redemption of the Fund's creation units.

* * * * *

(3) * * *

Instruction

A Money Market Fund will omit the statement required by Item 27(d)(3) and instead provide a statement that (i) the Money Market Fund files its complete schedule of portfolio holdings with the Commission each month on Form N–MFP; (ii) the Money Market Fund's reports on Form N–MFP are available on the Commission's website at *http://www.sec.gov;* and (iii) the Money Market Fund makes portfolio holdings information available to shareholders on its website.

* * * * *

■ 8. Form N–8B–2 (referenced in §§ 239.16 and 274.12) is amended as follows:

■ a. In the General Instructions, revising the definitions of ''Exchange-Traded Fund'' and ''Market Price''.

■ b. In Item 13, adding paragraphs (h), (i), and (j).

■ c. In Item IX, adding an undesignated paragraph following the heading.

The additions and revisions read as follows:

Note: The text of Form N–8B–2 does not, and this amendment will not, appear in the *Code of Federal Regulations.*

Form N–8B–2

* * * * *

GENERAL INSTRUCTIONS FOR FORM N–8B–2

* * * * *

Definitions

* * * * *

Exchange-Traded Fund (ETF): The term ''Exchange-Traded Fund'' means a Fund or Class, the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order granted by the Commission.

* * * * *

Market Price. The term ''Market Price'' has the same meaning as in rule 6c–11 [17 CFR 270.6c–11] under the Investment Company Act.

* * * * *

Information Concerning Loads, Fees, Charges, and Expenses

13.

* * * * *

(h) If the trust is an Exchange-Traded Fund, furnish an explanation indicating that an ETF investor may pay additional fees not described by any other item in this form, such as brokerage commissions and other fees to financial intermediaries.

(i) If the trust is an Exchange-Traded Fund, furnish the disclosures and information set forth in Item 6(c) of Form N–1A [referenced in 17 CFR 274.11A]. Provide information specific to the trust as necessary, utilizing the ETF-specific methodology set forth in the Instructions to Form N–1A Item 6(c). The Fund may omit the information required by Item 6(c)(5) of Form N–1A if it satisfies the requirements of paragraph (c)(1)(v) of Rule 6c–11 [17 CFR 270.6c–11(c)(1)(v)] under the Investment Company Act.

(j) If the trust is an Exchange-Traded Fund, provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (*i.e.,* premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund may omit the information required by this paragraph if it satisfies the requirements of paragraphs (c)(1)(ii)–(iv) and (c)(1)(vi) of Rule 6c–11 [17 CFR 270.6c–11(c)(1)(ii)–(iv) and (c)(1)(vi)] under the Investment Company Act.

* * * * *

IX

EXHIBITS

Subject to General Instruction 2(d) regarding incorporation by reference and rule 483 under the Securities Act, file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

* * * * *

■ 9. Amend Form N–CEN (referenced in § 274.101) as follows:

■ a. Adding Item C.7.k.

■ b. Revising the Instruction to Item E.2.

The addition and revision read as follows:

Note: The text of Form N–CEN does not, and this amendment will not, appear in the *Code of Federal Regulations.*

FORM N–CEN

ANNUAL REPORT FOR REGISTERED INVESTMENT COMPANIES

* * * * *

Part C. Additional Questions for Management Investment Companies

* * *

Item C.7.

* * *

k. Rule 6(c)–11 (17 CFR 270.6c–11):

* * *

Part E. Additional Questions for Exchange-Traded Funds and Exchange-Traded Managed Funds

* * *

Item E.2.

* * *

Instruction. The term ''authorized participant'' means a member or participant of a clearing agency registered with the Commission, which has a written agreement with the Exchange-Traded Fund or Exchange-Traded Managed Fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.

* * *

■ 10. Amend Form N–CSR (referenced in § 274.128) as follows:

■ a. In General Instruction D, remove the phrase ''Item 12(a)(1)'' and add in its place ''Item 13(a)(1)''.

■ b. In the instruction to Item 13, remove the phrase ''Instruction to Item 11'' and add in its place ''Instruction to Item 13''.

■ 11. Amend Form N–PORT (referenced in § 274.150) by revising the first paragraph of General Instruction F to read as follows:

Note: The text of Form N–PORT does not, and this amendment will not, appear in the *Code of Federal Regulations.*

FORM N–PORT

MONTHLY PORTFOLIO INVESTMENTS REPORT

* * *

GENERAL INSTRUCTIONS

* * *

F. Public Availability

With the exception of the non-public information discussed below, the information reported on Form N–PORT for the third month of each Fund's fiscal quarter will be made publicly available upon filing.

* * * * *

By the Commission.

Dated: September 25, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–21250 Filed 10–23–19; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 84 Thursday,

No. 206 October 24, 2019

Part III

Federal Reserve System

12 CFR Parts 217 and 252

Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 217 and 252

[Docket No. R–1673]

RIN 7100–AF 56

Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is inviting comment on a proposal to establish risk-based capital requirements for depository institution holding companies that are significantly engaged in insurance activities. The Board is proposing a risk-based capital framework, termed the Building Block Approach, that adjusts and aggregates existing legal entity capital requirements to determine an enterprise-wide capital requirement, together with a risk-based capital requirement excluding insurance activities, in compliance with section 171 of the Dodd-Frank Act. The Board is additionally proposing to apply a buffer to limit an insurance depository institution holding company's capital distributions and discretionary bonus payments if it does not hold sufficient capital relative to enterprise-wide risk, including risk from insurance activities. The proposal would also revise reporting requirements for depository institution holding companies significantly engaged in insurance activities.

DATES: Comments must be received on or before December 23, 2019.

ADDRESSES: You may submit comments, identified by Docket No. R–1673 and RIN 7100–AF 56, by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove sensitive personal identifying information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Thomas Sullivan, Associate Director, (202) 475–7656; Linda Duzick, Manager, (202) 728–5881; Matti Peltonen, Supervisory Insurance Valuation Analyst, (202) 872–7587; Brad Roberts, Supervisory Insurance Valuation Analyst, (202) 452–2204; or Matthew Walker, Supervisory Insurance Valuation Analyst, (202) 872–4971; Division of Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2272; David Alexander, Senior Counsel, (202) 452–2877; Andrew Hartlage, Counsel, (202) 452–6483; or Jonah Kind, Senior Attorney, (202) 452–2045; Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf, (202) 263–4869.

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I. Introduction

The Board of Governors of the Federal Reserve System (Board) is issuing this notice of proposed rulemaking (NPR) to seek comment on a proposal to establish risk-based capital requirements for certain depository institution holding companies significantly engaged in insurance activities (insurance depository institution holding companies).[1] As discussed in further detail in the description of the proposal, insurance depository institution holding companies include depository institution holding companies that are insurance underwriters, and depository institution holding companies that hold a significant percentage of total assets in insurance underwriting subsidiaries. The proposal introduces an enterprise-wide risk-based capital framework, termed the ''building block'' approach (BBA), that incorporates legal entity capital requirements such as the requirements prescribed by state insurance regulators, taking into account differences between the business of insurance and banking. The Board proposes to establish an enterprise-wide capital requirement for insurance depository institution holding companies based on the BBA framework, and, separately, to apply a minimum risk-based capital requirement to the enterprise using the flexibility afforded under recent amendments to section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to exclude certain state and foreign regulated insurance operations.[2] The Board is also proposing to apply a buffer that limits an insurance depository institution holding company's capital distributions and discretionary bonus payments if it does not hold sufficient capital relative to enterprise-wide risk, including risk from insurance activities. The minimum risk-based capital requirement is proposed pursuant to the Board's authority under section 10 of the Home Owners' Loan Act (HOLA)[3] and section 171 of the Dodd-Frank Act.[4]

II. Background

A. The Dodd-Frank Act and Capital Requirements for Insurance Depository Institution Holding Companies

In response to the 2007–09 financial crisis, Congress enacted the Dodd-Frank Act, which, among other objectives, was enacted to ensure fair and appropriate supervision of depository institutions without regard to the size or type of charter and streamline the supervision of depository institutions (DIs) and their holding companies. In furtherance of these objectives, Title III of the Dodd-Frank Act expanded the Board's supervisory role beyond bank holding companies (BHCs) by transferring to the Board all supervisory functions related to savings and loan holding companies (SLHCs) and their non-depository subsidiaries. As a result, the Board became the federal supervisory authority for all DI holding companies, including insurance depository institution holding companies.[5] Concurrent with the expansion of the Board's supervisory role, section 616 of the Dodd-Frank Act amended HOLA to provide the Board express authority to adopt regulations or orders that set capital requirements for SLHCs.[6]

Any capital requirements the Board may establish for SLHCs are subject to minimum standards under the Dodd-Frank Act. Specifically, section 171 of the Dodd-Frank Act requires the Board to establish minimum risk-based and leverage capital requirements on a consolidated basis for depository institution holding companies.[7] These

[1] In this Supplementary Information, the term ''insurance depository institution holding company'' means a savings and loan holding company significantly engaged in insurance activities. Section IV.B below discusses the threshold proposed to determine when a depository institution holding company is significantly engaged in insurance activities. Although the approach described in this proposal was designed to be appropriate for bank holding companies that are significantly engaged in insurance activities, the Board does not propose to apply this rule to bank holding companies at this time. The Board's portfolio of depository institution holding companies that are significantly engaged in insurance activities is currently composed only of savings and loan holding companies. The Board intends to address the application of this approach to bank holding companies in the final rule.

[2] Public Law 111–203, 124 Stat. 1376, 1435–38 (2010), as amended by Public Law 113–279, 128 Stat. 3107 (2014).

[3] 12 U.S.C. 1467a.

[4] 12 U.S.C. 5371.

[5] Public Law 111–203, title III, 301, 124 Stat. 1520 (2010).

[6] Dodd-Frank Act Sec. 616(b); HOLA Sec. 10(g)(1). Under Title I of the Dodd-Frank Act, the Board also supervises any nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) for supervision by the Board. Under section 113 of the Dodd-Frank Act, the FSOC may designate a nonbank financial company, including an insurance company, to be supervised by the Board. Currently, no firms are subject to the Board's supervision pursuant to this provision.

[7] Section 171 of the Dodd-Frank Act defines ''depository institution holding company'' to mean a bank holding company or savings and loan holding company, each as defined in section 3 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1813. As mentioned above, the population of insurance depository institution holding companies only consists of SLHCs. In requiring minimum leverage capital requirements for depository institution holding companies, section 171 of the Dodd-Frank Act provides the Board with flexibility

Continued

requirements must be not less than the capital requirements established by the Federal banking agencies to apply to insured depository institutions (IDIs), nor quantitatively lower than the capital requirements that applied to IDIs when the Dodd-Frank Act was enacted. The Dodd-Frank Act sets a floor for any capital requirements established under section 171 that is based on the capital requirements established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the FDI Act.[8]

The Board issued a revised capital rule in 2013, which served to strengthen the capital requirements applicable to banking organizations supervised by the Board by improving both the quality and quantity of regulatory capital and increasing risk-sensitivity. In consideration of requirements of section 171 of the Dodd-Frank Act, in 2012, the Board had sought comment on the proposed application of the revised capital rule to all firms supervised by the Board that are subject to regulatory capital requirements, including all savings and loan holding companies significantly engaged in insurance activities. In response, the Board received comments by or on behalf of supervised firms engaged primarily in insurance activities that requested an exemption from the capital rule in order to recognize differences in their business model compared with those of more traditional banking organizations. After considering these comments, the Board determined to exclude insurance SLHCs from the application of the rule.[9] The Board committed to explore further whether and how the revised capital rule, hereinafter referred to as the ''banking capital rule,'' should be modified for insurance SLHCs in a manner consistent with section 171 of the Dodd-Frank Act and safety and soundness concerns.

Section 171 of the Dodd-Frank Act was amended in 2014 (2014 Amendment) to provide the Board flexibility when developing consolidated capital requirements for insurance depository institution holding companies.[10] The 2014 Amendment permits the Board to exclude companies engaged in the business of insurance and regulated by a state insurance regulator, as well as certain companies engaged in the business of insurance and regulated by a foreign insurance regulator.

The 2014 Amendment to section 171 of the Dodd-Frank Act does not require the Board to exclude state-regulated, or certain foreign-regulated, insurers from its risk-based capital requirements. The Board has considered that exclusion of these insurers from the measurement and application of all risk-based capital requirements could present challenges to the Board's ability to timely and accurately assess the risk profile and capital adequacy of the entire organization and fulfill the Board's responsibility as a prudential supervisor of the organization. A more effective regulatory capital framework, reflecting the Board's objectives as consolidated supervisor of insurance depository institution holding companies, would capture all risks that face the enterprise and potentially could jeopardize the organization's ability to serve as a source of financial strength to the subsidiary IDI. There is support for taking this approach in both section 171 of the Dodd-Frank Act and section 10 of HOLA.

Section 171 of the Dodd-Frank Act also provides that the Board may not require, under its authority pursuant to section 171 of the Dodd-Frank Act or HOLA, financial statements prepared in accordance with U.S. generally accepted accounting principles (GAAP) from a supervised firm that is also a state-regulated insurer and only files financial statements utilizing Statutory Accounting Principles (SAP).[11] The Board notes that, unlike U.S. GAAP, SAP does not include an accounting consolidation concept. As discussed in detail in subsequent sections of this notice, the BBA is thus an aggregation-based approach and the Board's proposal is designed as a comprehensive approach to capturing risk, including all material risks, at the level of the entire enterprise or group.

B. The 2016 Advanced Notice of Proposed Rulemaking on Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities

On June 14, 2016, the Board published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) entitled ''Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities.''[12] In the ANPR, the Board conceptually described the BBA as a capital framework, contemplated for insurance depository institution holding companies, based on aggregating available capital and capital requirements across the different legal entities in an insurance group to calculate these two amounts at the enterprise level.[13] The ANPR described a number of potential adjustments that could be applied in the BBA, including adjustments to address variations in accounting practices across jurisdictions in which insurers operate, double leverage, aggregation across different jurisdictional capital frameworks, and defining loss-absorbing capital resources.[14] In the ANPR, the Board asked questions on all aspects of the BBA, including key considerations in evaluating capital frameworks for insurance depository institution holding companies, whether the BBA was appropriate for these firms as well as advantages and disadvantages of this approach, and the adjustments contemplated for use in the BBA.[15]

Among other things, the ANPR provided stakeholders with an opportunity to comment on the Board's development of a capital framework for insurance depository institution holding companies at an early stage. This NPR builds upon the discussion in the ANPR and reflects the Board's review of comments submitted in response to the ANPR. The comments are generally addressed below.

to develop leverage capital requirements that are tailored to the insurance business. The Board continues to consider a tailored approach to a leverage capital requirement for insurance depository institution holding companies.

[8] The floor for capital requirements established pursuant to section 171, referred to as the ''generally applicable'' requirements, is defined to include the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

[9] 12 CFR part 217 (Regulation Q).

[10] Public Law 113–279, 128 Stat. 3017 (2014).

[11] 12 U.S.C. 5371(c)(3)(A).

[12] 81 FR 38631 (June 14, 2016).

[13] As used in this Supplementary Information, ''available capital'' refers to loss absorbing capital that qualifies for use as capital under a regulatory capital framework and ''capital requirement'' refers to a measurement of the loss absorbing resources the firm needs to maintain commensurate with its risks.

[14] As used in this Supplementary Information, ''capital resources'' refers to instruments and other capital elements that provide loss absorbency in times of stress.

[15] In the ANPR, the Board also described a framework that was contemplated for application to nonbank financial companies significantly engaged in insurance activities (systemically important insurance companies), the Consolidated Approach (CA). This framework, based on consolidated financial statement data prepared in accordance with U.S. GAAP, would categorize insurance liabilities, assets, and certain other exposures into risk segments, determine consolidated required capital by applying risk factors to the amounts in each segment, define available capital for the consolidated firm, and determine whether the firm has enough consolidated available capital relative to consolidated required capital. The Board appreciates the comments it has received regarding the CA. The Board continues to deliberate a capital requirement for systemically important insurance companies.

C. General Comments on the ANPR

The Board received 27 public comments on the ANPR from interested parties including supervised insurance companies, insurers not supervised by the Board, insurance and other trade associations, regulatory and actuarial associations, and others. Generally, commenters supported the Board's proposed tailoring of a capital requirement that is insurance-centric and appreciated the transparency and early opportunity to provide comment. Commenters agreed that capital frameworks should capture all material companies and risks faced by insurers, reflect on- and off-balance sheet exposures, and build on existing capital frameworks where possible. According to commenters, the Board's capital framework also should be informed by its potential effects on asset allocation decisions of insurers, not unduly incentivizing or disincentivizing allocation to certain asset classes. Commenters generally supported the Board's proposal to efficiently use legal entity capital requirements within an appropriate capital framework for both insurance depository institution holding companies and those insurance firms designated by the FSOC as systemically important. Commenters further suggested that the BBA should be built on principles that include minimal adjustments to already-applicable capital frameworks, indifference as to structure of the supervised firm, comparability across capital frameworks to which the supervised firm's entities are subject, appropriately reflecting insurance and non-insurance frameworks, and transparency. Commenters observed that the BBA would align relatively well with regulators' treatment of capital at individual companies and, consequently, the ways that capital may not be fungible.

In the ANPR, the Board asked what capital requirement should be used for insurance companies, banking companies, and companies not subject to any company-level capital requirement, as used in the BBA. For insurance companies subject to the NAIC's risk-based capital (RBC) requirements, commenters generally supported the use of required capital at the Company Action Level (CAL) under the NAIC RBC framework, with some preferring the use of a greater threshold, often termed the ''trend test'' level.[16] In commenters' views, a key advantage of the BBA is compatibility with existing legal entity capital requirements. The BBA was also viewed as being reasonably able to capture the risks of non-homogenous products across jurisdictions and varying legal and regulatory environments. Since it is an approach that builds on existing legal entity capital requirements, the BBA would absorb the impact of how those requirements treat the subject entities' products.

According to commenters, among the key disadvantages of the BBA would be that the framework must reconcile possibly divergent valuation and accounting practices. As an aggregated approach, the BBA may not align with the insurance depository institution holding company's own internal approach for risk assessment, which may be conducted on a consolidated basis. Commenters expressed varying views on whether the BBA would be prone to regulatory arbitrage, but many noted that this may not be a shortcoming of the BBA if capital movements are subject to restrictions. With regard to specific implementation issues, commenters noted, among other things, that the BBA may entail challenges in calibrating scalars (the mechanism used to bring divergent capital frameworks to a common basis), identifying scalars with a sufficient level of granularity, and addressing differences in global valuation practices. Furthermore, commenters noted that valuation bases for required capital may differ from valuation bases for available capital.

Some commenters raised concerns about implementation costs and, noting that the BBA as set out may tend to have relatively low impact in terms of costs to regulators and the industry, suggested implementing the BBA over a timeframe in the range of one to two years. Multiple commenters agreed that the BBA is expected to have minimal setup and ongoing maintenance and compliance costs. One commenter noted that since the BBA is a tailored approach that uses a firm's existing books and records without compromising supervisory objectives, the BBA's design is anticipated to aid in controlling the burden.

D. Comments on Particular Aspects of the ANPR

1. Threshold for Determining a Firm To Be Subject to the BBA

The Board sought comment on the criteria that should be used to determine which supervised firms would be subject to the BBA. Commenters generally did not disagree with the Board's proposal to apply the BBA to supervised firms with 25 percent or more of total consolidated assets attributable to insurance underwriting activities (other than assets associated with insurance underwriting for credit risk). One commenter suggested that insurance liabilities, rather than dedicated assets, should be considered the principal indicator of insurance activity. Some comments suggested that the Board should consider a depository institution holding company to be an insurance depository institution holding company subject to the BBA when either the ultimate parent of the enterprise is an operating insurance underwriting company, or, if this is not the case, by applying the 25 percent threshold suggested in the ANPR.

The Board's proposed threshold for treating a depository institution holding company as significantly engaged in insurance activities, and thus subject to the BBA, is set out in Section IV.B.

2. Grouping of Companies in the BBA

A preliminary question in applying the BBA is whether and, if so, how, the individual companies under an insurance depository institution holding company should be grouped before they are aggregated.

Some comments advocated an approach of keeping all companies together under a common parent as far up in the organizational structure as possible. Other comments saw merit to grouping a subsidiary IDI distinctly from an insurance parent. A number of commenters voiced views on standards for materiality or immateriality in determining whether to include companies under an insurance depository institution holding company when applying the BBA. More generally, commenters voiced openness to deeming companies immaterial if they do not pose significant risk to the insurance depository institution holding company.

The Board's proposed approach to grouping companies in an insurance depository institution holding company's enterprise in applying the BBA is set out in Section IV.C.

[16] The ''company action level'' under state insurance RBC requirements is the amount of capital below which an insurer must submit a plan to its state insurance regulator demonstrating how the insurer will restore its capital adequacy. The ''trend test level'' adds a margin above the company action level, reflecting the company's current and recent preceding years' results.

3. Treatment of Non-Insurance, Non-Banking Companies

In the ANPR, the Board suggested that subsidiaries not subject to capital requirements, such as some mid-tier holding companies, would be treated under the Board's banking capital rule. Commenters expressed concern that this treatment may not always be appropriate, depending on whether the subsidiary's activities are more closely aligned with insurance or banking activities in the enterprise. Commenters suggested that, where the subsidiary's activities are related to insurance operations, treating these companies under capital frameworks applicable to the operating insurance parent of such companies may be more appropriate.

The Board's proposed treatment of non-insurance, non-banking companies under the BBA is discussed further in Section IV.C.

4. Adjustments

Generally, commenters favored relatively few or modest adjustments to available capital and capital requirements under existing capital frameworks when applying the BBA. According to commenters, adjustments should be focused on addressing accounting mismatches or gaps or to eliminate double-counting. Among other things, commenters advocated adjustments to reverse intercompany transactions and ensure that adequate capital is held to reflect the risks in captive insurance companies. Specific proposed adjustments included, among others, addressing valuation differences, reversing intercompany loans and guarantees, and reversing the downstreaming of capital.

Numerous commenters advocated the use of adjustments to eliminate state permitted and prescribed accounting practices, essentially reverting insurers' accounting treatment to that prescribed by the NAIC. With regard to implementation burden, one commenter noted that it likely would not be unduly burdensome to obtain the data related to permitted and prescribed practices for purposes of applying an adjustment under the BBA.

In response to the ANPR's question on how the BBA should address intercompany transactions, commenters suggested that at least some adjustments for intercompany transactions would be necessary, with varying views on the types of transactions that should be addressed through adjustments. Commenters similarly expressed that assets and liabilities associated with intercompany transactions should not be charged twice for the risks they pose and that intercompany transactions that result in shifting risk from one subsidiary to another should be reviewed.

Many commenters expressed views that unwinding of intercompany transactions should be limited to those needed to prevent double-counting of capital. According to comments, capital should be counted only once as available capital. In particular, commenters highlighted double-leverage, whereby an upstream company's debt proceeds are infused into a downstream subsidiary as equity, resulting in equity at the subsidiary level that is offset by the liability at the parent and, hence, capital-neutral at the enterprise-level.

The proposed treatment of adjustments in the BBA is addressed in Sections VI.B and VII.B.

5. Scalars

In the BBA, existing capital requirements would be scaled to a common basis, addressing, among other things, cross-jurisdictional differences. Commenters advocated a framework for the BBA that distinguished between jurisdictions with capital frameworks suitable to be used and subjected to scalars (scalar-compatible frameworks) versus those with capital frameworks that should neither be used nor scaled (non-scalar-compatible frameworks).

A number of commenters advocated that the distinction between scalar-compatible and non-scalar-compatible frameworks should rest on three attributes that the frameworks should possess: (1) Risk-sensitivity; (2) clear regulatory intervention triggers; and (3) transparency in areas such as reserving, capital requirements, and reporting of capital measures. For material companies in a non-scalar-compatible framework, commenters suggested that their data should be restated to a scalar-compatible framework and then scaled in the BBA.

Section V of this NPR explains the Board's approach to scaling in the BBA, including the methodology adopted to produce this scaling approach.

6. Available Capital

Generally, commenters suggested that available capital under the BBA should be closely aligned with available capital permitted under state insurance laws. In its ANPR, the Board asked whether the BBA should include more than one tier of capital.[17] Commenters generally did not favor assigning available capital in the BBA to multiple tiers, citing reasons including the desire to minimize adjustments to existing capital requirements and audited financial statement data, simplicity in the BBA's design, and accounting standards' treatment of certain assets as non-admitted. Commenters further suggested that the Board can achieve its supervisory objectives with a BBA that includes a single, rather than more than one, tier of capital.

The Board's proposed approach to determining available capital under the BBA is set out in Section VII.

III. The Proposal

A. Overview of the BBA

The proposed BBA is an approach to a consolidated capital requirement that considers all material risks on an enterprise-wide basis by aggregating the capital positions of companies under an insurance holding company after expressing them in terms of a common capital framework.[18] The BBA constructs ''building blocks''—or groupings of entities in the supervised firm—that are covered under the same capital framework. These building blocks are then used to calculate the combined, enterprise-level available capital and capital requirement. At the enterprise level, the ratio of the amount of available capital to capital requirement amount, termed the BBA ratio, is subject to a required minimum and buffer, with a proposed minimum of 250 percent and a proposed total buffer of 235 percent.[19]

In each building block, the BBA generally applies the capital framework for that block to the subsidiaries in that block. For instance, in a life insurance building block, subsidiaries within this block would be treated in the BBA the way they would be treated under life insurance capital requirements. In a

[17] 81 FR 38631, 38635 (June 14, 2016).

[18] To streamline implementation burden while reflecting all material risks, the proposed BBA uses the insurance risk-based capital framework promulgated by the National Association of Insurance Commissioners (NAIC) as the common capital framework. As used in this Supplementary Information, ''capital position'' refers to an expression of a firm's capitalization, typically expressed as a ratio of capital resources to a measurement of the firm's risk.

[19] The BBA, as proposed, would apply to insurance depository institution holding companies. Should the Board later decide that its supervisory objectives would be appropriately served by applying the BBA to other institutions, including a systemically important insurance company, the Board retains the right to subject such a firm to the BBA by order. In addition, the Board will continue to evaluate prudential standards applicable to insurance depository institution holding companies, including those that are triggered by minimum capital requirements. However, the Board does not propose to apply Board-run stress testing standards to insurance depository institution holding companies at this time.

depository institution building block, subsidiaries would be subject to Federal banking capital requirements. To address regulatory gaps and arbitrage risks, the BBA generally would apply banking capital requirements to material nonbank/non-insurance building blocks. Once the enterprise's entities are grouped into building blocks, and available capital and capital requirements are computed for each building block, the enterprise's capital position is produced by generally adding up the capital positions of each building block. The BBA is consistent with the Board's continuing emphasis on adopting tailored approaches to supervision and regulation in a manner that streamlines implementation burden.

The BBA framework was designed to produce a consolidated risk-based capital requirement that is not less stringent than the results derived from the Board's banking capital rule. To enable aggregation of available capital and capital requirements across different building blocks, the BBA proposes a mechanism (scaling) to translate a capital position under one capital framework to its equivalent in another capital framework.[20] At the enterprise level, the BBA applies a minimum risk-based capital requirement that leverages the minimum requirement from the Board's banking capital rule, expressed as its equivalent value in terms of the common capital framework. The minimum required capital ratio under the BBA begins with this equivalence value but includes a safety margin to provide a heightened degree of confidence that the BBA's requirement is not less than the generally applicable requirement. Thus, the BBA produces results that are not less stringent than the Board's banking capital rule.

In designing the BBA, the Board considered, among other things, the activities and risks of insurance institutions, existing legal entity capital requirements, input from interested parties, comments to the ANPR, and the requirements of federal law. The Board sought to develop the BBA to reflect risks across the entire firm in a manner that is as standardized as possible, rather than relying predominantly on a supervised firm's internal capital models. Furthermore, the BBA is built on U.S. regulatory and valuation standards that are appropriate for the U.S. insurance industry.

Board staff also met with interested parties, including members of the NAIC, to solicit their views on the overall development of the BBA. Input from the NAIC and states has helped identify areas of commonality between the BBA and the Group Capital Calculation (GCC) that is under development by the NAIC, achieve consistency between those frameworks wherever possible, and minimize burden upon firms that may be subject to both frameworks, while remaining respectful of the various objectives of the relevant supervisory bodies and legal environments.

These considerations exist in the context of the Board's participation in the international insurance standard-setting process and development of the international Insurance Capital Standard (ICS), an approach the Board did not follow in designing the BBA. The ICS is being developed through the International Association of Insurance Supervisors (IAIS) as a consolidated group-wide prescribed capital requirement for internationally active insurance groups (IAIGs).[21] In participating in this process, the Board remains committed to advocating, collaboratively with the NAIC, state insurance regulators, and the Federal Insurance Office, positions that are appropriate for the United States. In particular, this includes advocacy for development of an aggregation method akin to the BBA, and the GCC being developed by the NAIC, that can be deemed an outcome-equivalent approach for implementation of the ICS. In 2017, the IAIS decided to release the ICS in two phases: A five-year monitoring phase beginning in 2020, during which the ICS would be reported on a confidential basis to group-wide supervisors (the Monitoring Period), followed by an implementation phase. The IAIS released a public consultation document on ICS Version 2.0 in 2018,[22] and is planning to release ICS Version 2.0, for use in the Monitoring Period, in 2019.[23]

The purpose of the ICS Monitoring Period is to monitor the performance of the ICS over time. It is not intended to be used as supervisory mechanism to evaluate the capital adequacy of IAIGs. The ICS Monitoring Period is intended to provide a period of stability for the design and calibration of the ICS so that group-wide supervisors, with the support of supervisory colleges, may compare the ICS to existing group standards or those in development, assess whether material risks are captured and appropriately calculated, and report any difficulties encountered. Reporting during the Monitoring Period will include a reference ICS as well as additional reporting at the request of the group-wide supervisor.

The reference ICS is comprised of a market-adjusted valuation approach (MAV), which is a market-based balance sheet valuation approach similar to that used under the Solvency II framework, along with a standard method for determining capital requirements and common criteria for available capital. At the group-wide supervisor's request, ICS 2.0 will also include an alternative valuation approach, GAAP with Adjustments, that is based on local GAAP accounting rules and reporting with certain adjustments to produce results that are comparable to the reference ICS. In addition, supervisors may request information on internal models as an alternative approach for calculating risk weights. During the Monitoring Period, the IAIS will also continue with the collection of information and field-testing of the Aggregation Method.

The reference ICS may not be optimal for the Board's supervisory objectives, considering the risks and activities in the U.S. insurance market. In the United States, financial firms frequently serve a substantial role in facilitating their customers' long-term financial planning. Insurers in the United States meet consumers financial planning needs with life insurance and annuity products in addition to property/casualty products to protect personal and real property and limit liability. Insurers match life insurance and annuity long-duration products with a long-term investment strategy.

As proposed, the BBA would appropriately reflect, rather than unduly penalize, long-duration insurance liabilities in the United States. In the United States, an aggregation-based approach like the BBA could also strike a better balance between entity-level, and enterprise-wide, supervision of insurance firms.

Question 1: The IAIS is currently considering a MAV approach for the

[20] Two building blocks under two different capital frameworks cannot typically be added together if, as is frequently the case, each framework has a different scale for its ratios and thresholds. As discussed further below in section V, the BBA proposes to scale and equate capital positions in different frameworks through analyzing historical defaults under those frameworks.

[21] Standards produced through the IAIS are not binding upon the United States unless implemented locally in accordance with relevant laws.

[22] IAIS, *Risk-based Global Insurance Capital Standard Version 2.0: Public Consultation Document* (July 31, 2018), *https://www.iaisweb.org/page/supervisory-material/insurance-capital-standard/file/76133/ics-version-20-public-consultation-document.*

[23] IAIS, *The IAIS Risk-based Global Insurance Capital Standard (ICS): Frequently Asked Questions on the Implementation of ICS Version 2.0* (January 26, 2018), *https://www.iaisweb.org/file/71580/implementation-of-ics-version-20-qanda.*

ICS; in contrast, the BBA aggregates existing company-level capital requirements throughout an organization to assess capital adequacy at various levels of the organization, including at the enterprise level. What are the comparative strengths and weaknesses of the proposed approaches? How might an aggregation-based approach better reflect the risks and economics of the insurance business in the U.S.?

Question 2: In what ways would an aggregation-based approach be a viable alternative to the ICS? What criteria should be used to assess comparability to determine whether an aggregation-based approach is outcome-equivalent to the ICS?

The Board believes that the capital requirements proposed in this NPR advance the regulatory objectives of the Board as consolidated supervisor of insurance depository institution holding companies, including ensuring enterprise-wide safety and soundness, and protecting the subsidiary IDIs. Based on the Board's preliminary review, the Board does not anticipate that any currently supervised insurance depository institution holding company will initially need to raise capital to meet the requirements of the BBA. Moreover, the BBA is consistent with the Board's continuing emphasis on adopting a tailored approach to supervision and regulation in a manner that streamlines implementation burden.

B. Dodd-Frank Act Capital Calculation

In light of the requirements of the Dodd-Frank Act, in addition to the BBA, the Board is proposing to apply a separate minimum risk-based capital requirement calculation (the Section 171 calculation) to insurance depository institution holding companies that uses the flexibility afforded under the 2014 amendments to section 171 of the Dodd-Frank Act to exclude certain state and foreign regulated insurance operations and to exempt top-tier insurance underwriting companies.

As previously discussed, section 171 of the Dodd-Frank Act requires the Board to establish minimum risk-based and leverage capital requirements for depository institution holding companies. These requirements may not be less than the ''generally applicable'' capital requirements for IDIs, nor quantitatively lower than the capital requirements that applied to IDIs on July 21, 2010.[24] Section 171 of the Dodd-Frank Act generally requires that the minimum risk-based capital requirements established by the Board for depository institution holding companies apply on a consolidated basis.

Notwithstanding the general requirement of section 171 of the Dodd-Frank Act that the minimum risk-based capital requirements established by the Board for depository institution holding companies apply on a consolidated basis, section 171(c) provides that the Board is not required to include for any purpose of section 171 (including in any determination of consolidation) any entity regulated by a state insurance regulator or a regulated foreign subsidiary or certain regulated foreign affiliates of such entity engaged in the business of insurance.

Currently, only a depository institution holding company that is a bank holding company or a ''covered savings and loan holding company'' [25] is subject to the Board's banking capital rule, which serves as the generally applicable capital requirement for IDIs and sets a floor for any capital requirements established by the Board for depository institution holding companies. Insurance depository institution holding companies are excluded from the definition of covered savings and loan holding company and from the application of the Board's banking capital rule on a consolidated basis. As a result, a top-tier SLHC that is significantly engaged in insurance activities and its subsidiary SLHCs currently are not subject to a consolidated minimum risk-based capital requirement that complies with section 171 of the Dodd-Frank Act.

Under the proposed Section 171 calculation the Board's existing minimum risk-based capital requirements would generally apply to a top-tier insurance SLHC on a consolidated basis when this company is not an insurance underwriting company. In the case of an insurance SLHC that is an insurance underwriting company, the requirements would instead apply to any insurance SLHC's subsidiary SLHC that is not itself an insurance underwriting company and is not a subsidiary of any SLHC other than the insurance SLHC, provided that the subsidiary SLHC is the farthest upstream non-insurer SLHC (*i.e.,* the subsidiary SLHC's assets and liabilities are not consolidated with those of a holding company that controls the subsidiary for purposes of determining the parent holding company's capital requirements and capital ratios under the Board's banking capital rule) (an insurance SLHC mid-tier holding company). Except for the option to exclude insurance operations, which is described in further detail below, the minimum risk-based capital requirements that would apply for purposes of the Section 171 calculation are the same requirements that are applied under the generally applicable capital rules, and therefore ensure compliance with Section 171 of the Dodd-Frank Act.[26]

The proposed Section 171 calculation would be implemented by amending the definition of ''covered savings and loan holding company'' for the purposes of the Board's banking capital rule.[27] Under the proposal, an insurance SLHC would become a covered savings and loan holding company subject to the requirements of the Board's banking capital rule unless it is a grandfathered unitary savings and loan holding company that derives 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature.

[24] Section 171 of the Dodd-Frank Act defines the ''generally applicable'' risk-based capital requirements as those established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act (''FDI Act'') and ''includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.''

[25] 12 CFR 217.1(c) and 217.2. Covered savings and loan holding company means a top-tier savings and loan holding company other than: (1) A top-tier savings and loan holding company that is:

(i) An institution that meets the requirements of section 10(c)(9)(C) of HOLA (12 U.S.C. 1467a(c)(9)(C)); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k));

(2) A top-tier savings and loan holding company that is an insurance underwriting company; or

(3) A top-tier savings and loan holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk).

[26] In its most basic form, for the Board's generally applicable minimum risk-based capital requirement, qualifying capital is the numerator of the ratio and risk-weighted assets (RWA) determine the denominator of the ratio. As used in this Supplementary Information, the terms ''qualifying capital,'' ''risk weight,'' and ''risk-weighted assets'' are used consistently with their uses under Federal banking capital rules. Under the Board's banking regulatory capital framework, the resulting ratio must be, at a minimum, 4.5 percent when considering common equity tier 1 (CET1) capital, 6 percent when considering total tier 1 capital, and 8 percent when considering total capital.

[27] 12 CFR 217.2.

As a result of this amendment to the definition of ''covered savings and loan holding company,'' insurance SLHCs generally would become subject to the minimum risk-based capital requirements in the Board's banking capital rule. However, under the proposed rule, top-tier holding companies that are engaged in insurance underwriting and regulated by a state insurance regulator, or certain foreign insurance regulators, would not be required to comply with the generally applicable risk-based capital requirements.[28] Instead, those requirements would apply to any insurance SLHC mid-tier holding companies, as defined in the proposed rule.

As noted, under the proposed Section 171 calculation, an insurance SLHC subject to the generally applicable risk-based capital requirements (*i.e.,* that is not a top-tier insurance underwriting company) could elect not to consolidate the assets and liabilities of all of its subsidiary state-regulated insurers and certain foreign-regulated insurers. By making this election, an insurance SLHC could determine that assets and liabilities that support its insurance operations should not contribute to the calculation of risk-weighted assets or average total assets under the generally applicable capital requirements.

With regard to the regulatory capital treatment of an insurance SLHC's (or insurance mid-tier holding company's) equity investment in subsidiary insurers that do not consolidate assets and liabilities with the holding company pursuant to the election, the proposal presents two alternative approaches for comment.[29] Under the first alternative, the holding company could elect to deduct the aggregate amount of its outstanding equity investment in its subsidiary state- and certain foreign-regulated insurers, including retained earnings, from its common equity tier 1 capital elements. Under the second alternative, the holding company could include the amount of its investment in its risk-weighted assets and assign to the investment a 400 percent risk weight, consistent with the risk weight applicable under the simple risk-weight approach in section 217.52 of the Board's banking capital rule to an equity exposure that is not publicly traded.[30] The Board recognizes that fully deducting from common equity tier 1 capital an insurance SLHC's equity investment in insurance subsidiaries in some cases could yield inaccurate or overly conservative results for the section 171 calculation, for example, where the holding company has issued debt to fund equity contributions to the insurance subsidiaries. Conversely, any risk weight approach for equity investments in insurance subsidiaries must be calibrated to reflect risk, facilitate comparability of capital requirements for insurance and non-insurance depository institution holding companies, and avoid creating incentives for regulatory arbitrage. The Board continues to consider these issues, and invites comment on optional approaches to exclude insurance operations from the calculation of consolidated regulatory capital requirements.

As previously noted, in addition to risk-based capital requirements, section 171 requires the Board to establish minimum leverage capital requirements for depository institution holding companies. The Board's banking capital rule includes a minimum leverage ratio of 4 percent tier 1 capital to average total assets.[31] The Board is not currently proposing a leverage capital requirement for insurance SLHCs under the BBA framework or as part of the section 171 compliance calculation, and continues to evaluate methodologies to apply leverage capital requirements to these institutions.

Question 3: As an alternative to consolidation, what are the advantages or disadvantages of permitting a holding company to deconsolidate the assets and liabilities of its subsidiary state- and certain foreign-regulated insurers, and deduct from equity its investment in these subsidiary insurers?

Question 4: As an alternative to consolidation, what are the advantages or disadvantages of permitting a holding company to deconsolidate the assets and liabilities of its subsidiary state- and certain foreign-regulated insurers, and risk weight the holding company's equity investment in these subsidiary insurers?

Question 5: What is the appropriate risk weighting for a holding company's equity investment in its subsidiary state- and certain foreign-regulated insurers?

Question 6: What other calculations, if any, should the Board consider to ensure that the minimum risk-based capital requirement for insurance depository institution holding companies complies with section 171 of the Dodd-Frank Act?

Question 7: Should the generally applicable minimum leverage ratio be excluded from the section 171 calculation?

Question 8: What are the advantages or disadvantages of applying the generally applicable minimum leverage capital requirement to an insurance SLHC or insurance SLHC mid-tier holding company, as defined in this proposal, with the same exclusion of insurance subsidiaries as set out in this proposal for the generally applicable minimum risk-based capital requirement?

Question 9: What are the advantages or disadvantages of applying a supplementary leverage ratio requirement to an insurance SLHC or insurance SLHC mid-tier holding company, as defined in this proposal, with the same exclusion of insurance subsidiaries as set out in this proposal for the generally applicable minimum risk-based capital requirement?

A holding company electing to de-consolidate the assets and liabilities of all of its subsidiary state- and certain foreign regulated insurers would make this election, and indicate the manner in which it will account for its equity investment in such subsidiaries, on the applicable regulatory report filed by the holding company for the first reporting period in which it is subject to the Section 171 calculation. A holding company seeking to make such an election at a later time, or to change its election due to a change in control, business combination, or other legitimate business purpose, would be required to receive the prior approval of the Board.

Question 10: What would the benefits and costs be of allowing a holding company to elect not to consolidate some, but not all, of its subsidiary state- and certain foreign-regulated insurers?

Question 11: When should the Board permit a holding company to request to change a prior election regarding the capital treatment of its insurance subsidiaries?

[28] In accordance with section 171 of the Dodd-Frank Act, a foreign insurance regulator that fall under this provision is one that ''is a member of the [IAIS] or other comparable foreign insurance regulatory authority as determined by the Board of Governors following consultation with the State insurance regulators, including the lead State insurance commissioner (or similar State official) of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the [NAIC].''

[29] The amount of the holding company's outstanding equity investment, including retained earnings, in a subsidiary insurer can be best determined as the equity of the subsidiary under U.S. GAAP.

[30] 12 CFR 217.52(b)(6).

[31] Under the Board's banking capital rule, the leverage ratio is the ratio of tier 1 capital to average total consolidated assets as reported on the Call Report, for a state member bank, or the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C), for a bank holding company or savings and loan holding company, as applicable minus amounts deducted from tier 1 capital under 12 CFR 217.22(a), (c) and (d). *See* 12 CFR 217.10(b)(4).

IV. The Building Block Approach

A. Structure of the BBA

The proposed BBA is an approach to a consolidated capital requirement that aggregates the capital positions of companies under an insurance depository institution holding company, adjusted as prescribed in the proposed rule, and scaled to a common capital framework. The proposed BBA would group companies into subsets of the full enterprise, called building blocks, where the company that owns or controls each building block is termed a ''building block parent.'' The purpose of a building block is to group together companies generally falling under the same capital framework (namely, the framework of the building block parent). Each building block parent's applicable capital framework would be used to determine that parent's capital position.[32] The proposed BBA would scale or convert the capital positions of non-insurance building block parents to their insurance building block parent equivalents and then aggregate the capital positions to reach an enterprise-wide capital position. In this manner, the BBA reflects the risks and resources of the subsidiaries within each building block and, thus, a consolidation of all material risks in the insurance depository institution holding company's enterprise.

An important part of applying the BBA is identifying the building block parents in an insurance depository institution holding company's enterprise. Section IV.C below discusses the steps to determine the building block parents, including identifying an inventory of companies from which building block parents are identified based on the applicable capital framework assigned to the companies for use in the BBA. Ultimately, all of the building blocks are aggregated into the top-tier depository institution holding company's building block, thereby resulting in an amount of available capital and capital requirement for the top-tier depository institution holding company used to calculate its BBA ratio.

B. Covered Institutions and Scope of the BBA

The proposed BBA would apply to depository institution holding companies significantly engaged in insurance activities. The Board proposed in the ANPR that a firm would be subject to the BBA if the top-tier parent were an insurance underwriting company or 25 percent of its total assets were in insurance underwriting subsidiaries. In this NPR, the Board proposes to leave this threshold unchanged. A firm would be subject to the BBA if: (1) The top-tier DI holding company is an insurance underwriting company; (2) the top-tier DI holding company, together with its subsidiaries, holds 25 percent or more of its total consolidated assets in insurance underwriting subsidiaries (other than assets associated with insurance underwriting for credit risk related to bank lending);[33] or (3) the firm has otherwise been made subject to the BBA by the Board.

As consolidated supervisor of the top-tier DI holding company of an insurance depository institution holding company, the Board proposes to include, within the scope of the BBA calculation, all owned or controlled subsidiaries of this top-tier parent.[34] While the Board could have opted to exclude certain subsidiaries (*e.g.,* those that are immaterial), the Board considers that a capital requirement including all owned or controlled companies within the scope of the BBA better reflects a consolidated, enterprise-wide perspective of the risks faced by the insurance depository institution holding company. Companies that are not owned or controlled by a top-tier DI holding company and that do not own or control an IDI would fall outside of the BBA's scope. For instance, a top-tier DI holding company may have a sister company that does not control an IDI. The sister company would fall outside of the scope of the BBA's application because it lacks the requisite connection to the IDI. Under a different structure, an insurance depository institution holding company may control an IDI that is also controlled by another insurance depository institution holding company, where both insurance depository institution holding companies are part of the same organization generally regarded as a single group. Both of these top-tier DI holding companies would be within the BBA's scope.

Currently, the insurance depository institution holding companies are all SLHCs and the current proposed definition of top-tier depository institution holding company in the BBA only encompasses SLHCs. However, it is possible for a bank holding company (which is also a depository institution holding company under the FDI Act) to be significantly engaged in insurance activities as determined by applying the threshold described earlier in this section. In particular, under the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[35] Federal savings associations with total consolidated assets of up to $20 billion, as reported to the Office of the Comptroller of the Currency (OCC) as of year-end 2017, may elect to operate as a covered savings association.[36] The Board is still considering these recent legislative changes. However, the Board presently does not see reason to apply different capital requirements to an insurance depository institution holding company that controls a covered savings association and an insurance depository institution holding company that controls any other IDI. Preliminarily, the Board anticipates harmonizing the regulation of BHCs and SLHCs significantly engaged in insurance activities, in each case determined by applying the threshold described earlier in this section. This could result in BHCs significantly engaged in insurance activities falling within the scope of the final rule implementing the BBA.

Question 12: What are the advantages and disadvantages of including all insurance depository institution holding companies (including bank holding companies significantly engaged in insurance activities and insurance depository institution holding companies that control covered savings associations) within the scope of the final BBA rule, as planned?

[32] For instance, if a particular building block parent is a U.S. operating insurer, the applicable capital framework would be NAIC RBC as adopted by the insurer's domiciliary state. In the BBA, all of the parent's subsidiaries would be reflected in the manner that they are treated under NAIC RBC. If a building block parent is an insured depository institution, the applicable capital framework would be Federal bank capital rules. In the BBA, the IDI's subsidiaries would be consolidated and reflected through the IDI's capital position in accordance with the Federal banking capital rules.

[33] For purposes of this threshold, a supervised firm would calculate its total consolidated assets in accordance with U.S. GAAP, or, if the firm does not calculate its total consolidated assets under U.S. GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board.

[34] The Board recognizes that, where a firm's structure includes a number of companies that control an IDI, it may be more practical and efficient, particularly in terms of reducing implementation burden, to treat, for purposes of the BBA, a mid-tier entity as the top-tier SLHC with the upstream controlling entity(ies) left outside of the BBA's scope. For instance, if an insurance institution is controlled by a company significantly engaged in non-insurance, commercial activities, it may be practical, and without compromising the quality of the Board's consolidated supervision, to focus the BBA's application on the insurance institution rather than the broader commercial enterprise.

[35] Public Law 115–174, 132 Stat. 1296 (2018).

[36] EGRRCPA Section 206.

C. Identification of Building Blocks and Building Block Parents

1. Inventory

In order to identify the set of companies that would be grouped into building blocks and aggregated, an insurance depository institution holding company would first identify an inventory of all companies in its enterprise. Some of the companies in the inventory would be building block parents. The remaining companies would be assigned to building block parents.

To construct the inventory, the Board prefers including a broad set of companies that reflects the firm's full enterprise under the BBA's scope and provides an appropriately wide range of candidates for building block parents. A framework for constructing the inventory that relied on, for instance, the definitions of ''control'' under U.S. GAAP may be burdensome to apply and set a relatively higher bar for inclusion of affiliates, resulting in too few companies appearing on the inventory. The Board notes that the NAIC's Schedule Y, filed annually as part of the SAP financial statements, is advantageous in utilizing a standard for ''control'' that enables more subsidiaries and affiliates to be included.

Because it is possible that certain banking, SLHC, or nonbanking companies may not appear on the supervised firm's Schedule Y (but would appear on the firm's regulatory filings with the Board), the Board sought to augment the inventory by adding to the set of companies obtained from Schedule Y the companies appearing on the Board's Forms FR Y–6 and FR Y–10. These forms use a definition of control setting out scenarios where one company has control over another through a variety of ways, including ownership, control of voting securities, and management agreements. The Board considers that through the combination of companies appearing on Forms FR Y–6 and FR Y–10, and the NAIC's Schedule Y,[37] the BBA would reflect a sufficiently wide set of companies as potential building block parents as well as capturing all material risks. Moreover, by utilizing reports already prepared by insurance depository institution holding companies, including those reported to state insurance regulators, the BBA proposal aims to minimize burden in the process of inventorying companies.

While the inventory in the BBA will generally comprise the companies shown on the forms discussed above, the Board also seeks to ensure that the supervised firm's organizational and control structure does not materially alter the scope of risks that the BBA considers. Firms may engage in transactions with counterparties not shown on these forms, where these transactions have the effect of transferring risk or evading application the BBA. For such circumstances, the BBA includes a mechanism to include these counterparties in the inventory.

As discussed below, applying the BBA and performing its calculations rests on identifying the building block parents among the companies in the inventory. Once these building block parents are identified, all of their subsidiaries, whether or not listed on the inventory, would fall within the scope of the BBA.

An illustration of this step in applying the BBA is presented in Section IX.A.

2. Applicable Capital Framework

In the BBA, the term ''applicable capital framework'' refers to a regulatory capital framework that is used to determine whether a company should be a building block parent, and, once a company is assigned to a building block, to measure the capital resources of that company and the amount of risk the company contributes to the overall enterprise. Once a company is identified as a building block parent, its applicable capital framework would be used to reflect the capital position across all of the subsidiaries in the building block, including subsidiaries that are not directly subject to any regulatory capital framework.

For the insurance operations, insurance capital requirements are likely to best reflect the underlying risks.[38] For instance, the applicable capital framework for U.S. insurance operating companies may be life or property and casualty (P&C) risk-based capital (RBC). The Board's proposal to use the regulatory capital framework promulgated by the NAIC for an insurance company or operation as the applicable capital framework (*e.g.,* the P&C RBC for a P&C insurer) takes into consideration the NAIC capital framework's reflection of the potential impact of various risk exposures, including liabilities, on the solvency of that type of insurer. For material insurance companies that lack a regulatory capital framework for which scaling can be performed under the BBA, such as some captive insurance companies, the Board proposes to apply the NAIC's RBC, after restating such companies' financial information according to SAP.[39]

For banking companies, the Board was mindful of the reflection of risks in the banking capital requirements. The Board proposes to incorporate the regulatory capital framework established for a depository institution by its primary Federal banking regulator as the depository institution's applicable capital framework, because the capital framework has been calibrated to reflect the potential impact of various risk exposures common to banking organizations (primarily in the form of assets) on the risk profile of a depository institution. In particular, an IDI's applicable capital framework is determined as follows:[40] For nationally-chartered IDIs, the applicable capital framework is the capital rule as set forth by the OCC.[41] For state-chartered IDIs that are members of the Federal Reserve System, the applicable capital framework is the Board's banking capital rule, and for those that are not members, the capital rule as set forth by the FDIC.[42] In addition, applying bank capital requirements to certain other non-insurance subsidiaries, referred to in the BBA as ''material financial entities'' (MFEs), can mitigate the risk of regulatory arbitrage by disincentivizing the reallocation of assets between banking, insurance, and other companies in the institution. Where the rule proposes to apply Federal bank capital rules, insurance depository institution holding companies would apply them using the same elections (*e.g.,* treatment of accumulated other

[37] The Schedule Y used for this purpose is the one included in the most recent statutory annual statement for an operating insurer in the insurance depository institution holding company's enterprise.

[38] As discussed further below, the insurance operations in an insurance building block can encompass operating insurers and subsidiaries that are not subject to a regulatory capital framework. Unless those subsidiaries are later assigned to a bank building block, through the operations discussed below, the treatment of these companies under insurance capital rules would be used in the BBA. To best reflect the risks in the enterprise while streamlining implementation burden, the Board proposes to apply this treatment rather than applying the Board's banking capital rule universally to noninsurance companies. As discussed below, those that are material may meet the definition of a material financial entity and, where applicable, be treated under the Board's banking capital rule.

[39] A discussion of the proposed BBA's definition of ''material'' appears in Section IV.C.3.

[40] Note that a foreign bank would typically not meet the definition of an IDI, which includes entities whose deposits are insured by the FDIC without regard to whether the entity's deposits are insured by any other program. In the BBA, any foreign bank would be subject to the Board's banking capital rule.

[41] 12 CFR part 3, 12 CFR part 167.

[42] 12 CFR part 324; 12 part CFR 217.

comprehensive income) as they would when applying bank capital rules to a subsidiary IDI.[43]

The Board proposes to include, within the scope of the BBA, the insurance depository institution holding company predominantly engaged in title insurance through a tailored application of the Board's banking capital rule.[44] The NAIC has not promulgated a risk-based capital standard for title insurance companies. In the absence of an insurance capital framework for title insurance, and in light of the different nature of title insurance compared with life and P&C insurance, the Board has determined to apply the Board's banking capital rule to an insurance depository institution holding company predominantly engaged in title insurance. Currently, there is one insurance depository institution holding company that is predominantly engaged in title insurance. The Board's proposed application of the BBA to this firm is facilitated by the fact that the title insurance depository institution holding company, like other large title insurers, prepares consolidated financial statements in accordance with U.S. GAAP.

As a simplified example of the determination of companies' applicable capital frameworks, consider an insurance depository institution holding company consisting of a life insurance top-tier parent with two subsidiaries, a P&C insurer and the IDI. Each of these companies would fall under a different applicable capital framework, namely, for the top-tier parent, NAIC RBC for life insurance; for the P&C subsidiary, NAIC RBC for P&C insurance; and for the IDI, the appropriate Federal banking capital rule. A further illustration of this step in applying the BBA is presented in Section IX.B.

Question 13: The Board invites comment on the proposed approach to determine applicable capital frameworks. What are the advantages and disadvantages of the approach? What is the burden associated with the proposed approach?

3. Building Block Parents

Under the proposed BBA, a building block parent can be one of several different types of companies. The first is the top-tier depository institution holding company. In the absence of any other identified building block parents, the top-tier depository institution holding company's building block would contain all of the top-tier depository institution holding company's subsidiaries. A second type of building block parent is a mid-tier holding company that is a ''depository institution holding company'' under U.S. law. Treating these companies as building block parents will allow for the calculation of a separate BBA ratio at the level of these companies in the enterprise and help to ensure that these companies remain appropriately capitalized. The balance of this subsection discusses the remaining types of building block parents.

(a) Capital-Regulated Companies and Material Financial Entities as Building Block Parents

For two categories of companies that could be identified as building block parents, companies that are subject to company-level capital requirements (capital-regulated companies) and MFEs, the analysis is conducted in the same manner. For each of these companies in the inventory, the supervised firm analyzes whether that company's applicable capital framework differs from that of the next capital-regulated company, MFE, or DI holding company encountered when proceeding upstream in the supervised firm's inventory. If so, that company is identified as a building block parent. The identification of building block parents, particularly capital-regulated companies and material financial entities, can be illustrated through the following decision tree, which would be applicable for each company in the insurance depository institution holding company's enterprise.

[43] This accords with the rule set out in 12 CFR 217.22(b)(2)(iii), which specifies that ''Each depository institution subsidiary of a Board-regulated institution that is not an advanced approaches Board-regulated institution must elect the same option as the Board-regulated institution pursuant to [12 CFR 217.22(b)(2)].''

[44] Later sections in this Supplementary Information discuss aspects of applying the Board's banking capital rule to the insurance depository institution holding company predominantly engaged in title insurance.

*Decision Tree Depicting Identification of Building Block Parents**

* In addition to the identifications noted in the decision tree:

- Inventory companies identified pursuant to the proposed provisions concerning the Board's reservation of authority, structures intended to evade application of the rule, or certain inventory companies owned by members of more than one building block, are building block parents;
- A company that otherwise would be a building block parent, but, pursuant to the proposed provision concerning the Board's reservation of authority, is deemed to not be a building block parent.

† Certain companies (investment advisers under the Investment Advisers Act of 1940, financial subsidiaries as defined in Section 121 of the Gramm-Leach-Bliley Act (GLBA), Pub. L. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809, and companies whose risks are allocated to intra-group transaction counterparties as discussed below) are ineligible to be MFEs.

For example, if a firm's top-tier depository institution holding company is a life insurer that has two direct subsidiaries—a P&C insurer and the IDI—the firm would analyze whether the P&C company's applicable capital framework (NAIC RBC for P&C insurers) differs from that of the top-tier DI holding company (NAIC RBC for life insurers). Upon finding that the applicable capital frameworks are different, the P&C insurer would be a building block parent. The same would be the case for the IDI, whose applicable capital framework (a Federal banking capital rule) differs from the capital framework of its life insurance parent. However, if the P&C subsidiary has a further downstream P&C subsidiary, the firm would compare the latter P&C company's applicable capital framework only against that the P&C subsidiary immediately below the life insurer.[45] Thus, the downstream P&C subsidiary would not be identified as a building block parent.

If the capital framework of a capital-regulated company or MFE is the same as that of the next-upstream capital-regulated company, MFE, or DI holding company, generally the companies will remain in the same building block except for one case. This exceptional case is where a company's applicable capital framework treats the company's subsidiaries in a way that does not substantially reflect the subsidiary's risk. For instance, there are situations in which NAIC RBC may not fully reflect the risks in certain subsidiaries (typically, certain foreign subsidiaries) that assume risk from affiliates.[46] In such cases, the subsidiary (which could be a capital-regulated company or MFE) would be identified as a building block parent so that its risks can more appropriately be reflected in the BBA.

While the current population of insurance depository institution holding companies does not include material non-U.S. operations, additional considerations in identifying capital-regulated companies as building block parents may arise in cases of an insurance depository institution holding company's insurance subsidiaries subject to non-U.S. capital frameworks. Whether such companies can be identified as building block parents depends on whether the companies' applicable capital frameworks can be scaled to NAIC RBC, the common capital framework used in the BBA. If a scalar has been developed for the applicable capital framework, the capital-regulated non-U.S. insurance subsidiary would be identified as a building block parent. Where a scalar has not been developed for the applicable capital framework, but the aggregate of the enterprise's companies falling under the non-U.S. insurance capital framework is material,[47] the BBA proposes a provisional scaling approach so that these companies could be identified as building block parents. In all other cases, capital-regulated non-U.S. insurance subsidiaries would not be identified as building block parents.

As discussed above, an MFE is a financial entity that is material, subject to certain exclusions. The proposed definition of ''financial entity'' in the BBA enumerates several types of companies engaged in financial activity consistent with similar enumerations in other rules applied by the Board. To develop the proposed definition of ''financial entity,'' the Board began with the definition of the same term under the Board's existing rules,[48] and made modifications to tailor to insurance enterprises and the BBA (principally, the removal of the prong for employee benefit plans, since these are unlikely to exist under insurance depository institution holding companies).

The proposed definition of materiality consists of two parts. In the first part, a company is presumed to be material if the top-tier depository institution holding company has exposure to the company exceeding 1 percent of the top-tier's total assets.[49] In this context, ''exposure'' includes:

- The absolute value of the top-tier depository institution holding company's direct or indirect interest in the company's capital;
- the top-tier depository institution holding company or any of its subsidiaries providing an explicit or implicit guarantee for the benefit of the company; and
- potential counterparty credit risk to the top-tier depository institution holding company or any subsidiary arising from any derivatives or similar instrument, reinsurance or similar arrangement, or other contractual agreement.

There may be cases in which these enumerated presumptions may not fully capture subsidiaries that are otherwise material. To accommodate these cases, the second part of the proposed definition of ''material'' would consider a subsidiary to be material when it is significant in assessing the insurance depository institution holding company's available capital or capital requirements. Factors that indicate such significance include risk exposure, activities, organizational structure, complexity, affiliate guarantees or recourse rights, and size.[50] This definition, tailored to insurance and the BBA, accords with the Board's prior rulemakings and actions utilizing considerations of materiality.[51]

Question 14: What other definitions of materiality, if any, should the Board consider for use in the BBA? Examples may include a threshold based on size, off-balance sheet exposure, or activities including derivatives or securitizations.

Question 15: What thresholds, other than the proposed threshold for exposure as a percentage of total assets, should the Board consider for use in the BBA's definition of materiality? What are advantages and disadvantages of using a threshold based on the top-tier depository institution holding company's building block capital requirement?[52]

The notion of a material financial entity is proposed to address a variety of companies not subject to a capital requirement and that could pose risk to the safety and soundness of the insurance depository institution holding company or its subsidiary IDI. For instance, an insurance depository institution holding company may have a material derivatives trading subsidiary not presently subject to any capital framework. Additionally, a company under an insurance depository institution holding company may serve as a funding vehicle for other companies in the institution, borrowing and downstreaming funds to affiliates.

[45] Although the downstream P&C subsidiary has two companies upstream of it—the life parent and its direct subsidiary P&C insurer—the downstream P&C subsidiary's applicable capital framework would only be compared against the framework of the next-upstream capital regulated company.

[46] The BBA proposes to apply NAIC RBC to such subsidiaries. However, under state laws, the application of NAIC RBC on the parent would not normally operate to include the available and required capital from applying NAIC RBC to the subsidiary. However, when the is identified as a building block parent in the BBA, the subsidiary's available and required capital under NAIC RBC would be reflected by the parent after aggregation.

[47] The proposed BBA's application of the term ''material'' is discussed below.

[48] *See* 12 CFR 252.71(r).

[49] The supervised firm must calculate its total consolidated assets in accordance with U.S. GAAP, or if the firm does not calculate its total consolidated assets under U.S. GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board.

[50] Here, the consideration of significance reflects the potential to influence the Board's supervisory judgments and assessments of the insurance depository institution holding company.

[51] *See* 12 CFR part 243 (Regulation QQ) and Reporting Form FR 2052b.

[52] To reconcile a potential circularity of having a definition of materiality that relies on the current year's building block capital requirement, the threshold could be based on the company capital requirement of the capital-regulated company in the supervised insurance organization with the greatest assets, for the first year, and the prior year's building block capital requirement for the top-tier depository institution holding company for subsequent years.

Among other companies that could be MFEs are certain insurance companies that exist to reinsure risk from affiliates. The Board proposes that when such companies, and the insurance depository institution holding company's use of and transactions with such companies, could pose material financial risk to the insurance depository institution holding company, such companies' financial information should be restated in accordance with SAP.[53] Such companies as restated should be subjected to capital treatment under RBC and included in the BBA as MFEs.

The BBA includes certain exceptions whereby companies that are financial entities and material would nonetheless not be treated as MFEs. Where a company primarily functions as an intermediary through which other companies within the insurance depository institution holding company's enterprise conduct activities (*e.g.,* manage or hedge risk through the use of reinsurance or derivatives or investment partnerships), the proposed BBA allows the insurance depository institution holding company to elect to not treat such a company as an MFE. In such a case, the firm would be required to allocate the company's risks to other companies within the insurance depository institution holding company's enterprise.

In addition, the Board proposes that certain types of companies would be ineligible to be MFEs: A financial subsidiary as defined in GLBA Section 121 and a subsidiary primarily engaged in asset management. In the case of a financial subsidiary, the equity of these subsidiaries is deducted, and the assets and liabilities not consolidated, under the Board's banking capital rules. Treating such a subsidiary as an MFE, and calculating qualifying capital and RWA for such a subsidiary, may not fully accord with the Board's current banking capital rules.

In the case of a subsidiary primarily engaged in asset management, the Board considers that a registered investment adviser under the Investment Advisers Act of 1940 would not be an MFE. As a non-insurance company, the applicable capital regime under the BBA for an investment adviser would be the Federal banking capital rules. These rules are built on the calculation of RWA and presently do not have dedicated, robust, and risk-sensitive treatment of operational risk. Moreover, investment advisers do not typically report all assets under management on their balance sheets and can face substantial operational risk. As such, measuring these subsidiaries' capital positions using the Board's banking capital rules may not provide a complete depiction of the subsidiaries' risks. Furthermore, in insurers' organizational structures, asset manager subsidiaries can exist under non-operating or shell holding companies. To the extent that such holding companies under insurance depository institution holding companies are not engaged in financial activities, they would not constitute financial entities under the BBA.

Question 16: The Board invites comment on the use of the material financial entity concept. What are the advantages and disadvantages to the approach? What burden, if any, is associated with the proposed approach?

Question 17: The Board invites comment on the proposed treatment of intermediaries. What are the advantages and disadvantages of the approach? What burden, if any, is associated with the proposed treatment?

Question 18: What risk-sensitive approaches could be used to address the risks presented by asset managers in an insurance depository institution holding company's enterprise?

Question 19: What forms or structures, if any, do asset managers or their holding companies take in insurance enterprises, such that they may fall within the proposed definition of an MFE?

(b) Other Instances of Building Block Parents

The BBA allows for three additional cases in which a company is identified as a building block parent. First, a company is a building block parent when it is:

- Party to one or more reinsurance or derivative transactions with other inventory companies;
- Material; and
- Engaged in activities such that one or more inventory companies are expected to absorb more than 50 percent of its expected losses.

Second, the case could arise where a company under an insurance depository institution holding company is jointly owned by more than one building block parent, where the jointly owned company is not itself a building block parent. Furthermore, the company may be consolidated in the applicable capital framework of one or more of the building block parents. In such a case, the aggregation in the BBA could result in double counting of the risks and resources of the jointly-owned company. To avoid this outcome, the proposed BBA would identify the jointly-owned company as a building block parent, whereupon the aggregation and consideration of allocation shares, discussed below, would avoid double-counting.

Finally, depending on an insurance depository institution holding company's organizational structure, it may be more convenient or less burdensome to treat, as a building block parent, a company that is not identified as such through the operations described above, or vice versa.

Each of these cases of identifying or declining to identify building block parents is achieved through the reservation of authority provision proposed in the BBA.[54] Factors that the Board may consider in determining to treat or not treat a company in an insurance depository institution holding company's enterprise as a building block parent in this manner include, but are not limited to, operational ease or convenience in applying the BBA, adequate risk sensitivity and reflection of risks posed to the safety and soundness of the supervised institution and/or its subsidiary IDI, and minimizing implementation burden in the insurance depository institution holding company's fulfillment of regulatory reporting and compliance requirements.[55] Moreover, certain transaction structures result in material risks being moved outside of regulatory capital frameworks, or moved to regulatory capital frameworks that do not fully reflect these risks.[56] The BBA accommodates such scenarios by reserving for the Board the authority to make adjustments to the set of inventory companies that are building block parents.

An illustration of this step in applying the BBA is presented in Section IX.C below.

Question 20: Are the additional instances where the Board proposed to identify building block parents appropriate? For example, with regard to a company that would be a building

[53] This application of SAP would be consistent with the way SAP is applied in the BBA, reflecting the proposed adjustments. One such adjustment that is relevant is the use of Principle-Based Reserving (PBR) on business that is currently grandfathered. See section VI.B.3.

[54] *See* proposed Section 601(d)(3).

[55] Likewise, this provision allows the Board to not treat a company as a building block parent where that company would be a building block parent by operation of the rule. The same considerations identified here could guide the Board in the exercise of this authority.

[56] Such transactions could include, among other things, certain reinsurance or derivative transactions involving a counterparty that was formed or acquired by or on behalf of the insurance depository institution holding company where no inventory company has more than a negligible ownership stake in the counterparty.

block parent because it is a party to one or more reinsurance or derivative transactions with other inventory companies, is material, and is engaged in activities such that one or more inventory companies are expected to absorb more than 50 percent of its expected losses, would a different level of expected losses (i.e., a level other than 50 percent) be more appropriate?

D. Aggregation in the BBA

After identifying all of the building block parents and their applicable capital frameworks, the BBA would determine available capital and capital requirements, make appropriate adjustments and translate as needed to the common capital framework used in the BBA, the NAIC's RBC. The BBA uses a bottom up approach to aggregation. This approach will generate a BBA ratio for each company in the organization that is a depository institution holding company under the FDI Act, *i.e.,* the top tier depository institution holding company and any mid-tier depository institution holding company. The top tier parent and any subsidiary depository institution holding company may be subject to a capital framework other than the NAIC's RBC. In that instance, the building block available capital and building block capital requirement are scaled to NAIC RBC to compute the BBA ratio that those levels in the organizational structure.

The purpose of aggregating companies within the BBA is to reflect the ownership interests of building block parents in subsidiaries and affiliates in order to provide an accurate measure of available capital without double counting. In the BBA, this is achieved by determining a building block parent's ''allocation share'' of any downstream building block parent. The following three examples may further illustrate the determination of allocation shares in the proposed BBA:

- An upstream company that is a building block parent (upstream building block parent) owns 100 percent of a subsidiary that is also a building block parent (downstream building block parent). The downstream building block parent's available capital is comprised solely of the equity owned by the upstream building block parent.
  - The upstream building block parent's allocation share in the downstream building block parent is 100 percent.
- An upstream building block parent (BBP A), and another building block parent (BBP B) at the same level in the corporate hierarchy as BBP A, together own a downstream building block parent, where BBP A owns 30 percent and BBP B owns 70 percent.
  - BBP A's allocation share in the downstream building block parent is 30 percent and BBP B's allocation share is 70 percent.
- Upstream building block parents BBP A and BBP B jointly own a downstream building block parent, where BBP A owns 30 percent and BBP B owns 70 percent. In addition, BBP A owns a surplus note issued by the downstream building block parent, which represents 20 percent of the downstream building block parent's available capital. Consider further that the carrying value of the downstream building block parent (and its capital excluding the surplus note) is $100 million and the surplus note is for $25 million.
  - BBP A's allocation share is the surplus note ($25 million) plus its prorated share of the downstream building block parent's equity ($30 million), divided by the downstream building block parent's total available capital ($125 million), or 44 percent. BBP B's allocation share is 56 percent.

As a simple example, consider the hypothetical insurance depository institution holding company presented in Section IV.C.2. Suppose the life parent's Total Adjusted Capital (TAC) is $500 million and its Authorized Control Level (ACL) RBC is $100 million. Suppose the P&C subsidiary's TAC and ACL are $40 million and $10 million, respectively. Aggregating the P&C subsidiary and life parent is seamless, since the life parent's RBC figures already include the P&C subsidiary, *i.e.* before and after aggregation of the P&C subsidiary under the BBA, the life parent's TAC and ACL are the same. For the life parent's subsidiary IDI, suppose the IDI's total capital is $27 million and its RWA is $150 million. After scaling (see the scaling parameters and explanation of this example in Section V below), its available capital is $17.5 million and its capital requirement is $1.6 million. Suppose the life parent's carrying value of the subsidiary IDI is $30 million, and the IDI's contribution to the life parent's ACL is $2 million. Aggregating the IDI into the life parent in accordance with the BBA results in available capital of $487.5 million,[57] and capital requirement of $99.6 million.[58]

A further illustration of this step in applying the BBA is presented in Section IX.G.

Question 21: How can the Board improve the calculation of allocation share? Should the Board further clarify the data sources for the inputs to the allocation share calculation? Would it be better to use a simpler methodology, such as relying only on common equity ownership percentages?

V. Scaling Under the BBA

A. Key Considerations in Evaluating Scaling Mechanisms

In the BBA, the calculation referred to as ''scaling'' translates a company's capital position under one capital framework to its equivalent capital position in another framework. This translation allows appropriate comparisons and aggregation of metrics. In evaluating different approaches to determining scalars, the Board was primarily informed by considerations including reasonableness of the approaches' assumptions, ease of implementation, and stability of the parametrization resulting from the approaches. Reasonable assumptions include those that are reflective of supervisory experience, as opposed to those that are crude and unlikely to produce accurate translations. Ease of implementation refers to the ease with which scaling parameters can be derived in an approach, which can vary based on availability of data on companies' experience under a framework. The stability of parametrization refers to the extent to which changes in assumptions or data affect the value of scaling parameters.

As an Appendix to this proposed rule, the Board is publishing a white paper that supplements the determination of the scaling parameters in this proposed rule.[59] The white paper identifies and assesses a number of approaches to developing scalars, and helps explain the underlying assumptions and analytical framework supporting the scaling approach and equations proposed in this rule. The Board has incorporated that analysis in its consideration and is publishing the white paper to make it more accessible to the public.

B. Identification of Jurisdictions and Frameworks Where Scalars Are Needed

Because all of the current insurance depository institution holding

[57] This is calculated as the life parent's TAC ($500 million), minus its carrying value of the IDI ($30 million), plus the IDI's scaled total capital ($17.5 million).

[58] This is calculated as the life parent's ACL RBC ($100 million), minus the contribution to ACL by the IDI ($2 million), plus the IDI's scaled capital requirement ($1.6 million).

[59] *See Comparing Capital Requirements in Different Regulatory Frameworks* (2019). The Board relied on the white paper, including the explanations and analysis contained therein, in this rulemaking and incorporates it by reference.

companies are U.S.-based insurers that own IDIs, which are subject to Federal bank capital rules, scaling from the Board's banking capital rule to the NAIC's RBC (and vice versa) will be needed in the BBA. The Board also performed an analysis to determine whether scaling between any other capital frameworks would currently be needed.

With regard to scaling between U.S. and non-U.S. jurisdictions (*e.g.,* non-U.S. insurance to U.S. insurance), the Board reviewed the companies under each insurance depository institution holding company that would be subject to this proposal using the Board's existing supervisory data cross-referenced with data available from the NAIC. Because all foreign non-insurance operations would be analyzed using the Board's banking capital rule, the Board focused on non-U.S. insurance operations. None of the non-U.S. insurance subsidiaries of current insurance depository institution holding companies appeared to be material to their group. The Board therefore is not presently proposing scaling for non-U.S. insurance capital frameworks.[60]

C. The BBA's Approach to Determining Scalars

After considering potential scaling methods and the analysis in the referenced white paper, the Board proposes to use an approach to scaling in the BBA based on historical bank and insurer default data (the probability of default approach). The proposal uses historical default rates to analyze the meaning of solvency ratios and preserves this in translating values between capital frameworks. While default definitions can be difficult to align across capital frameworks, an underlying purpose of many solvency ratios is to assess the probability of a firm defaulting and default data currently appears to be the best available economic benchmark for capitalization metrics.

Using the probability of default approach, the Board proposes to use the following scaling formulas, which are explained more fully in the referenced white paper. The first equation below calculates the equivalent ACL under NAIC RBC based on an amount of risk-weighted assets under Federal banking capital rules. The second equation below calculates TAC under NAIC RBC, based on an amount of tier 1 plus tier 2 qualifying capital under Federal banking capital rules. The third and fourth equations cover scaling back from NAIC RBC to Federal banking capital rules.

1. NAIC ACL RBC = 0.0106 * RWA
2. NAIC TAC = (Banking Rule Total Capital)-0.063*RWA
3. RWA = 94.3* NAIC ACL RBC
4. Banking Rule Total Capital = NAIC TAC + 5.9* NAIC ACL RBC

This scaling approach reflects a total balance sheet perspective.[61] Available capital under two different frameworks may have differences that distort the picture of a firm's capital position in one framework compared with the other. U.S. GAAP is based on a going-concern assumption. By contrast, U.S. SAP is generally more conservative, based on a liquidation (realizable value or gone concern) assumption. To reflect accounting differences such as these, the proposed scaling approach scales available capital in addition to the capital requirement. Scaling from bank capital rules to insurance capital rules is applied to the total of combining common equity tier 1, additional tier 1, and tier 2 capital under the Board's banking capital rule because there is only one tier of capital in the BBA and NAIC RBC.

In the example of a simple insurance depository institution holding company presented in Sections IV.C.2 and IV.D above, the life insurance parent's subsidiary IDI had total capital of $27 million and RWA of $150 million. To calculate scaled available capital and required capital, the IDI's amounts under Federal banking capital rules are used in the equations shown above. Specifically, scaled capital requirement = 0.0106 * $150 million = $1.59 million and scaled available capital = $27 million − (0.063 * $150 million) = $27 million − $9.45 million = $17.55 million.[62]

A further illustration of this step in applying the BBA is presented in Section IX.F.

D. Approach Where Scalars Are Not Specified

As proposed, the BBA only includes scaling between Federal bank capital rules and NAIC RBC. However, depending on how insurance depository institution holding companies change their structures and business mixes over time, or new insurance depository institution holding companies come under Board supervision, the BBA may need to include scaling from other frameworks. While the Board will not propose scalars for specific capital frameworks not present in the existing population of insurance depository institution holding companies, the proposed BBA includes a framework by which the scaling would be provisionally determined for a capital framework where no scalar is specified, should the need arise.

This provisional approach would be used for a non-U.S. insurance subsidiary when its regulatory capital framework is scalar compatible, as defined in the proposed rule. The proposed rule defines ''scalar compatible framework'' as (1) a framework for which the Board has determined scalars or (2) a framework that exhibits the following three attributes: (a) The framework is clearly defined and broadly applicable to companies engaged in insurance; (b) the framework has an identifiable intervention point that can be used to calibrate a scalar;[63] and (c) the framework provides a risk-sensitive measure of required capital reflecting material risks to a company's financial strength. Where the non-U.S. insurance subsidiary's regulatory capital framework is not scalar compatible, the BBA proposes to apply U.S. insurance capital rules to the company.

Question 22: The Board invites comment on the proposed approach to scalars and the associated white paper. What are the advantages and disadvantages of the approach? What is the burden associated with the proposed approach?

Question 23: How should the Board develop scalars for international insurance capital frameworks if needed?

VI. Determination of Capital Requirements Under the BBA

A. Capital Requirement for a Building Block

The proposed BBA determines aggregate capital requirements by beginning with the capital requirements at each building block. For building block parents that are subject to NAIC RBC in the BBA, the Board proposes to use the ACL amount of required capital under NAIC RBC as the input to

[60] The Board continues to review insurance depository institution holding companies' operations in non-U.S. jurisdictions and may later propose scaling for non-U.S. insurance capital frameworks, depending on further evaluation of these companies, frameworks, and risk and activities therein.

[61] The notion of the ''total balance sheet perspective'' refers to the idea that an accounting framework affects valuations of assets, liabilities, and equity, and thus can affect calculation of required and available capital. From this standpoint, scaling required capital without also considering whether available capital needs to be scaled can result in an incomplete depiction of a company's capital position.

[62] The amounts in the example in Section IV.D above are rounded for convenience.

[63] As used in this Supplementary Information, ''intervention point'' refers to a threshold for the ratio of available capital to capital requirement at which the relevant regulator may take action against the supervised firm under applicable law.

aggregation. For building block parents subject to the Board's banking capital rule, the Board proposes to use total risk-weighted assets as the input to aggregation. An illustration of this step in applying the BBA is presented in Section IX.D below.

B. Regulatory Adjustments to Building Block Capital Requirements

The main categories of adjustments to capital requirements under the proposed BBA (the denominator in the BBA ratio) are discussed below.[64]

Question 24: The Board invites comments on all aspects of the proposed adjustments to capital requirements. Should any of the adjustments be applied differently? What other adjustments should the Board consider?

An illustration of this step in applying the BBA is presented in Section IX.E.2 below.

1. Adjusting Capital Requirements for Permitted and Prescribed Accounting Practices Under State Laws

The accounting practices for insurance companies can vary from state to state due to permitted and prescribed practices, which can result in significant differences in financial statements between similar companies filing SAP financial statements in different states. Regulators both within and outside of the United States have the authority to take actions with respect to insurance companies in the form of variations from standard accounting practices. An issue for the BBA is whether and how to address international or state regulator-approved variations in accounting or capital requirements for regulated insurance companies.

The proposed BBA contains adjustments to address permitted practices, prescribed practices, or other practices, including legal, regulatory, or accounting, that departs from a capital framework as promulgated for application in a jurisdiction. To serve the Board's supervisory objectives, the Board proposes an adjustment to capital requirements (the denominator in the BBA ratio) to reverse state permitted and prescribed practices (and, where relevant, any approved variations applied by solvency regulators other than U.S. state and territory insurance supervisors). The Board considers that this proposed adjustment provides for a consistent representation of financial information across all companies in the jurisdiction.

The Board anticipates that the majority of permitted and prescribed practices would primarily affect available capital, but includes the adjustment to capital requirements for completeness and because permitted practices to balance sheet items such as reserves can have secondary impacts on the NAIC RBC calculation. Extensions or other company-specific treatments may also affect capital requirements as calculated under non-U.S. insurance capital frameworks.

2. Certain Intercompany Transactions

Although intercompany transactions are eliminated in consolidated accounting frameworks, in an aggregated framework like the BBA, some intercompany transactions could introduce redundancies in capital requirements or raise the potential to overstate risk at the aggregated, enterprise-wide level. Others could reduce the capital requirement of a company without reducing the overall risk to the institution. The Board considers that some adjustments to capital requirements for intercompany transactions may be appropriate for the BBA. For instance, intra-group reinsurance, loans, or guarantees can result in credit risk weights at the subsidiary level without generating additional risk at the enterprise level. In this scenario, eliminating risk weights in the appropriate companies' capital requirements may better reflect total enterprise-wide risk.

The BBA thus proposes an adjustment for the elimination of charges for the possibility of default of the top-tier depository institution holding company or any subsidiary thereof. However, in many cases, the impact on enterprise-wide capital requirement from this reflection of risk may be small or immaterial. The Board thus proposes to make this adjustment optional, *i.e.,* allowing the insurance depository institution holding company the option to eliminate the credit risk weight in capital requirements at one company party to the intercompany transaction.

3. Adjusting Capital Requirements for Transitional Measures in Applicable Capital Frameworks

Similar to the availability of permitted and prescribed practices and other approved variations, transitional measures are sometimes included under capital frameworks during implementation.[65] While such measures are important for application of regulatory capital frameworks, in practice, the framework, without applying the transitional measures, can provide a more accurate reflection of risk as intended by that framework. The BBA thus proposes an adjustment to remove the effects of any grandfathering or transitional measures under an applicable capital framework in determining capital requirements. Along with the adjustment for permitted and prescribed practices and other aspects of the rule, this adjustment is anticipated to help increase the comparability of results among supervised firms.

4. Risks of Certain Intermediary Companies

As described in Section IV.C, an insurance depository institution holding company has the option to not treat as an MFE a company that meets the definition of an MFE. Typically, such a company would be one that serves as a pass-through or risk management intermediary for other companies under the insurance depository institution holding company.[66] If an insurance depository institution holding company were to make this election, the risks posed by this company must nonetheless be reflected in the BBA. As proposed, the BBA would require the insurance depository institution holding company to allocate the risks that the company faces to the other companies in the enterprise with which the company engages in transactions.

5. Risks Relating to Title Insurance

For an insurance depository institution holding company predominantly engaged in title insurance, the risks are reflected in part in the company's claim reserve liability, but the Board's banking capital rule would not risk-weight this amount. To determine an appropriate risk weight to apply to this liability, the Board reviewed data from historical title claim reserves and observed a risk comparable to assets that have been assigned a 300 percent risk weight in the Board's banking capital rule. In order to tailor

[64] The BBA proposes an adjustment to available capital requiring that building block parents deduct the amount of their investments in their own capital instruments along with any investments made by members of their building block, to the extent such instruments are not already excluded from available capital. In the proposed rule, a corresponding adjustment is made in determining building block available capital.

[65] In the United States insurance market, one prominent impact of this proposed adjustment would be to accelerate the application of principles-based reserving. This adjustment could also encompass transitional measures in Europe, such as the long-term grandfathering of disparate accounting of insurance liabilities, if a jurisdiction in Europe were to become relevant in the application of the BBA.

[66] Frequently a pass-through company like this enters into transactions with affiliates (*e.g.,* operating insurers) and enters into back-to-back transactions with third parties to manage risks on a portfolio basis

the Board's banking capital rule to an insurance depository institution holding company predominantly engaged in title insurance, the Board proposes to adjust capital requirements by applying a risk weight of 300 percent to the firm's claim reserves relating to title insurance business, as reflected in the firm's U.S. GAAP financial statements.[67]

Question 1: Is the proposed risk weighting approach for risks relating to title insurance appropriate? For example, would a different risk weight (i.e., a risk weight other than 300 percent) be more appropriate?

C. Scaling and Aggregating Building Blocks' Adjusted Capital Requirements

In order to bring capital requirements from various frameworks to a comparable basis before aggregation, the BBA would scale capital requirements. Capital requirement amounts for building block parents would be scaled by application of the parameters set out in Section V above.

The BBA aggregates a downstream building block's capital requirements into those of its upstream building block parent by scaling to the upstream parent's capital framework and adding to the upstream parent's capital requirement. This rollup includes adjusting for the parent's ownership of the building block prior to adding in the scaled capital requirement for the building block. In performing this rollup, building blocks are aggregated to achieve a consolidated, enterprise-wide reflection of capital requirements. Ultimately, all building blocks under the top-tier depository institution holding company would be scaled and rolled up into the capital position of the top-tier depository institution holding company.

An illustration of this step in applying the BBA is presented in Section IX.H.

VII. Determination of Available Capital Under the BBA

A. Approach to Determining Available Capital

1. Key Considerations in Determining Available Capital

A firm's capital resources should be accessible to absorb losses and not have features that cause the firm's financial condition to weaken in times of stress. In developing the BBA the Board was informed by its review of existing capital frameworks—including the NAIC's RBC, the Board's banking capital rules, and their objectives, taking into account, among other things, considerations of the permanence and subordination of capital resources; the right of the issuer to make, cancel, or defer payments under a capital instrument; and the absence of encumbrances.

In many capital frameworks, including the Board's banking capital rule, qualifying capital is divided into tiers. In general, tiers of capital can represent different levels of capital resources' availability and loss-absorbency. Capital in a higher tier may represent the ability to absorb losses such that the institution can continue operations as a going concern, while capital in a lower tier may represent resources that serve as a supplementary cushion to a higher tier and aid the institution in the event of resolution (*i.e.,* a gone/near-gone concern).

By contrast, the state insurance capital framework uses one tier of capital. In the proposed BBA, the frameworks most often applicable to the supervised firms' building blocks will be U.S. state insurance capital frameworks. The NAIC RBC framework began as an early warning system, providing a risk sensitive ''safety net'' for insurers that provides for timely regulatory intervention in the case of insurer distress or insolvency.[68] Among other things, intervention is based on a comparison of TAC to required capital at ACL. As such, the NAIC RBC framework and TAC, in part through reliance on SAP financial data for their development and implementation, reflect aspects of a ''gone concern'' or liquidation value standard.[69] Moreover, TAC, as a single tier of capital, is a component of the RBC framework at intervention levels other than ACL.

The proposed BBA contains one tier of available capital. This approach achieves the supervisory objectives sought to be achieved through the BBA in a manner that achieves simplicity of design.

2. Aggregation of Building Blocks' Available Capital

The Board proposes to determine available capital in the BBA by aggregating available capital under the frameworks applicable to the companies in an insurance depository institution holding company, subject to certain limited adjustments, rather than applying a consistent definition or set of criteria to all capital instruments for inclusion in the BBA. Since the BBA will determine aggregate capital requirements by beginning with capital requirements from company capital frameworks (prior to adjustments and scaling), determining available capital in a different manner could introduce inconsistencies. Moreover, applying a single set of definitional criteria, as occurs in the Board's banking capital rule, may be facilitated when the subject firms prepare consolidated financial statements in accordance with U.S. GAAP or other rules. However, doing this may be more challenging in the context of differing bases of accounting across building blocks in the BBA applied to insurance depository institution holding companies.

Mechanically, the proposed rule determines available capital under the BBA similarly to how it determines capital requirements, namely, by rolling up available capital from downstream building block parents into upstream building block parents, with certain adjustments and scaling. The aggregation of available capital eliminates double leverage or multiple leverage by deducting upstream parents' investments in subsidiaries that are building block parents.[70]

In addition, the proposal requires an insurance depository institution holding company to deduct upstream holdings within a building block, *i.e.,* an investment by a subsidiary of a building block parent in the building block parent's capital instrument. The purpose of this deduction is to avoid the potential for inflation of a supervised firm's available capital through inter-affiliate transactions, and furthermore, to avoid a potential circularity in the BBA calculation.

[67] A significant asset of typical title insurers is an asset known as the title plant, which, under U.S. GAAP, would be considered an intangible asset (Financial Accounting Standards Board, Accounting Standards Codification Topic 950–350). The Board continues to see the U.S. GAAP treatment as appropriate in applying the Board's banking capital rule to the insurance depository institution holding company predominantly engaged in title insurance.

[68] *See* NAIC, Risk-Based Capital, *http://www.naic.org/cipr_topics/topic_risk_based_capital.htm.*

[69] NAIC, NAIC Group Capital Calculation Recommendation, p. 2 (2015), *available at http://www.naic.org/documents/committees_e_grp_capital_wg_related_cap_calc_reccomendation.pdf.*

[70] In a case of double-leverage, for instance, the parent's investment in subsidiary, replaced by the building block available capital, will continue to have an offsetting liability from the parent's debt issuance. If double-leverage or double-gearing exists within a building block, where the upstream (capital-providing) company and downstream (capital-receiving) company are in the same building block, the double-leverage would not be inflating capital for the building block. If double-leverage occurs with the upstream company in one building block and the downstream in a different building block, the upstream building block parent would deduct its downstreamed capital to the capital-receiving company, thereby avoiding double-counting in the calculation.

B. Regulatory Adjustments and Deductions to Building Block Available Capital

This section discusses adjustments in the BBA to determine available capital, performed at the level of each building block. The next section (subsection VII.C below) discusses two final adjustments, made at the level of the top-tier parent once all building block available capital is aggregated.

Question 25: The Board invites comments on all aspects of the proposed adjustments to available capital. Should any of the adjustments be applied differently? What other adjustments should the Board consider?

An illustration of adjusting available capital in applying the BBA is presented in Section IX.E.2.

1. Criteria for Qualifying Capital Instruments

Adjustments at the level of determining building block available capital include deducting any capital instrument, issued by a company within the building block that fails one or more of the eleven criteria for Tier 2 capital under the Board's banking capital rule, as codified in section 217.20(d) of the Board's Regulation Q.[71] While the current population of insurance depository institution holding companies has relatively less publicly issued capital or debt instruments compared to stock companies, the Board considers it appropriate to set these criteria to reflect the Board's supervisory goals and objectives, ensure adequate loss absorbency of available capital under the BBA with a measure of consistency, and take into account the possibility of changes to the population of insurance depository institution holding companies. The criteria apply a measure of consistency to capital instruments for inclusion as available capital under the BBA. Depending on their characteristics, capital instruments allowable as available capital under company-level capital frameworks may also satisfy these criteria, thereby qualifying under the BBA.

Question 26: What other criteria, if any, should the Board consider for determining available capital under the BBA?

Question 27: One of the criteria, concerning capital instruments that contain certain call features, requires the top-tier depository institution holding company to obtain prior Board approval before exercising the call option. Should the Board apply a de minimis threshold below which this approval is not needed?

The Board proposes that certain instruments frequently used by insurers, surplus notes,[72] could be eligible for inclusion in available capital under the BBA, provided that the notes meet the criteria to qualify as capital under the BBA. Treatment of surplus notes under state insurance capital framework remains unaltered by the BBA. Moreover, it appears reasonable to conclude that issuers of surplus notes may or may not have contemplated all of the criteria for available capital under the BBA when issuing surplus notes that are presently outstanding.

The Board is thus proposing to include a grandfathering provision for surplus notes issued by a top-tier depository institution holding company or its subsidiary to a non-affiliate prior to November 1, 2019. This allows existing and currently planned surplus notes to qualify without any modifications, but future surplus notes would be expected to comply with all requirements after a short notice period. Under this grandfathering, these notes are deemed to meet criteria set out in proposed Section 608(a) that they may not otherwise meet, provided that the surplus note is currently capital under state insurance capital frameworks (a company capital element as set out in the proposed rule) for the issuing company.

Question 28: Are there other approaches, other than grandfathering, that the Board should consider to address surplus notes issued by insurance depository institution holding companies or their subsidiaries before November 1, 2019?

Question 29: What grandfathering date should the Board use?

Certain instruments used as capital resources may have call options that could be exercised within five years of the issuance of the instrument, specifically for a ''rating event.'' The Board proposes section 217.608(f) in the BBA to accommodate these capital resources.

2. BBA Treatment of Deduction of Insurance Underwriting Risk Capital

As set out above, under application of the proposed BBA, certain capital-regulated companies, including IDIs and other companies subject to the Federal bank capital rules, would be identified as building block parents. In applying the Board's banking capital rule to determine available capital, one deduction from qualifying capital relates to the deduction of the amount of the capital requirement for insurance underwriting risks established by the regulator of any insurance underwriting activities of the bank, including such activities of a subsidiary of the bank. In the context of the BBA, an aggregation-based framework that is structurally and conceptually different from the Board's banking capital rule, the risk-sensitive amount of required capital is aggregated into the enterprise-wide capital requirement. Measuring enterprise-wide risk based on insurance underwriting activities is among the core supervisory objectives that the BBA serves. Deducting capital requirements for insurance underwriting activities, when aggregate capital requirements will reflect this risk, could overly penalize an insurance depository institution holding company.

The Board's banking capital rule deducts, for a depository institution holding company insurance subsidiary, the RBC for underwriting risk from qualifying capital (and assets subject to risk weighting). In the BBA, this deduction would be eliminated in calculating building block available capital since the insurance risks are being aggregated, rather than deducted.

3. Adjusting Available Capital for Permitted and Prescribed Practices Under State Laws

As explained above in section VI with regard to capital requirements, the accounting practices for insurance companies can vary from U.S. state to state due to permitted and prescribed practices, and can result in significant differences in financial statements between companies with similar financial profiles but domiciled in different states. An issue for the BBA is whether and how to address regulator-approved variations in determining available capital. Similar to the adjustment described above to the calculation of building block capital requirements (the denominator of the calculation), the Board proposes to include adjustments to available capital (the numerator in the BBA ratio) to reverse the impact of these accounting

[71] The criteria are listed in Section 608(a) of the proposed rule.

[72] Surplus notes generally are financial instruments issued by insurance companies that are included in surplus for statutory accounting purposes as prescribed or permitted by state laws and regulations, and typically have the following features: (1) The applicable state insurance regulator approves in advance the form and content of the note; (2) the instrument is subordinated to policyholders, to claimant and beneficiary claims, and to all other classes of creditors other than surplus note holders; and (3) the applicable state insurance regulator is required to approve in advance any interest payments and principal repayments on the instrument.

practices, as well as any other approved variation as proposed in the BBA.[73]

4. Adjusting Available Capital for Transitional Measures in Applicable Capital Frameworks

As with the corresponding adjustment in determining capital requirements under the BBA, similar to the availability of permitted and prescribed practices or other approved variations, transitional measures are sometimes adopted in capital frameworks during implementation. While such measures are important for application of regulatory capital frameworks, in practice, the framework without applying the transitional measures can provide a more accurate reflection of loss absorbing capital as intended by that framework. The BBA thus proposes an adjustment for the removal of the effects of any grandfathering or transitional measures, under a regulatory capital framework, in determining available capital.

5. Deduction of Investments in Own Capital Instruments

To avoid the double-counting of available capital, and in light of the Board's supervisory objectives in designing the BBA, the proposal requires building block parents to deduct the amount of their investments in their own capital instruments along with any such investments made by members of their building block, to the extent such instruments are not already excluded from available capital. In addition, under the proposal, a capital instrument issued by a company in an insurance depository institution holding company's enterprise that the firm could be contractually obligated to purchase also would have been deducted from capital elements. The proposal notes that if an insurance depository institution holding company has already deducted its investment in its own capital instruments from its available capital, it would not need to make such deductions twice.

The proposed rule requires an insurance depository institution holding company to look through its holdings of an index to deduct investments in its own capital instruments, including synthetic exposures related to investments in own capital instruments. Gross long positions in investments in its own capital instruments resulting from holdings of index securities would have been netted against short positions in the same underlying index. Short positions in indexes to hedge long cash or synthetic positions could have been decomposed to recognize the hedge. More specifically, the portion of the index composed of the same underlying exposure that is being hedged could have been used to offset the long position only if both the exposure being hedged and the short position in the index were covered positions under the market risk rule and the hedge was deemed effective by the banking organization's internal control processes which would have been assessed by the primary federal supervisor of the banking organization or is reported as a highly effective hedge by insurance supervisors under Statement of Statutory Accounting Principle 86. If the insurance depository institution holding company found it operationally burdensome to estimate the investment amount of an index holding, the proposal permits the institution to use a conservative estimate with prior approval from the Board. In all other cases, gross long positions would be allowed to be deducted net of short positions in the same underlying instrument only if the short positions involved no counterparty risk. In determining such net long positions, the proposed BBA would exclude such positions held in a separate account asset or through an associated guarantee, unless the relevant separate account fund is concentrated in the company.

6. Reciprocal Cross-Holdings in Capital of Financial Institutions

A reciprocal cross-holding results from a formal or informal arrangement between two financial institutions to swap, exchange, or otherwise hold or intend to hold each other's capital instruments. The use of reciprocal cross-holdings of capital instruments to artificially inflate the capital positions of each of the financial institutions involved would undermine the purpose of available capital, potentially affecting the safety and soundness of such financial institutions. Under the proposal, in light of the Board's supervisory objectives in designing the BBA, reciprocal cross-holdings of capital instruments of companies in an insurance depository institution holding company's enterprise are deducted from available capital. The proposed deduction encompasses reciprocal cross-holdings between building block parents and companies external to the insurance depository institution holding company, and such holdings between building block parents and other companies within the insurance depository institution holding company's enterprise.

C. Limit on Certain Capital Instruments in Available Capital Under the BBA

In light of the Board's supervisory objectives in designing the BBA, the Board proposes to limit available capital under the BBA arising from investments in the capital of unconsolidated financial institutions. This treatment is consistent with the Board's banking capital rule and treatment of non-insurance SLHCs under the Board's rules. The proposed BBA incorporates the limit on investments in the capital of unconsolidated financial institutions in the manner currently done under the Board's banking capital rule.

To operationalize this limitation in the context of the BBA, a proxy for consolidation is also needed because the U.S. GAAP definition is not presently applicable to the full population of current insurance depository institution holding companies. The proposed BBA would not treat a company appearing on the insurance depository institution holding company's inventory as an unconsolidated financial institution. Moreover, investments in the capital of unconsolidated financial institutions would be determined as the net long position calculated in accordance with 12 CFR 217.22(h), provided that separate account assets or associated guarantees would not be regarded as an indirect exposure. As a result, the look-through treatment under 12 CFR 217.22(h) would not be applied to separate account assets or associated guarantees.

As noted above, the proposed BBA contains one tier of available capital, but as discussed in this Section VII.C, certain limitations may apply. The criteria set out in subsection VII.B.1 set a baseline threshold for capital instruments to be includable as available capital under the BBA. However, certain more stringent criteria for capital instruments can isolate instruments that are more loss absorbing and of higher quality. These criteria are reflected in the Board's banking capital rule corresponding to capital instruments includable as common equity tier 1 capital, as codified in section 217.20(b) of the Board's Regulation Q.[74]

Consistent with the Board's supervisory objectives, the Board aims to ensure that an insurance depository institution holding company does not

[73] In the proposed BBA, this refers to a permitted practice, prescribed practice, or other practice, including legal, regulatory, or accounting, that departs from a solvency framework as promulgated for application in a jurisdiction.

[74] As noted in the proposed rule, two technical adjustments are proposed to adapt language under the Board's banking capital rule to the appropriate counterpart(s) in the BBA.

hold capital largely using capital instruments of lower quality or loss absorbing capability. In order to ensure that the majority of an insurance depository institution holding company's available capital consists of instruments meeting the criteria in this subsection VI.C, the proposed BBA would limit, at the level of building block available capital for the top-tier parent, capital instruments meeting the criteria in subsection VII.B.1, but not meeting the criteria in in 12 CFR 217.20(b), as modified in the proposed BBA (tier 2 capital instruments), to be no more than 62.5 percent of the building block capital requirement for that top-tier parent.

In reaching this proposal, the Board considered expressing this limit as a percentage of the top-tier parent's building block available capital excluding capital instruments qualifying for inclusion in the BBA but not meeting the criteria in 12 CFR 217.20(b), as modified in the proposed BBA. Ignoring any impact of scaling, in light of the Board's supervisory objectives in designing the BBA, this percentage of such available capital could be determined in the context of the minimum capital requirements under the Board's banking capital rule. The Board considered that a limit expressed in this manner was less favorable from a supervisory standpoint. In times of stress, in the Board's supervisory experience, available capital typically declines more rapidly than required capital. As a result, in such times, a supervised firm's capacity to count existing or newly issued tier 2 capital instruments towards regulatory requirements generally would decline in tandem if they were limited as a percentage of other available capital. By contrast, expressing the limit as a percentage of capital requirement avoids much of this procyclicality. Supervised firms would also have a less volatile limit under which to count or issue tier 2 capital instruments in a case where the firm's capital levels fell close to or below the required minimum amounts.

Question 30: What alternate formulations of the limit on tier 2 capital may be more appropriate, while still ensuring appropriate quality of capital?

Question 31: Aside from a limit on tier 2 capital instruments, are there other ways to ensure sufficiently loss absorbing available capital and/or prevent an institution from relying disproportionately on capital resources that are less loss absorbing?

As discussed below, the minimum capital requirement under the BBA is for the top-tier parent to hold building block available capital at least equal to 250 percent of its building block capital requirement. In light of the Board's supervisory objectives in designing the BBA, this minimum requirement corresponds to, and is therefore at least as stringent as, the minimum requirement under the Board's banking capital rule of 8 percent of risk-weighted assets. In light of the BBA's limit on tier 2 capital instruments (62.5 percent of the top-tier parent's building block capital requirement), an insurance depository institution holding company holding exactly the minimum requirement level of available capital therefore holds at least 187.5 percent of the top-tier parent's building block capital requirement through available capital *other* than tier 2 instruments (*e.g.,* instruments satisfying the criteria for common equity tier 1 capital, retained earnings, other elements of statutory surplus, etc.). This firm would therefore have this latter form of capital sufficient to cross a threshold of 6 percent of risk-weighted assets, in the context of the Board's banking capital rule.[75]

Thus, the BBA's proposed limitation on tier 2 instruments means that insurance depository institution holding companies would effectively meet the requirements under the Board's banking capital rule applicable to additional tier 1 capital plus common equity tier 1 capital using building block available capital excluding tier 2 instruments.[76] The Board considers that applying the proposed limit on tier 2 instruments achieves a simpler, more tractable application of minimum capital requirements under the BBA without introducing implementation costs outweighing these benefits. In addition, this approach facilitates the Board's use of only one tier of capital in the BBA.

As a simple illustration of these limits, consider further the example presented in Sections IV and V above. Suppose the life insurance parent did not hold any investment in the capital of unconsolidated financial institutions, but had issued $35 million in surplus notes owned by third parties. Suppose further that these surplus notes qualify for inclusion as available capital under the BBA, but are not grandfathered surplus notes. The life insurance parent's capital requirement of $99.6 million would be used to determine the limit on surplus notes and other tier 2 instruments that are includable as available capital. Here, the insurance depository institution holding company could not include more than $62.25 million of tier 2 instruments in available capital,[77] and as a result, the firm can include all of its external-facing surplus notes in available capital. A more fulsome illustration of this step in applying the BBA is presented in Section IX.G below.

D. Board Approval of Capital Elements

The BBA proposal also includes a provision concerning Board approval of a capital instrument. In accordance with the proposal, existing capital instruments will be includable in available capital under the BBA. However, over time, capital instruments that are equivalent in quality and capacity to absorb losses to existing instruments may be created to satisfy different market needs. Proposed section 217.608(g) accommodates such instruments for inclusion in available capital. Similar authority exists under the Board's banking capital rule under section 217.20(e).[78] In exercising its authority under proposed section 217.608(g), the Board expects to consider, among other things, the requirements for capital elements in the final rule; the size, complexity, risk profile, and scope of operations of the insurance depository institution holding company, and whether any public benefits in approving the instrument would be outweighed by risk to an IDI. Capital instruments already approved under the authority under the Board's banking capital rule remain eligible for inclusion as available capital under the BBA in accordance with this proposal. For purposes of the BBA, proposed section 217.608(g) would apply going forward.

[75] Said differently, if the firm's available capital is distributed 187.5/250, or three-fourths, as resources other than tier 2 instruments, this available capital would, in the context of the Board's banking capital rule, amount to three-fourths of the minimum requirement, or 6 percent of risk-weighted assets. The firm's tier 2 capital, held in the amount of 62.5 percent of the top-tier parent's building block capital requirement, would be one-fourth of available capital at the minimum requirement under the Board's banking capital rule, corresponding to 2 percent of risk-weighted assets in the context of the Board's banking capital rule.

[76] The BBA, as proposed, does not reflect or utilize the criteria for additional tier 1 capital under the Board's banking capital rule. However, in the Board's supervisory experience, the incidence of insurers utilizing capital instruments that meet the criteria of additional tier 1, but not the criteria of common equity tier 1 is not common, and when utilized, does not frequently represent a material proportion of the insurer's capital.

[77] This amount is calculated as $99.6 * 62.5%.

[78] Proposed section 12 CFR 217.601(d)(1)(ii) parallels the existing section 12 CFR 217.1(d)(2)(ii).

VIII. The BBA Ratio, Minimum Capital Requirement and Capital Conservation Buffer

A. The BBA Ratio and Proposed Minimum Requirement

Under the BBA, the Board's minimum capital requirement for an insurance depository institution holding company would be the ratio of aggregated building block available capital to the aggregated building block capital requirement (the BBA ratio):

$$BBA\ Ratio = \frac{Building\ block\ available\ capital}{Building\ block\ capital\ requirement}$$

In light of the Board's supervisory objectives and authorities in accordance with U.S. law, the Board proposes to require a minimum BBA ratio of 250 percent. The Board determined this minimum threshold by first translating the minimum total capital requirement of 8 percent of risk-weighted assets under the Board's banking capital rule to its equivalent under NAIC RBC. The Board then added a margin of safety to account for factors including any potential data or model parameter uncertainty in determining scaling parameters and an adequate degree of confidence in the stringency of the requirement. The Board notes that the proposed minimum ratio, 250 percent, aligns with the midpoint between two prominent, existing state insurance supervisory intervention points, the ''company action level'' and ''trend test level'' under state insurance RBC requirements.[79]

Question 32: The Board invites comment on the proposed minimum capital requirement. What are the advantages and disadvantages of the approach? What is the burden associated with the proposed approach?

As a simple illustration of this minimum requirement, consider the example presented in Sections IV, V, and VII above. After aggregating the subsidiary building block parents, the life insurance top-tier parent had building block available capital of $487.5 million and building block capital requirement of $99.6 million. Its BBA ratio is thus 489 percent, above the required minimum 250 percent. A further illustration of this step in applying the BBA is presented in Section IX.H.

B. Proposed Capital Conservation Buffer

To encourage better capital conservation by supervised firms and enhance the resiliency of the financial system, the proposed rule would limit capital distributions and discretionary bonus payments for insurance depository institution holding companies that do not hold a specified amount of available capital at the level of a top-tier parent or other depository institution holding company, in addition to the amount that is necessary to meet the minimum risk-based capital requirement proposed under the BBA. Insurance depository institution holding companies would be subject only to the proposed capital conservation buffer under the BBA, not the existing capital conservation buffer codified at section 217.11 of the Board's banking capital rule.

To determine the appropriate threshold for a capital conservation buffer under the BBA, the Board took a similar approach to how it determined the minimum requirement. The analysis began with the threshold levels from the buffer under the Board's banking capital rule and translated them to their equivalents under NAIC RBC.[80] The full amount of the buffer under the Board's banking capital rule, 2.5 percent, translates to 235 percent under the NAIC RBC framework. This translated buffer threshold was applied in the BBA. An insurance depository institution holding company would need to hold a capital conservation buffer in an amount greater than 235 percent (which, together with the minimum requirement of 250 percent, results in a total requirement of at least 485 percent) to avoid limitations on capital distributions and discretionary bonus payments to executive officers. The proposal further provides for a maximum dollar amount (calculated as a maximum payout ratio multiplied by eligible retained income, as discussed below) that the insurance depository institution holding company could pay out in the form of capital distributions or discretionary bonus payments during the current calendar year. Under the proposal, an insurance depository institution holding company with a buffer of more than 235 percent would not be subject to a maximum payout amount pursuant to the above-referenced proposed provision; however, the Board would retain the ability to restrict capital distributions under other authorities and limitations on distributions under other regulatory frameworks would continue to apply.

In order to tailor the capital conservation buffer to the insurance business, the proposal introduces a number of technical adaptations to the capital conservation buffer appearing in the Board's banking capital rule to apply this in the context of an insurance depository institution holding company. First, in light of the proposed annual reporting cycle for the BBA, discussed below, the proposed rule would apply the capital conservation buffer on a calendar year basis rather than quarterly. Second, the proposed rule broadens ''distributions'' to include discretionary dividends on participating insurance policies because, for mutual insurance companies, these payments are the equivalent of stock dividends. Third, rather than restrict the composition of the capital conservation buffer to solely common equity tier 1 capital, the proposal restricts the composition to building block available capital excluding tier 2 instruments. Moreover, the proposed rule replaces the thresholds appearing in 12 CFR 217.11, Table 1, with corresponding amounts that have been scaled from the Board's banking capital rule to the common capital framework under the BBA.[81]

In addition, the proposal defines ''eligible retained income'' as ''the annual change in building block available capital,'' excluding certain changes resulting from capital markets

[79] *See* footnote 16 for explanation of company action level and trend-test level as used in the context of RBC.

[80] Because the thresholds here are part of a capital conservation buffer, which is inherently a provision to apply an added margin of safety, no uplift or margin of safety was built into the intervention points after translating those under the Board's banking capital rule to NAIC RBC.

[81] Note that, as defined in the proposed rule, tier 2 capital instruments are those meeting the criteria for tier 2 capital under the Board's banking capital rule, but failing the criteria for common equity tier 1 capital.

transactions. This change significantly reduces operational burden because, unlike in the bank context, insurance depository institution holding companies do not necessarily calculate a consolidated retained earnings amount that could serve as the basis upon which to apply the definition of ''eligible retained income'' without modification.

Question 33: The Board invites comment on the proposed minimum capital buffer. What are the advantages and disadvantages of the buffer? What is the burden associated with the buffer?

IX. Sample BBA Calculation

In order to better illustrate the steps and application of the BBA, this NPR presents the example below based on a fictitious mutual life insurance company.

A. Inventory

As described above in Section IV.C.1, the first step in applying the BBA is identifying an inventory of companies within the insurance depository institution holding company's enterprise. This would generally be performed by identifying the companies on the Board's Y–10 and Y–6 forms together with companies on the Schedule Y, as prepared in accordance with the NAIC's SSAP No. 25, included in the most recent statutory annual statement for an operating insurer in the insurance depository institution holding company's enterprise. The organizational chart below illustrates the application of this step for the sample insurance firm presented here, Mutual Life Insurance Company (Mutual Life).

As can be seen from this organizational chart, Mutual Life Ins. Co. is the top-tier depository institution holding company of the insurance depository institution holding company's enterprise. In addition to two life insurance companies, this enterprise has two P&C insurance companies, a life captive insurance company, and an IDI (assume it is a nationally-chartered IDI), as well as a number of nonbank, non-insurance companies, including life and P&C insurance agencies, investment vehicles, an asset manager, a broker/dealer, and a midtier holding company above the IDI.

B. Applicable Capital Frameworks

As described in Section IV.C.2, the second step in applying the BBA is to determine the applicable capital frameworks for companies under the insurance depository institution holding company. As proposed in this rule, the applicable capital framework for a company other than one engaged in insurance or reinsurance underwriting, except for an IDI, is the Board's banking capital rule, while the applicable capital framework for a nationally-chartered IDI is the banking capital rule as set forth by the OCC. For companies engaged in insurance or reinsurance underwriting, the applicable capital framework is generally the regulatory capital framework under the laws or regulations to which that company is subject. The applicable capital frameworks for companies under Mutual Life Ins. Co. are presented below.

In the illustration above, the applicable capital frameworks are shown for certain key companies. For instance, the applicable capital frameworks for Mutual Life Insurance Co., the top-tier depository institution holding company, and P&C Insurance Co. are shown, but no frameworks are shown for Life Insurance Agency or P&C Insurance Agency—these two companies would be treated as they are under the capital frameworks applicable to their immediate parents. Assume that the life insurance captive was material in relation to the insurance depository institution holding company through Mutual Life Insurance Company guaranteeing the return on certain investments of the captive. The life insurance captive would be treated as an MFE and the applicable capital framework would be the NAIC's RBC applicable to life insurance companies.

C. Identification of Building Block Parents and Building Blocks

As described in Section IV.C.3, the third step in applying the BBA is to identify the building block parents. Most often, this will occur as a result of having identified the applicable capital frameworks for the companies under the insurance depository institution holding company, where a capital-regulated company or MFE is assigned to a building block when its applicable capital framework differs from that of the next-upstream capital-regulated company, MFE, or DI holding company.

As the top-tier depository institution holding company, Mutual Life Insurance Company itself is the first candidate to be a building block parent. Life Insurance Co. would fall under the same applicable capital framework as the top-tier depository institution holding company (NAIC life RBC), and therefore would not be identified as a building block parent; rather, it would remain in the same building block as the block for which Mutual Life Ins. Co. is building block parent. By contrast, the BBA proposes (for purposes of identification of building blocks) to treat NAIC RBC for life and P&C as distinct frameworks; thus, P&C Insurance Company is identified as a building block parent from Mutual Life Ins. Co. With it, the Subsidiary P&C Insurance Company, P&C Insurance Agency, and two investment subsidiaries would be members of this building block.

The life insurance captive would be subject to NAIC RBC for life insurers. Because treatment of captives' risk can vary among insurers, the life insurance captive may not be reflected in the RBC capital calculations of its operating insurance parents. Assuming that, for purposes of this illustration, the life insurance captive's risk is not reflected in the RBC calculations of Mutual Life or Life Ins. Co., the captive would be made its own building block parent. The other subsidiaries of Life Insurance Co. would be assigned to the building block for which Mutual Life Ins. Co. is building block parent.

Midtier Holdco is a depository institution holding company. Under the proposed rule, this company would be identified as a building block parent. Note that, as a non-insurance company, this company's applicable capital framework under the proposed BBA would be the Board's banking capital rule, which, in turn, would reflect the risks of the IDI. Therefore, the IDI would not be identified as a building block parent. The same would be the case for the broker/dealer, which, together with the IDI, would be assigned as a member of Midtier Holdco's building block.

Thus, the building block parents in Mutual Life Ins. Co.'s enterprise are Mutual Life Ins. Co., P&C Ins. Co., Life Ins. Captive, and Midtier Holdco. The demarcation of building blocks for Mutual Life Ins. Co. is shown below:

D. Identification of Available Capital and Capital Requirements Under Applicable Capital Frameworks

Assume that, for the captive, an RBC calculation is performed and reported to the state regulator even though the captive generally would not be subject to the same generally applicable capital requirements as primary insurers. Assume further that, for Mutual Life Ins. Co., the available capital and capital requirement amounts for its four building blocks are as shown below. Determination of available capital and capital requirements would result as follows:

E. Adjustments to Available Capital and Capital Requirements

1. Illustration of Adjustments to Capital Requirements

As described in Section VI.B above, the BBA, as proposed, includes a number of possible adjustments to capital requirements at the level of each building block. Assume that no adjustments to capital requirements are applicable in the building block for which Mutual Life Insurance Company is the building block parent.

The first possible adjustment is to reverse any permitted or prescribed practices that affect capital requirements. Suppose that the Life Ins. Captive benefits from a prescribed practice under its domiciliary jurisdiction, specifically, that assets in the form of conditional letters of credit are reported on the balance sheet without corresponding liabilities. This prescribed practice would be adjusted out of the capital requirement. Under the proposed BBA, these letters of credit would not be treated as assets and, hence, would face no risk weight. Additionally, the use of principles-based reserving from the elimination of transitional measures would impact the RBC calculation because reserves are used in different parts of the RBC calculation, including the calculation of exposure to mortality risk. Assume that the total impact on Life Insurance Company's RBC capital requirement from these adjustments to captives is $3 million.

The second possible adjustment to capital requirements is an optional elimination of intercompany credit risk weights. Suppose that in Mutual Life Ins. Co., there is an inter-affiliate reinsurance arrangement whereby P&C Ins. Co. reinsures a portion of Sub P&C Ins. Co.'s book. Sub P&C Ins. Co. retains some risk, and faces a charge in its RBC requirement for its receivables from its parent. Suppose that this receivable is in the amount of $40 million, the RBC charge for Sub P&C Ins. Co. is $2 million, and Mutual Life Ins. Co. elects to make this adjustment.

An additional possible adjustment to capital requirements relates to the insurance depository institution holding company's ability to elect to not treat as an MFE a company that otherwise meets the definition of this term, after which the insurance depository institution holding company must correspondingly allocate the risks of this company to other companies in the insurance depository institution holding company with which the company engages in transactions. Assume that Mutual Life Ins. Co. has no companies other than its Life Insurance Captive that would constitute MFEs and that Mutual Life Ins. Co opts to treat the Life Insurance Captive as an MFE. This adjustment to capital requirements is therefore not applicable in this case.

Under the BBA as proposed, no adjustments would take place to total risk-weighted assets for building block parents subject to the Board's banking capital rule. Thus, the total impact of adjustments to capital requirements for Mutual Life Ins. Co. can be shown as follows:

2. Illustration of Adjustments to Available Capital

As described in Section VII.B above, the proposed BBA includes a number of possible adjustments to available capital. In the example of Mutual Life Ins. Co., assume that no adjustments to available capital are applicable in the building block for which Mutual Life Insurance Company is the building block parent.

However, suppose that the P&C Insurance Co. subsidiary benefits from a permitted practice under its domiciliary jurisdiction. As described in Section VII.B.3, permitted and prescribed practices would be adjusted out of available capital, so that insurance companies are presented on a consistent basis in the BBA. Suppose that, for P&C Insurance Co., the increase to surplus arising from the permitted practice is $15 million. This amount would be deducted in determining building block available capital for P&C Insurance Co.

Captive reinsurers typically would have at least two related adjustments. Suppose that, as noted above, the Life Ins. Captive has a prescribed practice that allows holding undrawn contingent letters of credit as assets without a corresponding liability. By application of the adjustment to available capital to reverse prescribed practices, described in Section VII.B.3, these letters of credit would not be treated as assets and, hence, would not contribute to available capital under the proposed BBA. Suppose that, for Life Ins. Captive, these letters of credit are held at $240 million. This amount would be deducted in determining building block available capital for Life Ins. Captive. Somewhat offsetting this, captives would typically benefit from the adjustment that removes transitional measures. Suppose that application of principles-based reserving to business in the captive results in reduced liabilities that increase surplus by $100 million. This would be added to available capital.

Under the BBA, as proposed, the sole possible adjustment to building block parents, or their building blocks, subject to the Board's banking capital rule arises where the building block parent owns an insurer. Under the Board's banking capital rule, this ownership generally results in a deduction from qualifying capital in the amount of the insurance subsidiary's capital requirement for insurance underwriting risks.[82] In the case of Mutual Life Ins. Co., neither the Midtier Holdco nor IDI have insurance underwriting subsidiaries, so no adjustment is needed to available capital for this building block.

The total impact of adjustments to available capital for Mutual Life Ins. Co. can be shown as follows:

F. Scaling Adjusted Available Capital and Capital Requirements

As described above in Section V, adjusted available capital and adjusted capital requirement for each building block are scaled, using the scaling approach proposed by the Board, to the applicable capital framework of the building block parent most immediately upstream. No scaling is proposed for translating between NAIC RBC as applicable to life and P&C insurance. Thus, in the case of Mutual Life Ins. Co., for the building blocks for which P&C Ins. Co. and Life Ins. Captive are

[82] *See* 12 CFR 217.22(b)(3).

building block parents, no scaling is needed to translate to NAIC RBC as applied to Mutual Life Ins. Co. For these building blocks, the building block available capital are the adjusted available capital amounts and the building block capital requirements are the adjusted capital requirements.

For the building block for which Midtier Holdco is building block parent, scaling is needed. This building block is under the Board's banking capital rule. The building block parent most immediately upstream, Mutual Life Ins. Co., is under NAIC RBC. Thus, scaling is needed between the Board's banking capital rule and NAIC RBC according to the equations set out in Section V.C above. The calculations are as follows:

Building block available capital = $272M − ($2,264M * 6.3%) = $129 million

Building block capital requirements = $2,264M * 1.06% = $24 million

The total impact of scaling for Mutual Life Ins. Co. can be shown as follows:

G. Roll-Up and Aggregation of Building Blocks

As described in Sections IV.D, VI.C, and VII.A.2 above, building block available capital and building block capital requirement, reflecting adjustments and scaling, are rolled up through successive upstream building blocks until the top-tier parent's building block is reached.

At each step, when rolling up available capital, any downstreamed capital from the upstream parent is deducted. Assume that Mutual Life Ins. Co. provides no capital to P&C Ins. Co. or Midtier Holdco other than its equity investment in the subsidiary, and that Mutual Life Ins. Co. carries these subsidiaries at $698 million and $301 million, respectively. Assume that Mutual Life Ins. Co. treats the Life Ins. Captive as a nonadmitted asset. The total impact on Mutual Life Ins. Co.'s surplus is thus $999 million, which would be deducted in the roll-up prior to re-aggregating the building block available capital for P&C Ins. Co., Midtier Holdco, and Life Ins. Captive.

When rolling up capital requirements, the amount of the upstream parent's capital requirement attributable to each downstream building block parent is deducted. Mutual Life Ins. Co.'s RBC required capital amount would include the unadjusted P&C RBC requirement for P&C Ins. Co., assumed to be $166 million, in its C0 component, but would include no amount attributable to Life Ins. Captive. Mutual Life Ins. Co.'s holding of Midtier Holdco would affect its life RBC calculation through the C1cs component, deriving from the carrying value of $301 million but also may reflect the impact of asset concentration charges, taxes, and the covariance adjustment as reflected in the life RBC calculation. Assume that extracting Midtier Holdco from Mutual Life Ins. Co.'s RBC calculation would reduce the amount (on the basis of the authorized control level of RBC) by $24 million. Assume that the total impact on Mutual Life Ins. Co.'s RBC requirement is thus $190 million, which would be deducted in the roll-up prior to re-aggregating the building block capital requirement for P&C Ins. Co., Life Ins. Captive, and Midtier Holdco.

In each case, the roll-up is also done taking into account the upstream parent's allocation share of the downstream building block parent. For purposes of Mutual Life Ins. Co., assume

all subsidiaries are wholly owned, so that all allocation shares are 100 percent.

Taking into account the building block available capital amounts, building block capital requirements, and deductions of downstreamed capital and contributions to Mutual Life Ins. Co.'s RBC related to P&C Ins. Co., Life Ins. Captive, and Midtier Holdco, the resulting building block available capital and building block capital requirement amounts for Mutual Life Ins. Co. are as follows:

Building block available capital = $4,311 + (999) + 626 + 105 + 129 = $4,172 million

Building block capital requirement = $454 + (190) + 164 + 37 + 24 = $489 million

This can be shown as follows:

As described in Section VII.C above, there is a remaining adjustment at the level of the top-tier depository institution holding company to determine whether capital instruments that meet the criteria set out in Section VII.B.1 above, but not the criteria in Section VII.C, exceed 62.5 percent of capital requirements. Assume that Mutual Life Ins. Co. has outstanding surplus notes that are grandfathered as proposed in the BBA, and thus are deemed to satisfy the criteria set out in Section VII.B.1 above. These surplus notes may not meet the criteria set out in Section VII.C above, but as proposed in the BBA, would be grandfathered such that the BBA would not limit the insurance depository institution holding company from treating all of these instruments as available capital under the BBA. Going forward, the unretired portion of these surplus notes would continue to be grandfathered, and Mutual Life Ins. Co. would treat as available capital any instruments meeting the criteria from Section VII.B.1, but not meeting the criteria in Section VII.C, not exceeding the greater of 62.5 percent of capital requirements and the outstanding grandfathered surplus notes.

H. Calculation of BBA Ratio and Application of Minimum Requirement and Buffer

As described in Sections III.A above, the ratio of building block available capital to building block capital requirements is the calculated BBA Ratio. This ratio is reviewed relative to the minimum requirement set out in the proposed BBA. In the example presented above, the ratio of building block available capital to building block capital requirements for Mutual Life Ins. Co. is $4,172 million/$489 million = 853 percent. This can be shown as follows:

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Relative to the minimum capital requirement proposed in the BBA, 250 percent, and the 235 percent buffer atop this minimum, Mutual Life Ins. Co. would be considered to have met the minimum requirement and buffer with a BBA ratio of 853 percent.

X. Reporting Form and Disclosure Requirements

In connection with this proposed rule, the Board proposes to implement a new reporting form for use in the BBA. The proposed reporting form, titled ''Capital Requirements for Board-Regulated Institutions Significantly Engaged in Insurance Activities'' (Form FR Q–1), and instructions focus on information needed to carry out the BBA calculations.[83] The proposed Form FR Q–1 is not intended to be exhaustive in terms of addressing supervisory needs other than the needs for the BBA.

The vast majority of the information reported to the Board through the proposed reporting form would not be public. The information that the Board proposes to make public would consist of the building block available capital, building block capital requirement, and BBA ratio for the top-tier parent of an insurance depository institution holding company's enterprise. The Board has long supported meaningful public disclosure by supervised firms with the objective of improving market discipline and encouraging sound risk management practices. The Board is also aware that a sizable amount of information is publicly disclosed by insurance firms pursuant to state laws and that IDIs disclose their Call Reports. At this stage, the Board does not see the need for the proposed BBA to require more detailed disclosure of information by an insurance depository institution holding company. The Board's consideration of market discipline is also informed by the fact that the current population of insurance depository institution holding companies represents a minority of the U.S. insurance market. Furthermore, the Board believes that the proposed disclosure requirements strike an appropriate balance between the need for meaningful disclosure and the protection of proprietary and confidential information.[84] The Board has tailored the proposed disclosure requirements under the BBA so as to enable insurance depository institution holding companies to provide the disclosures without revealing proprietary and confidential information.

As set out in the proposed reporting form and instructions, the form would be sent to the Board annually by March 15 of each year. The Board may also choose to require reporting more frequently than annually if needed for the Board to fulfill its supervisory objectives. Instances calling for such more frequent reporting may include, among others, a significant change such that the most recent reported amounts are no longer reflective of the supervised firm's capital adequacy and risk profile, or a significant change in qualitative attributes (for example, the firm's risk management objectives and policies, nature of reporting system, and definitions).

Question 34: What should the Board consider in determining the reporting cycle for the BBA?

Question 35: Aside from what is currently proposed for public disclosure under the BBA and associated reporting form, should additional information submitted to the Board pursuant to the BBA be made public?

[83] The proposed Form FR Q–1 and instructions are available at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

[84] Proprietary information encompasses information that, if shared with competitors, would render a supervised firm's investment in these products/systems less valuable, and, hence, could undermine its competitive position. Information about customers is often confidential, in that it is provided under the terms of a legal agreement or counterparty relationship.

To be transparent, gather additional input, and provide a valuable test of the proposed approach, the Board intends to conduct a quantitative impact study (QIS) of the BBA as part of its rulemaking process. The data collected through this QIS will be used to analyze the impact of various aspects of the proposed BBA. For instance, information collected through the QIS will allow further exploration of areas of thought and concern raised by commenters in response to the Board's ANPR of June 2016. In addition, the Board's analysis of the QIS results may inform its advocacy of positions in international insurance standard setting, including an aggregation method, akin to the BBA, that may be deemed comparable to the ICS. The analysis of QIS results may also assist in the Board's continued engagement with the NAIC and the NAIC's development of the GCC so as to minimize burden and achieve efficiencies with regard to firms that may be subject to more than one of these approaches.

XI. Impact Assessment of Proposed Rule

This section presents a preliminary assessment of anticipated benefits and costs of the proposed BBA, were it to be adopted as proposed. The Board's review of potential costs and benefits of this proposal remains ongoing as the Board proceeds towards a final rule implementing the BBA. This assessment will be informed by a QIS. Furthermore, the Board remains mindful of the assistance commenters can provide in bringing to light anticipated costs and benefits. The Board has already reached a more informed preliminary assessment of benefits and costs because of the comments submitted in response to the ANPR. This preliminary analysis indicates that the proposed BBA achieves the statutory requirement to establish a consolidated capital requirement for insurance depository institution holding companies in a manner that streamlines burden such that the benefits should more than outweigh any initial or ongoing implementation costs. The Board invites comments on all potential benefits and costs, as well as balance between the two, arising from the BBA as proposed.

To the greatest extent possible, the Board attempts to minimize regulatory burden in its rulemakings, consistent with the effective implementation of its statutory responsibilities. Moreover, the Board remains committed to transparency in this and all of its rulemaking processes, including engagement with interested parties and an appropriate balancing of benefits, costs, and economic impacts.

A. Analysis of Potential Benefits

1. A Capital Requirement for the Board's Consolidated Supervision

One of the main elements of a program of supervision of financial institutions is a robust and risk-sensitive capital requirement, a key benefit provided by the BBA with respect to insurance depository institution holding companies. Maintaining sufficient capital is central to a financial institution's ability to absorb unexpected losses and continue to engage in financial intermediation. Ensuring the adequacy of a supervised firm's capital levels and a robust capital planning process for managing and allocating its capital resources are primary objectives of the Board's consolidated supervision, including supervision of insurance depository institution holding companies. In the absence of a capital rule for insurance depository institution holding companies, the Board's supervision of these firms has focused on the second of these objectives, evaluation of the supervised firms' capital planning. The Federal Reserve System's supervisory teams conduct capital adequacy inspections at insurance depository institution holding companies, evaluating processes and policies for capital planning including methodologies and controls. A more complete supervisory program includes a capital requirement, a need that this proposal aims to fill and a principal benefit it is intended to achieve.

2. Going Concern Safety and Soundness of the Supervised Institution

With a capital requirement for insurance depository institution holding companies, the Board as a consolidated supervisor will have a risk-sensitive framework to assess going-concern safety and soundness for each insurance depository institution holding company and the population of these firms overall. This enables firm-specific capital adequacy review and horizontal reviews across firms. The Board remains cognizant that state insurance supervisors regulate the types of insurance products offered by insurance companies that are part of organizations that the Board supervises, as well as the manner in which the insurance is provided, and the capital adequacy of licensed insurers. The Board's consolidated supervision is complementary to, and in coordination with, existing legal-entity supervision by the states by providing a perspective that considers the risks across the entire firm.

As a result, the Board's supervision will have the ability to consider risks at the enterprise level arising from an array of sources, including companies subject and not subject to a capital requirement, and insurance and non-insurance companies, under an insurance depository institution holding company. The BBA therefore has the benefit of not only providing a capital requirement for the Board's consolidated supervision, but also providing the Board with additional supervisory insights.

3. Protection of the Subsidiary Insured Depository Institution

The Board believes that it is important that any company that owns and operates a depository institution be held to appropriate standards of capitalization. The Board's consolidated supervision of an insurance depository institution holding company encompasses the parent company and its subsidiaries, and allows the Board to understand the organization's structure, activities, resources, and risks, and to address financial, managerial, operational, or other deficiencies before they pose a danger to the insurance depository institution holding companies' subsidiary depository institutions. Using its authority, the Board proposes a consolidated capital requirement for insurance depository institution holding companies, helping to ensure that these institutions maintain adequate capital to support their group-wide activities and do not endanger the safety and soundness of their depository institution subsidiaries.

The proposed BBA brings the benefit of contributing to the protection of the insurance depository institution holding companies' IDIs and, consequently, the FDIC and the U.S. system of deposit insurance. Deposit insurance has provided a safe and secure place for those households and small businesses with relatively modest amounts of financial assets to hold their transactional and other balances, and Congress designed deposit insurance mainly to protect the modest savings of unsophisticated depositors with limited financial assets.

4. Improved Efficiencies Resulting From Better Capital Management

The proposed BBA brings the benefit of potential efficiencies at insurance depository institution holding companies through improved capital management practices by providing an enterprise-wide capital requirement and associated framework. For example, the application of a consolidated capital

requirement in the form of the BBA could result in an insurance depository institution holding company discovering that its aggregate, enterprise-wide capital position is different than previously estimated, resulting in the insurance depository institution holding company being able to manage and allocate its capital in a way that more accurately reflects its risks. If insurance depository institution holding companies are better able to manage risk, then over the long term, the proposed rule may result in decreased losses and related costs to insurance depository institution holding companies and their IDIs.

5. Fulfillment of a Statutory Requirement

As noted above, the Board is charged by Congress to promulgate rules in accordance with statutory mandates, which reflect a deliberation of costs and benefits first performed by Congress. The framework proposed in this NPR fulfills a statutory mandate under Section 171 of the Dodd-Frank Act.

B. Analysis of Potential Costs

1. Initial and Ongoing Costs To Comply

While insurers typically have internal capital planning processes, calculations, and metrics, insurance depository institution holding companies do not presently perform an enterprise-wide capital calculation mandated by a federal regulator. Compliance with the BBA will thus require some upfront setup and attendant maintenance to collect the requisite information, perform the calculations, and submit the required reports, as well as opportunity cost of management's time to undertake this setup. However, the BBA builds on existing legal entity capital requirements and, as a result, minimizes the amount of additional systems infrastructure development beyond what is already done by the insurance depository institution holding company to comply with its entity-level regulatory requirements. Implementation costs are thereby notably less relative to a ground-up capital requirement.

Under the proposal, the BBA would require certain calculations of, and information pertaining to, the RBC requirements for certain operating insurance companies in the insurance depository institution holding company's enterprise. Generally, RBC reports that insurers file with state regulators are confidential under the applicable state laws. The proposed reporting form FR Q–1 aims to reflect this treatment under state law while still serving the Board's supervisory objectives.

The attributes of the BBA as proposed are not anticipated to give rise to significant initial or ongoing implementation costs. Generally, compliance with the BBA may entail initial costs for an insurance depository institution holding company. In particular, the firm may need to set up certain systems for information collection and processing and, on an ongoing basis, maintain these systems, conduct certain review, and submit the regulatory reports required under the proposal. The analysis suggests that these costs will not be unduly burdensome.

The BBA's proposed approach to grouping an insurance depository institution holding company's legal entities into building blocks is not anticipated to be unduly burdensome. Under the proposal, the insurance depository institution holding company would be required to inventory its legal entities, then review each capital-regulated company and material financial entity and ascertain whether each should be treated as a building block parent. The proposed BBA would use an insurance depository institution holding company's Schedule Y, as prepared in the institution's lead insurer's most recent statutory annual statement, together with its Forms Y–6 and Y–10 prepared for the Board, as the basis for the inventory. By leveraging information that the insurance depository institution holding company already prepares under current regulatory requirements, the proposed BBA would streamline implementation burden. The burden of evaluating each company against the BBA's proposed provisions on determining building block parents is anticipated to be minimal.

The proposed rule also sets out a method and formula for scaling between Federal banking capital rules and NAIC RBC. Implementing this provision entails calculations that are not anticipated to be burdensome.

Under the proposed rule, a material financial entity not engaged in insurance or reinsurance underwriting would be subject to the Board's banking capital rule prior to aggregation, unless the insurance depository institution holding company elects to not treat such a company as an MFE. While the burden of identifying a material financial entity is not expected to be sizable, an insurance depository institution holding company may face some initial implementation costs in preparing financial statement data for MFEs in accordance with U.S. GAAP, to the extent such data is not already prepared. Were the insurance depository institution holding company to decline to treat any such company as an MFE, the firm would be required to allocate the risks faced by the company to relevant affiliates. However, a financial report for an MFE, or allocation of an MFE's risks to affiliates with which it engages in certain transactions, would build on financial data anticipated to be already captured, thereby minimizing additional implementation burden. The costs associated with initial setup to produce financial statement data for MFEs, or allocating the risks of the MFE to relevant affiliates with any attendant recalculations of required capital amounts, could include, but may not be limited to, the opportunity cost of personnel and management's time to establish and oversee processes to generate this data, and the more direct costs of establishing or improving new management information systems to assure the timely and accurate presentation of information. Ongoing costs in either case may include system maintenance and additional staffing to produce the statements, potentially entailing ongoing payroll costs and the opportunity cost of the time spent operating the systems to produce MFEs' financial data or allocating its risks and potential constraints on flexibility in financial or corporate structure. However, none of these initial and ongoing costs is expected to be substantial.

Under the proposal, an insurance depository institution holding company would be required to conform all permitted and prescribed practices, for any insurer in its enterprise, that depart from statutory accounting treatment as set out by the NAIC. An insurance depository institution holding company would also be required to remove the impact of any transitional measures available under applicable capital frameworks. The initial implementation costs of administering these adjustments are anticipated to be comparable to such ongoing costs since reviewing and making these adjustments would generally be done on an annual basis when performing the BBA's calculations. When permitted or prescribed accounting practices impact capital, surplus and/or net income, they are generally required to be disclosed in statutory annual statements prepared by regulated insurers. The identification of these and the remaining such practices is not anticipated to involve significant time beyond what is incurred by the insurance depository institution holding company in preparing its regulatory

filings for state supervisors. Conforming these accounting practices to the NAIC's SAP, and producing revised accounting and RBC information, may entail some implementation costs. The costs associated with these adjustments are expected to be modest within the context of the organizations and could include, but may not be limited to, the costs to recruit and hire staff, including ongoing payroll and benefits costs, and the costs of development and implementation of management information systems.

Under the proposal, the insurance depository institution holding company would have the option to eliminate credit risk weights on intercompany transactions, including loans, guarantees, reinsurance, and derivatives transactions. Because this adjustment is at the option of the insurance depository institution holding company, the Board considers that the supervised institution would only elect for such adjustments if the benefits outweighed the costs. In any event, the costs associated with running entity-level capital requirements, including RBC, excluding intercompany credit risk weights are expected to be minimal, where such costs could include, but may not be limited to, changes in accounting or management information systems and costs of potentially rerunning certain capital calculations, with any attendant costs to recruit and hire staff, including ongoing payroll and benefits costs, to revise accounting treatment as needed.

2. Review of Impacts Resulting From the BBA

Any capital requirement has the potential to influence a subject firm's actions. With regard to the BBA, the Board notes that it is generally less likely for an insurance depository institution holding company to fail an aggregation-based approach if it already meets each of its entity-level regulatory requirements. In concept, this outcome may not always hold after reflecting an aggregation-based approach's adjustments, inclusion of entities not subject to a regulatory capital framework, and the intervention levels used by the supervisor applying the aggregation-based approach. However, based on the Board's preliminary review, the Board does not presently anticipate that any currently supervised insurance depository institution holding company will initially need to raise capital to meet the requirements of the proposed BBA.

In light of the Board's supervisory objectives in designing the BBA, the Board proposes in this NPR to subject capital instruments that may be included in the BBA to the criteria for tier 2 capital under the Board's banking capital rule. It is possible that, to the extent that a state's criteria for inclusion of capital instruments differs from the criteria in the Board's banking capital rule, instruments that qualify under legal entities' RBC requirements would not qualify under the BBA, which could result in an insurance depository institution holding company incurring costs (*e.g.,* issuance costs and required interest or dividend payments) to raise capital resources meeting requirements under the BBA. However, it is relevant that insurance depository institution holding companies in many cases hold capital, in forms other than instruments that may not meet the criteria for tier 2 capital under the Board's banking capital rule, already sufficient to meet the requirements under the BBA.

Moreover, in order to mitigate any burdens arising from these proposed requirements applicable to capital resources, the Board proposes to grandfather existing surplus notes and treat them as available capital under the BBA, and treat as capital, on a going-forward basis, newly issued surplus notes meeting the criteria set out in the BBA.

The proposed BBA would also deduct any investments that an insurance depository institution holding company has in its own capital instruments, including upstream investments by subsidiaries in parents and any reciprocal cross-holdings in the capital of financial institutions. In the Board's supervisory experience, insurance depository institution holding companies tend to have few such investments, if any. The proposed BBA also includes a limitation on the investment by a top-tier parent or other depository institution holding company in instruments recognized as capital of unconsolidated financial institutions. The Board's supervisory experience suggests that insurance depository institution holding companies do not tend to hold such instruments. The Board therefore anticipates any costs or burden arising from these proposed provisions to be minimal or nonexistent.

Under the proposal, the minimum capital requirement applied under the BBA would be the minimum requirement under the Board's banking capital rule, scaled to the BBA's common capital framework, plus a margin of safety. The proposal further includes the capital conservation buffer requirement under the Board's banking capital rule, tailored and scaled to the BBA's common capital framework. To minimize any burden and tailor the BBA to be an insurance-centric standard, the Board proposes to use, as the common capital framework for aggregation, the NAIC RBC framework. Based on the Board's preliminary review, the Board does not presently anticipate that any insurance depository institution holding company would immediately fail to meet the proposed BBA's minimum capital requirement or this requirement together with the BBA's proposed capital conservation buffer.

The proposed BBA would limit the inclusion in the BBA of instruments meeting the criteria for tier 2 instruments under the Board's banking capital rule, but not meeting the banking capital rule's criteria for common equity tier 1, to 62.5 percent of required capital after aggregating to the level of the top-tier parent of the insurance depository institution holding company's enterprise. An insurance depository institution holding company may have issued instruments that would qualify as tier 2 capital under the banking capital rule, but would not qualify as common equity tier 1 under the same, exceeding 62.5 percent of required capital. In such a case, absent grandfathering, the firm would not be able to count the instruments in excess of 62.5 percent of required capital towards its BBA requirement.[85] In concept, this could result in an insurance depository institution holding company needing to modify its capital structure to comply with this proposed provision. However, based on the Board's preliminary review, and the current insurance depository institution holding companies' overall capital positions, the Board does not anticipate any substantial burden arising from this limitation. Moreover, the proposed grandfathering of outstanding surplus notes issued by any company within an insurance depository institution holding company's enterprise, with the proposed BBA applying the limit on tier 2 instruments to only newly issued surplus notes, will reduce implementation burden.

This proposal also includes the Section 171 calculation, as described above. The Board continues to deliberate the potential implementation costs of this calculation. In light of this, the Board has proposed two options by which subject DI holding companies can exclude certain insurance subsidiaries.

[85] The supervised insurance institution, including the issuer within its enterprise, would remain able to count such instruments towards any other capital requirements.

3. Impact on Premiums and Fees

Any initial and ongoing costs of complying with the standard, if adopted as proposed, could nominally affect the premiums and fees that the insurance depository institution holding companies charge, since insurance products are priced to allow insurers to recover their costs and earn a fair rate of return on their capital. A capital requirement like the BBA, if adopted as proposed, could also affect the cost of capital borne by the insurance depository institution holding company, which in turn could affect premiums and an insurer's borrowing cost. In the long run, costs of providing a policy may be borne by policyholders.

Because the expected costs associated with implementing the proposal, if adopted, are not expected to be substantial within the context of the insurance depository institution holding companies' existing budgets, there is not expected to be a substantial change in the pricing of insurance depository institution holding companies' products resulting from the proposed standards. In addition, because the Board does not presently anticipate that any supervised insurance depository institution holding company will need to initially raise capital to meet the requirements of the BBA, there is not expected to be a substantial change in the cost of capital faced by insurance depository institution holding companies. Moreover, the better identification of risk to the safety and soundness of the consolidated enterprise, as well as the subsidiary IDI, that is expected to result from the proposal may lead to improved efficiencies, fewer losses, and lower costs in the long term, which may offset any effects on premiums of any compliance costs.

4. Impact on Financial Intermediation

The possibility of reduced financial intermediation or economic output in the United States related to the proposed BBA appears unlikely. In this regard, the Board recalls that capital requirements under the BBA are taken as they are under the jurisdictional capital frameworks, including NAIC RBC, subject to adjustment and scaling that does not alter the underlying capital charges. As a result, the BBA is not expected to operate to influence insurance depository institution holding companies' aggregate investment allocations among asset classes, or more generally affect insurance depository institution holding companies' role in risk assumption or other financial intermediation.

C. Assessment of Benefits and Costs

Based on an initial assessment of available information, the benefits of the proposed BBA are expected to outweigh any costs. Most significantly, the intent of the proposed rule is to ensure the safety and soundness of the insurance depository institution holding company and protect the subsidiary IDI, in fulfillment of the Board's statutory mandate. The Board believes this objective would be accomplished, in accordance with the Board's supervisory goals, through the proposed BBA in a manner that is minimally burdensome and appropriately tailored.

Question 36: The Board invites comment on all aspects of the foregoing evaluation of the costs and benefits of the proposed rule. Are there additional costs or benefits that the Board should consider? Would the magnitude of costs or benefits be different than as described above?

XII. Administrative Law Matters

A. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

B. Paperwork Reduction Act

In connection with the proposed rule, the Board proposes to implement a new reporting form that would constitute a ''collection of information'' within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number is 7100–NEW. The Board reviewed the proposed information collection under the authority delegated to the Board by the OMB.

The proposed reporting form is subject to the PRA. The form would be implemented pursuant to section 171 of the Dodd-Frank Act and section 10 of HOLA for insurance depository institution holding companies.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the Board's estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to (202) 395–5806.

Proposed Information Collection

Title of Information Collection: Reporting Form for the Capital Requirements for Board-regulated Institutions Significantly Engaged in Insurance Activities.

Agency Form Number: FR Q–1.

OMB Control Number: 7100–NEW.

Frequency of Response: Annual.

Affected Public: Businesses or other for-profit.

Respondents: Insurance depository institution holding companies.

Abstract: Section 171 of the Dodd-Frank Act requires, and section 10 of the Home Owners' Loan Act authorizes, the Board to implement risk-based capital requirements for depository institution holding companies, including those that are significantly engaged in insurance activities.

Current Actions: Pursuant to section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and section 10 of HOLA, the Board is proposing the application of risk-based capital requirements to certain depository institution holding companies. The Board is proposing an aggregation-based approach, the Building Block Approach, that would aggregate capital resources and capital requirements across the different legal entities under an insurance depository institution holding company to calculate consolidated, enterprise-wide

qualifying and required capital. The proposed BBA utilizes, to the greatest extent possible, capital frameworks already in place for the entities in the enterprise of a depository institution holding company significantly engaged in insurance activities and is tailored to the supervised firm's business model, capital structure, and risk profile. The new reporting form FR Q–1 would require a depository institution holding company to produce certain information required for the application of the BBA. The proposed reporting form and instructions are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

Estimated Paperwork Burden

Estimated number of respondents: 8.

Estimated average hours per response: 40 (Initial set-up 160).

Estimated annual burden hours: 1,600 (1,280 for initial set-up and 320 for ongoing compliance).

C. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act [86] (RFA), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The RFA requires an agency to either provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

In accordance with section 171 of the Dodd-Frank Act and section 10 of HOLA, the Board is proposing to adopt subpart J to 12 CFR part 217 (Regulation Q) to establish risk-based capital requirements for insurance depository institution holding companies.[87] An insurance depository institution holding company's aggregate capital requirements generally would be the sum of the capital requirements applicable to the top-tier parent and certain subsidiaries of the insurance depository institution holding company, where the capital requirements for regulated financial subsidiaries would generally be based on the regulatory capital rules of the subsidiaries' functional regulators—whether a state or foreign insurance regulator for insurance subsidiaries or a Federal banking regulator for IDIs. The BBA would then build upon and aggregate capital resources and requirements across groups of legal entities in the insurance depository institution holding company's enterprise (insurance, non-insurance financial, non-financial, and holding company), subject to adjustments.

Under Small Business Administration (SBA) regulations, the finance and insurance sector includes direct life insurance carriers, direct title insurance carriers, and direct P&C insurance carriers, which generally are considered ''small'' for the purposes of the RFA if a life insurance carrier or title insurance carrier has assets of $38.5 million or less or if a P&C insurance carrier has less than 1,500 employees.[88] The Board believes that the finance and insurance sector constitutes a reasonable universe of firms for these purposes because this proposal would only apply to depository institution holding companies significantly engaged in insurance activities, as discussed in the **SUPPLEMENTARY INFORMATION.**

Life insurance companies and title insurance companies that would be subject to the proposed rule all substantially exceed the $38.5 million asset threshold at which they would be considered a ''small entity'' under SBA regulations. P&C insurance companies subject to the proposed rule exceed the less than 1,500 employee threshold at which a P&C entity is considered a ''small entity'' under SBA regulations.

Because the proposed rule is not likely to apply to any life insurance carrier or title insurance carrier with assets of $38.5 million, or P&C carrier with less than 1,500 employees, if adopted in final form, it is not expected to apply to a substantial number of small entities for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 171 of the Dodd-Frank Act and section 10 of HOLA.

List of Subjects

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk, Securities.

12 CFR Part 252

Administrative practice and procedure, Banks, banking, Credit, Federal Reserve System, Holding companies, Investments, Qualified financial contracts, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

Subpart A—General Provisions

■ 2. Section 217.1 is amended by:

■ a. Revising paragraphs (c)(1)(ii) and (iii);

■ b. Redesignating paragraphs (c)(2) through (5) as paragraphs (c)(3) through (6); and

■ c. Adding new paragraph (c)(2).

The revisions and additions read as follows:

§ 217.1 Purpose, applicability, reservations of authority, and timing.

* * * * *

(c) * * *

(1) * * *

(ii) A bank holding company domiciled in the United States that is not subject to the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (part 225, appendix C of this chapter), provided that the Board may by order apply any or all of this part to any bank holding company, based on the institution's size, level of complexity,

[86] 5 U.S.C. 601 *et seq.*

[87] *See* 12 U.S.C. 1467a and 5371.

[88] 13 CFR 121.201.

risk profile, scope of operations, or financial condition; or

(iii) A covered savings and loan holding company domiciled in the United States that is not subject to the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (part 225, appendix C of this chapter). For purposes of compliance with the capital adequacy requirements and calculations in this part, savings and loan holding companies that do not file the FR Y–9C should follow the instructions to the FR Y–9C.

(2) *Insurance Savings and Loan Holding Companies.* (i) In the case of a covered savings and loan holding company that does not calculate consolidated capital requirements under subpart B of this part because it is a state regulated insurer, subpart B of this part applies to a savings and loan holding company that is a subsidiary of such covered savings and loan holding company, provided:

(A) The subsidiary savings and loan holding company is an insurance SLHC mid-tier holding company; and

(B) The subsidiary savings and loan holding company's assets and liabilities are not consolidated with those of a savings and loan holding company that controls the subsidiary for purposes of determining the parent savings and loan holding company's capital requirements and capital ratios under subparts B through F of this part.

(ii) *Insurance savings and loan holding companies and treatment of subsidiary state regulated insurers, regulated foreign subsidiaries and regulated foreign affiliates.*

(A) In complying with the capital adequacy requirements of this part (except for the requirements and calculations of subpart J of this part), including any determination of applicability under § 217.100 or § 217.201, an insurance savings and loan holding company, or an insurance SLHC mid-tier holding company, may elect to:

Option 1: Deduction

(*1*) Not consolidate the assets and liabilities of its subsidiary state-regulated insurers, regulated foreign subsidiaries and regulated foreign affiliates; and

(*2*) Deduct the aggregate amount of its outstanding equity investment, including retained earnings, in such subsidiaries and affiliates.

Option 2: Risk-Weight

(*1*) Not consolidate the assets and liabilities of its subsidiary state-regulated insurers, regulated foreign subsidiaries and regulated foreign affiliates;

(*2*) Include in the risk-weighted assets of the Board-regulated institution the aggregate amount of its outstanding equity investment, including retained earnings, in such subsidiaries and affiliates and assign to these assets a 400 percent risk weight in accordance with § 217.52.

(B) *Nonconsolidation election for state regulated insurers, regulated foreign subsidiaries and regulated foreign affiliates.* (*1*) An insurance savings and loan holding company or insurance SLHC mid-tier holding company may elect not to consolidate the assets and liabilities of all of its subsidiary state regulated insurers, regulated foreign subsidiaries and regulated foreign affiliates by indicating that it has made this election on the applicable regulatory report, filed by the insurance savings and loan holding company or insurance SLHC mid-tier holding company for the first reporting period in which it is an insurance savings and loan holding company or insurance SLHC mid-tier holding company.

(*2*) An insurance savings and loan holding company or insurance SLHC mid-tier holding company that has not made an effective election pursuant to paragraph (C)(2)(B)(*1*) of this section, or that seeks to change its election due to a change in control, business combination, or other legitimate business purpose, may do so only with the prior approval of the Board, effective as of the reporting date of the first reporting period after the period in which the Board approves the election, or such other date specified in the approval.

* * * * *

■ 3. In § 217.2,

■ a. Revising the definition of ''*Covered savings and loan holding company,* '' and

■ b. Adding the definitions of ''*Capacity as a regulated insurance entity*'', ''*Insurance savings and loan holding company*'', ''*Insurance SLHC mid-tier holding company*'', ''*Regulated foreign subsidiary and regulated foreign affiliate*'', and ''*State regulated insurer*''.

The revision and additions read as follows:

§ 217.2 Definitions.

* * * * *

Capacity as a regulated insurance entity has the meaning in section 171(a)(7) of the Dodd-Frank Act (12 U.S.C. 5371(a)(7)).

* * * * *

Covered savings and loan holding company means a top-tier savings and loan holding company other than:

(1) An institution that meets the requirements of section 10(c)(9)(C) of HOLA (12 U.S.C. 1467a(c)(9)(C)); and

(2) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

* * * * *

Insurance savings and loan holding company means:

(1) A top-tier savings and loan holding company that is an insurance underwriting company; or

(2)(i) A top-tier savings and loan holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance underwriting for credit risk); and

(ii) For purposes of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board.

Insurance SLHC mid-tier holding company means a savings and loan holding company domiciled in the United States that:

(1) Is a subsidiary of an insurance savings and loan holding company to which subpart J applies; and

(2) Is not an insurance underwriting company that is subject to state-law capital requirements.

Regulated foreign subsidiary and regulated foreign affiliate has the meaning in section 171(a)(6) of the Dodd-Frank Act (12 U.S.C. 5371(a)(6)) and any subsidiary of such a person other than a state regulated insurer.

* * * * *

State regulated insurer means a person regulated by a state insurance regulator as defined in section 1002(22) of the Dodd-Frank Act (12 U.S.C. 5481(22)), and any subsidiary of such a person, other than a regulated foreign subsidiary and regulated foreign affiliate.

* * * * *

Subpart B—Capital Ratio Requirements and Buffers

■ 4. Section 217.10 is amended by adding paragraphs (a)(4), (6) and (7), to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(a) * * *

(4) For a Board-regulated institution other than an insurance savings and loan holding company or insurance SLHC mid-tier holding company, a leverage ratio of 4 percent.

* * * * *

(6) An insurance savings and loan holding company that is a state regulated insurer is not required to meet the minimum capital ratio requirements in paragraphs (a)(1) through (5) of this section, if the company uses subpart J of this part for purposes of compliance with the capital adequacy requirements and calculations in this part.

(7) An insurance savings and loan holding company is not required to meet the buffer in § 217.11, if the company uses subpart J of this part for purposes of compliance with the calculation of its capital conservation buffer.

* * * * *

■ 5. Section 217.11 is amended by revising paragraph (a)(3) to read as follows:

§ 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

(a) * * *

* * * * *

(3) *Calculation of Capital Conservation Buffer.* (i) For a Board-regulated institution (other than an insurance savings and loan holding company that uses subpart J of this part for the purpose of calculating its capital conservation buffer) the capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter based on the Board-regulated institution's most recent Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable:

* * * * *

■ 6. In part 217, add subpart J, to read as follows:

Subpart J—Capital Requirements for Board-regulated Institutions Significantly Engaged in Insurance Activities

Sec.

207.601 Purpose, applicability, reservations of authority, and scope
207.602 Definitions
207.603 Capital Requirements
207.604 Capital Conservation Buffer
217.605 Determination of Building Blocks
217.606 Scaling Parameters
217.607 Capital Requirements under the Building Block Approach
217.608 Available Capital Resources under the Building Block Approach

Subpart J—Capital Requirements for Board-regulated Institutions Significantly Engaged in Insurance Activities

§ 217.601 Purpose, applicability, reservations of authority, and scope

(a) *Purpose.* This subpart establishes a framework for assessing overall risk-based capital for Board-regulated institutions that are significantly engaged in insurance activities. The framework in this subpart is used to measure available capital resources and capital requirements across a Board-regulated institution and its subsidiaries that are subject to diverse applicable capital frameworks, aggregate available capital resources and capital requirements, and calculate a ratio that reflects the overall capital adequacy of the Board-regulated institution. This subpart includes minimum BBA ratio and capital buffer requirements, public disclosure requirements, and transition provisions for the application of this subpart.

(b) *Applicability.* This section applies to every Board-regulated institution that is:

(1) (i) A top-tier depository institution holding company that is an insurance underwriting company; or

(ii) A top-tier depository institution holding company, that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in insurance underwriting companies (other than assets associated with insurance underwriting for credit risk). For purposes of this subparagraph (b)(ii), the Board-regulated institution must calculate its total consolidated assets in accordance with U.S. GAAP, or if the Board-regulated institution does not calculate its total consolidated assets under U.S. GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board; or

(2) An institution that is otherwise subject to this subpart, as determined by the Board.

(c) *Exclusion of certain SLHCs.* This subpart shall not apply to a top-tier depository institution holding company that

(i) Exclusively files financial statements in accordance with SAP;

(ii) Is not subject to a State insurance capital requirement; and

(iii) Has no subsidiary depository institution holding company that

(A) Is subject to a capital requirement; or

(B) Does not exclusively file financial statements in accordance with SAP.

(d) *Reservation of authority.*

(1) *Regulatory capital resources.*

(i) If the Board determines that a particular company capital element has characteristics or terms that diminish its ability to absorb losses, or otherwise present safety and soundness concerns, the Board may require the supervised insurance organization to exclude all or a portion of such element from building block available capital for a depository institution holding company in the supervised insurance organization.

(ii) Notwithstanding the provisions set forth in § 217.608, the Board may find that a capital resource may be included in the building block available capital of a depository institution holding company on a permanent or temporary basis consistent with the loss absorption capacity of the capital resource and in accordance with § 217.608(g).

(2) *Required capital amounts.* If the Board determines that the building block capital requirement for any depository institution holding company is not commensurate with the risks of the depository institution holding company, the Board may adjust the building block capital requirement and building block available capital for the supervised insurance organization.

(3) *Structural requirements.* In order to achieve the appropriate application of this subpart, the Board may require a supervised insurance organization to take any of the following actions with respect to the application of this subpart, if the Board determines that such action would better reflect the risk profile of an inventory company or the supervised insurance organization:

(i) Identify an inventory company that is a depository institution holding company as a top-tier depository institution holding company, or vice versa;

(ii) Identify any company as an inventory company, material financial entity, or building block parent;

(iii) Reverse the identification of a building block parent; or

(iv) Set a building block parent's allocation share of a downstream building block parent equal to 100 percent.

(e) *Other reservation of authority.* With respect to any treatment required under this subpart, the Board may require a different treatment, provided

that such alternative treatment is commensurate with the supervised insurance organization's risk and consistent with safety and soundness.

(f) *Notice and response procedures.* In making any determinations under this subpart, the Board will apply notice and response procedures in the same manner as the notice and response procedures in section 263.202 of this chapter.

§ 217.602 Definitions

(a) Terms that are set forth in § 217.2 and used in this subpart have the definitions assigned thereto in § 217.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Allocation share means the portion of a downstream building block's available capital or building block capital requirement that a building block parent must aggregate in calculating its own building block available capital or building block capital requirement, as applicable.

Applicable capital framework is defined in § 217.605, provided that for purposes of § 217.605(b)(2), the NAIC RBC frameworks for life insurance, fraternal insurers, property and casualty insurance, and health insurance companies are different applicable capital frameworks.

Assignment means the process of associating an inventory company with one or more building block parents for purposes of inclusion in the building block parents' building blocks.

BBA ratio is defined in § 217.603.

Building block means a building block parent and all downstream companies and subsidiaries assigned to the building block parent.

Building block available capital has the meaning set out in § 217.608.

Building block capital requirement has the meaning set out in § 217.607.

Building block parent means the lead company of a building block whose applicable capital framework must be applied to all members of a building block for purposes of determining building block available capital and the building block capital requirement.

Capital-regulated company means a company in a supervised insurance organization that is directly subject to a regulatory capital framework.

Common capital framework means NAIC RBC.

Company available capital means, for a company, the amount of its company capital elements, net of any adjustments and deductions, as determined in accordance with the company's applicable capital framework.

Company capital element means, for purposes of this subpart, any part, item, component, balance sheet account, instrument, or other element qualifying as regulatory capital under a company's applicable capital framework prior to any adjustments and deductions under that framework.

Company capital requirement means:

(1) For a company whose applicable capital framework is NAIC RBC, the Authorized Control Level risk-based capital requirement;

(2) For a company whose applicable capital framework is a U.S. federal banking capital rule, the total risk-weighted assets; and

(3) For any other company, a risk-sensitive measure of required capital used to determine the jurisdictional intervention point applicable to that company.

Downstream building block parent means a building block parent that is a downstream company of another building block parent.

Downstream company means a company whose company capital element is directly or indirectly owned, in whole or in part by, another company in the supervised insurance organization.

Downstreamed capital means direct ownership of a downstream company's company capital element that is accretive to a downstream building block parent's building block available capital.

Engaged in insurance or reinsurance underwriting means, for a company, to be regulated as an insurance or reinsurance underwriting company, other than insurance underwriting companies that primarily underwrite title insurance or insurance for credit risk.

Financial entity means:

(1) A bank holding company; a savings and loan holding company as defined in section 10(n) of the Home Owners' Loan Act (12 U.S.C. 1467a(n)); a U.S. intermediate holding company established or designated for purposes of compliance with this part;

(2) A depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States; a federal credit union or state credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) and (6)); a national association, state member bank, or state nonmember bank that is not a depository institution; an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H));

(3) An entity that is state-licensed or registered as:

(i) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

(ii) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

(4) Any person registered with the Commodity Futures Trading Commission as a swap dealer or major swap participant pursuant to the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*), or an entity that is registered with the U.S. Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); a broker or dealer as defined in sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)–(5)); an investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–53(a));

(6) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 (17 CFR 270.3a–7) of the U.S. Securities and Exchange Commission;

(7) A commodity pool, a commodity pool operator, or a commodity trading

advisor as defined, respectively, in sections 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(10), 1a(11), and 1a(12)); a floor broker, a floor trader, or introducing broker as defined, respectively, in sections 1a(22), 1a(23) and 1a(31) of the Commodity Exchange Act (7 U.S.C. 1a(22), 1a(23), and 1a(31)); or a futures commission merchant as defined in section 1a(28) of the Commodity Exchange Act (7 U.S.C. 1a(28));

(8) An entity that is organized as an insurance company, primarily engaged in underwriting insurance or reinsuring risks underwritten by insurance companies;

(9) Any designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462); and

(10) An entity that would be a financial entity described in paragraphs (1) through (9) of this definition, if it were organized under the laws of the United States or any State thereof.

Inventory has the meaning set out in paragraph (a) of § 217.602(b)(2).

Material means, for a company in the supervised insurance organization:

(1) Where the top-tier depository institution holding company's total exposure exceeds 1 percent of total consolidated assets of the top-tier depository institution holding company. The supervised firm must calculate its total consolidated assets in accordance with U.S. GAAP, or if the firm does not calculate its total consolidated assets under U.S. GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board. For purposes of this definition, total exposure includes:

(a) The absolute value of the top-tier depository institution holding company's direct or indirect interest in the company capital elements of the company;

(b) The top-tier depository institution holding company or any other company in the supervised insurance organization providing an explicit or implicit guarantee for the benefit of the company; and

(c) Potential counterparty credit risk to the top-tier depository institution holding company or any other company in the supervised insurance organization arising from any derivative or similar instrument, reinsurance or similar arrangement, or other contractual agreement; or

(2) The company is otherwise significant in assessing the building block available capital or building block capital requirement of the top-tier depository institution holding company based on factors including risk exposure, activities, organizational structure, complexity, affiliate guarantees or recourse rights, and size.

Material financial entity means a financial entity that, together with its subsidiaries, but excluding any subsidiary capital-regulated company (or subsidiary thereof), is material, provided that an inventory company is not eligible to be a material financial entity if:

(1) The supervised insurance organization has elected pursuant to § 217.605(c) to not treat the company as a material financial entity.

(2) The inventory company is a financial subsidiary, as defined in section 121 of the Gramm-Leach-Bliley Act;

(3) The inventory company is properly registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*), or with any state.

Member means, with respect to a building block, the building block parent or any of its downstream companies or subsidiaries that have been assigned to a building block.

NAIC means the National Association of Insurance Commissioners.

NAIC RBC means the most recent version of the Risk-Based Capital (RBC) For Insurers Model Act, together with the RBC instructions, as adopted in a substantially similar manner by an NAIC member and published in the NAIC's Model Regulation Service.

Permitted Accounting Practice means an accounting practice specifically requested by a state regulated insurer that departs from SAP and state prescribed accounting practices, and has received approval from the state regulated insurer's domiciliary state regulatory authority.

Prescribed Accounting Practice means an accounting practice that is incorporated directly or by reference to state laws, regulations and general administrative rules applicable to all insurance enterprises domiciled in a particular state.

Recalculated building block capital requirement means, for a downstream building block parent and an upstream building block parent, the downstream building block parent's building block capital requirement recalculated assuming that the downstream building block parent had no upstream investment in the upstream building block parent.

Regulatory capital framework means, with respect to a company, the applicable legal requirements, excluding this subpart, specifying the minimum amount of total regulatory capital the company must hold to avoid restrictions on distributions and discretionary bonus payments, regulatory intervention on the basis of capital adequacy levels for the company, or equivalent standards; provided that for purposes of this subpart, the NAIC RBC frameworks for life insurance, fraternal insurance, property and casualty insurance, and health insurance companies are different regulatory capital frameworks.

SAP means Statutory Accounting Principles as promulgated by the NAIC and adopted by a jurisdiction for purposes of financial reporting by insurance companies.

Scaling means the translation of building block available capital and building block capital requirement from one applicable capital framework to another by application of § 217.606.

Scalar-compatible means a capital framework:

(1) For which the Board has determined scalars; or

(2) That is an insurance capital regulatory framework, and exhibits each of the following three attributes:

(a) the framework is clearly defined and broadly applicable;

(b) The framework has an identifiable intervention point that can be used to calibrate a scalar; and

(c) The framework provides a risk-sensitive measure of required capital reflecting material risks to a company's financial strength.

Submission date means the date as of which Form FR Q–1 is filed with the Board.

Supervised insurance organization means:

(1) In the case of a depository institution holding company, the set of companies consisting of:

(i) A top-tier depository institution holding company that is an insurance underwriting company, together with its inventory companies; or

(ii) A top-tier depository institution holding company, together with its inventory companies, that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in insurance underwriting companies (other than assets associated with insurance underwriting for credit risk). For purposes of this paragraph (1)(ii) of this definition, the supervised firm must calculate its total consolidated assets in accordance with U.S. GAAP, or if the firm does not calculate its total consolidated assets under U.S. GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board; or

(2) An institution that is otherwise subject to this subpart, as determined by the Board.

Tier 2 capital instruments, for purposes of this subpart, has the meaning set out in § 217.608(a).

Top-tier depository institution holding company means a savings and loan holding company that is not controlled by another savings and loan holding company.

Upstream building block parent means an upstream company that is a building block parent.

Upstream company means a company within a supervised insurance organization that directly or indirectly controls a downstream company, or directly or indirectly owns part or all of a downstream company's company capital elements.

Upstream investment means any direct or indirect investment by a downstream building block parent in an upstream building block parent.

U.S. federal banking capital rules mean this part, other than this subpart, and the regulatory capital rules promulgated by the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency.

§ 217.603 Capital Requirements

(a) *Generally.* A supervised insurance organization must determine its BBA ratio, subject to the minimum requirement set out in this section and buffer set out in § 217.604, for each depository institution holding company within its enterprise by:

(1) Establishing an inventory that includes the supervised insurance organization and every company that meets the requirements of § 217.605(b)(1);

(2) Identifying all building block parents as required under § 217.605(b)(3);

(3) Determining the available capital and capital requirement for each building block parent in accordance with its applicable capital framework;

(4) Determining the building block available capital and building block capital requirement for each building block, reflecting adjustments and scaling as set out in this subpart;

(5) Rolling up building block available capital and building block capital requirement amounts across all building blocks in the supervised insurance organization's enterprise to determine the same for any depository institution holding companies in the enterprise; and

(6) Determining the ratio of building block available capital to building block capital requirement for each depository institution holding company in the supervised insurance organization.

(b) *Determination of BBA ratio.* For a depository institution holding company in a supervised insurance organization, the BBA ratio is the ratio of the company's building block available capital to the company's building block capital requirement, each scaled to the common capital framework in accordance with § 217.606. Expressed formulaically:

$$BBA\ Ratio = \frac{Building\ block\ available\ capital}{Building\ block\ capital\ requirement}$$

(c) *Minimum capital requirement.* A depository institution holding company in a supervised insurance organization must maintain a BBA ratio of at least 250 percent.

(d) *Capital adequacy.* (1) Notwithstanding the minimum requirement in this subpart, a depository institution holding company in a supervised insurance organization must maintain capital commensurate with the level and nature of all risks to which the supervised insurance organization is exposed. The supervisory evaluation of the depository institution holding company's capital adequacy is based on an individual assessment of numerous factors, including the character and condition of the company's assets and its existing and prospective liabilities and other corporate responsibilities.

(2) A depository institution holding company in a supervised insurance organization must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

§ 217.604 Capital Conservation Buffer

(a) *Application of § 217.11(a).* A top-tier depository institution holding company in a supervised insurance organization must comply with § 217.11(a) as modified solely for application in this subpart by:

(1) Replacing the term ''calendar quarter'' with ''calendar year;''

(2) Including in the definition of ''distribution'' discretionary dividend payments on participating insurance policies;

(3) In § 217.11(a)(1), replacing ''*common equity tier 1 capital*'' with ''*building block available capital excluding tier 2 instruments;*''

(4) Replacing § 217.11(a)(2)(i) in its entirety with the following: ''*Eligible retained income.* The eligible retained income of a depository institution holding company in a supervised insurance organization is the annual change in the company's building block available capital, calculated as of the last day of the current and immediately preceding calendar years based on the supervised insurance organization's most recent Form FR Q–1, net of any distributions and accretion to building block available capital from capital instruments issued in the current or immediately preceding calendar year, excluding issuances corresponding with retirement of capital instruments under paragraph (1) of this section of the definition of distribution;

(5) Replacing § 217.11(a)(3) in its entirety with the following: ''The capital conservation buffer for a depository institution holding company in a supervised insurance organization is the greater of its BBA ratio, calculated as of the last day of the previous calendar year based on the supervised insurance organization's most recent Form FR Q–1, minus the minimum capital requirement under § 217.603(c), and zero;''

(6) Replacing § 217.11(a)(4)(ii) in its entirety with the following: ''A depository institution holding company in a supervised insurance organization with a capital conservation buffer that is greater than 235 percent is not subject to a maximum payout amount under this section;

(7) In § 217.11(a)(4)(iii)(B), replacing ''2.5 percent'' with ''235 percent;''

(8) Replacing Table 1 to § 217.11 in its entirety with the following:

TABLE 1 TO § 217.604—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Greater than 235 percent.	No payout ratio limitation applies.
Less than or equal to 235 percent, *and* greater than 177 percent.	60 percent.

TABLE 1 TO § 217.604—CALCULATION OF MAXIMUM PAYOUT AMOUNT—Continued

Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Less than or equal to 177 percent, *and* greater than 118 percent.	40 percent.
Less than or equal to 118 percent, *and* greater than 59 percent.	20 percent.
Less than or equal to 59 percent.	0 percent.

§ 217.605 Determination of Building Blocks

(a) *General.* A supervised insurance organization must identify each building block parent and its allocation share of any downstream building block parent, as applicable.

(b) *Operation.* To identify building block parents and determine allocation shares, a supervised insurance organization must take the following steps in the following order:

(1) *Inventory of companies.* A supervised insurance organization must identify as inventory companies: (i) All companies that are

(A) Required to be reported on the FR Y–6;

(B) Required to be reported on the FR Y–10; or

(C) Classified as affiliates in accordance with NAIC Statement of Statutory Accounting Principles (SSAP) No. 25 and the preparation of Schedule Y;

(ii) Any company, special purpose entity, variable interest entity, or similar entity that:

(A) Enters into one or more reinsurance or derivative transactions with inventory companies identified pursuant to paragraph (b)(1)(i) of this section;

(B) Is material;

(C) Is engaged in activities such that one or more inventory companies identified pursuant to paragraph (b)(1)(i) of this section are expected to absorb more than 50 percent of its expected losses; and

(D) Is not otherwise identified as an inventory company; and

(iii) Any other company that the Board determines must be identified as an inventory company.

(2) *Determination of applicable capital framework.* (i) A supervised insurance organization must:

(A) Determine the applicable capital framework for each inventory company; and

(B) Identify inventory companies that are subject to a regulatory capital framework.

(ii) The applicable capital framework for an inventory company is:

(A) If the inventory company is not engaged in insurance or reinsurance underwriting, the U.S. federal banking capital rules, in particular:

(*1*) If the inventory company is not a depository institution, subparts A through F of this part; and

(*2*) If the inventory company is a depository institution, the regulatory capital framework applied to the depository institution by the appropriate primary federal regulator, *i.e.,* subparts A through F of this part (Board), parts 3 of this title (Office of the Comptroller of the Currency), or part 324 of this title (Federal Deposit Insurance Corporation), as applicable;

(B) If the inventory company is engaged in insurance or reinsurance underwriting and subject to a regulatory capital framework that is scalar-compatible, the regulatory capital framework; and

(C) If the inventory company is engaged in insurance or reinsurance underwriting and not subject to a regulatory capital framework that is scalar-compatible, then NAIC RBC for life insurers, fraternal insurers, health insurers, or property & casualty insurers based on the company's primary source of premium revenue.

(3) *Identification of building block parents.* A supervised insurance organization must identify all building block parents according to the following procedure:

(i) (A) Identify all top-tier depository institution holding companies in the supervised insurance organization.

(B) Any top-tier depository institution holding company is a building block parent

(ii) (A) Identify any inventory company that is a depository institution holding company;

(B) An inventory company identified in paragraph (b)(3)(ii)(A) of this section is a building block parent.

(iii) Identify all inventory companies that are capital-regulated companies (*i.e.,* inventory companies that are subject to a regulatory capital framework) or material financial entities.

(iv) (A) Of the inventory companies identified in paragraph (b)(3)(iii) of this section, identify any inventory company that:

(*1*) Is assigned an applicable capital framework that is different from the applicable capital framework of any next upstream inventory company identified in paragraphs (b)(3)(i) through (iii) of this section; [1] and

(*2*) Is assigned an applicable capital framework for which the Board has determined a scalar or, if the company in aggregate with all other companies subject to the same applicable capital framework are material, a provisional scalar;

(B) Of the inventory companies identified in paragraph (b)(3)(iii) of this section, identify any inventory company that:

(*1*) Is assigned an applicable capital framework that is the same as the applicable capital framework of each next upstream inventory company identified in paragraphs (b)(3)(i) through (iii) of this section;

(*2*) Is assigned an applicable capital framework for which the Board has determined a scalar or, if the company in aggregate with all other companies subject to the same applicable capital framework are material, a provisional scalar; and

(*3*) Is owned, in whole or part, by an inventory company that is subject to the same regulatory capital framework and the owner:

(*i*) Applies a charge on the inventory company's equity value in calculating its company capital requirement; or

(*ii*) Deducts all or a portion of its investment in the inventory company in calculating its company available capital.

(C) An inventory company identified in paragraph (b)(3)(iv)(A) through (B) of this section is a building block parent.

(v) Include any inventory company identified in paragraph (b)(1)(ii) of this section as a building block parent.

(vi) (A) Identify any inventory company

(*1*) For which more than one building block parent, as identified pursuant to paragraphs (b)(3)(i) through (v) of this section, owns a company capital element either directly or indirectly other than through another such building block parent; and

(*2*) (*i*) Is consolidated under any such building block parent's applicable capital framework; or

[1] In a simple structure, an inventory company would compare its applicable capital framework to the applicable capital framework of its parent company. However, if the parent company does not meet the criteria to be identified as a building block parent, the inventory company must compare its capital framework to the next upstream company that is eligible to be identified as a building block parent. For purposes of this paragraph (b)(3)(iv) of this section, a company is ''next upstream'' to a downstream company if it owns, in whole or in part, the downstream company either directly, or indirectly other than through a company identified in paragraphs (b)(3)(ii) through (iii) of this section.

(*ii*) Owns downstreamed capital.

(B) An inventory company identified in paragraph (b)(3)(vi)(A) of this section is a building block parent.

(4) *Building blocks.* (A) Except as provided in paragraph (b)(4)(B) of this section, a supervised insurance organization must assign an inventory company to the building block of any building block parent that owns a company capital element of the inventory company, or of which the inventory company is a subsidiary,[2] directly or indirectly through any company other than a building block parent, unless the inventory company is a building block parent.

(B) A supervised insurance organization is not required to assign to a building block any inventory company that is not a downstream company or subsidiary of a top-tier depository institution holding company.

(5) *Financial Statements.* The supervised insurance organization must:

(i) For any inventory company whose applicable capital framework is NAIC RBC, prepare financial statements in accordance with SAP; and

(ii) For any building block parent whose applicable capital framework is subparts A through F of this part:

(A) Apply the same elections and treatment of exposures as are applied to the subsidiary depository institution;

(B) Apply subparts A through F of this part, to the members of the building block of which the building block parent is a member, on a consolidated basis, to the same extent as if the building block parent were a Board-regulated institution; and

(C) Where the building block parent is not the top-tier depository institution holding company, not deduct investments in capital of unconsolidated financial institutions, nor exclude these investments from the calculation of risk-weighted assets.

(6) *Allocation share.* A supervised insurance organization must, for each building block parent, identify any downstream building block parent owned directly or indirectly through any company other than a building block parent, and determine the building block parent's allocation share of these downstream building block parents pursuant to paragraph (d) of this section.

(c) *Material financial entity election.* (1) A supervised insurance organization may elect to not treat an inventory company meeting the criteria in paragraph (c)(2) of this section as a material financial entity. An election under this section must be included with the first financial statements submitted to the Board after the company is included in the supervised insurance organization's inventory.

(2) The election in paragraph (c)(1) of this section is available as to an inventory company if:

(*i*) That company engages in transactions consisting solely of either (A) transactions for the purpose of transferring risk from one or more affiliates within the supervised insurance organization to one or more third parties; or (B) transactions to invest assets contributed to the company by one or more affiliates within the supervised insurance organization, where the company is established for purposes of limiting tax obligation or legal liability; and

(*ii*) The supervised insurance organization is able to calculate the adjustment required in § 217.607(b)(4).

(d) *Allocation share.* (1) Except as provided in paragraph (d)(2) of this section, a building block parent's allocation share of a downstream building block parent is calculated as Allocation Share $_{UpBBP}$ =

$$\frac{(\mathrm{Tier2}_{\mathrm{UpBBP}} + (\mathrm{DownAC} - \mathrm{UpInvestment} - \mathrm{Tier2}_{\mathrm{Total}}) * \mathrm{ProRataAllocation}_{\mathrm{UpBBP}})}{(\mathrm{DownAC} - \mathrm{UpInvestment})}$$

(i) UpBBP = The building block parent that owns a company capital element of DownBBP directly or indirectly through a member of UpBBP's building block.

(ii) DownBBP = The building block parent whose company capital element is owned by UpBBP directly or indirectly through a member of UpBBP's building block.

(iii) Tier2 = The value of tier 2 instruments issued by DownBBP, where $\mathrm{Tier2}_{\mathrm{UpBBP}}$ is the amount that is owned by any member of UpBBP's building block and $\mathrm{Tier2}_{\mathrm{Total}}$ is the total amount issued by DownBBP.[3]

(iv) UpInvestment = Any upstream investment by DownBBP in UpBBP.[4]

(v) $\mathrm{ProRataAllocation}_{\mathrm{UpBBP}}$ = UpBBP's share of DownBBP based on equity ownership of DownBBP, including associated paid-in capital.

(vi) DownAC = Total building block available capital of DownBBP.

(2) The top-tier depository institution's allocation share of a building block parent identified under paragraph (b)(3)(v) of this section is 100 percent. Any other building block parent's allocation share of such building block parent is zero.

§ 217.606 Scaling Parameters

(a) *Scaling specified by the Board.*

(1) *Scaling between the U.S. federal banking capital rules and NAIC RBC.*

(i) *Scaling capital requirement.* When calculating (in accordance with § 217.607) the building block capital requirement for a building block parent, the applicable capital framework which is NAIC RBC or the U.S. federal banking capital rules, and where the applicable capital framework of the appropriate downstream building block parent is NAIC RBC or the U.S. federal banking capital rules, the capital requirement scaling modifier is provided by Table 1 to § 217.606.

TABLE 1 TO § 217.606—CAPITAL REQUIREMENT SCALING MODIFIERS FOR NAIC RBC AND THE U.S. FEDERAL BANKING CAPITAL RULES

Downstream building block parent's applicable capital framework:	Upstream building block parent's applicable capital framework:	
	NAIC RBC	U.S. federal banking capital rules
U.S. federal banking capital rules	1.06 percent (*i.e.,* 0.0106)	1.

[2] For purposes of this section, subsidiary includes a company that is required to be reported on the FR Y–6, FR Y–10, or NAIC's Schedule Y, as applicable.

[3] The amounts of Tier2 should be valued consistently with how the instruments are reported in DownBBP's financial statements.

[4] The amount of the upstream investment is calculated as the impact, excluding any impact on taxes, on DownBBP's company available capital if DownBBP were to deduct the investment.

TABLE 1 TO § 217.606—CAPITAL REQUIREMENT SCALING MODIFIERS FOR NAIC RBC AND THE U.S. FEDERAL BANKING CAPITAL RULES—Continued

Downstream building block parent's applicable capital framework:	Upstream building block parent's applicable capital framework:	
	NAIC RBC	U.S. federal banking capital rules
NAIC RBC	1	94.3.

(ii) *Scaling available capital.* When calculating (in accordance with § 217.608) the building block available capital for a building block parent, the applicable capital framework which is NAIC RBC or the U.S. federal banking capital rules, and where the applicable capital framework of the appropriate downstream building block parent is NAIC RBC or the U.S. federal banking capital rules, the available capital scaling modifier is provided by Table 2 to § 217.606.

TABLE 2 TO § 217.606—AVAILABLE CAPITAL SCALING MODIFIERS FOR NAIC RBC AND THE U.S. FEDERAL BANKING CAPITAL RULES

Downstream building block parent's applicable capital framework:	Upstream building block parent's applicable capital framework:	
	NAIC RBC	U.S. federal banking capital rules
U.S. federal banking capital rules	Recalculated building block capital requirement * −6.3 percent (*i.e.,* −0.063).	0.
NAIC RBC	0	Recalculated building block capital requirement * 5.9.

(2) [Reserved]

(b) *Scaling not specified by the Board but framework is scalar-compatible.* Where scaling modifier to be used in § 217.607 or § 217.608 is not specified in paragraph (a) of this section, and the building block parent's applicable capital framework is scalar-compatible, the scaling modifier is determined as follows:

(1) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Jurisdictional intervention point.* The jurisdictional intervention point is the capital level, under the laws of the jurisdiction, at which the supervisory authority in the jurisdiction may intervene as to a company subject to the applicable capital framework by imposing restrictions on distributions and discretionary bonus payments by the company or, if no such intervention may occur in a jurisdiction, then the capital level at which the supervisory authority would first have the authority to take action against a company based on its capital level; and

(ii) *Jurisdiction adjustment.* The jurisdictional adjustment is the risk adjustment set forth in Table 3 to § 217.606, based on the country risk classification set by the Organization for Economic Cooperation and Development for the jurisdiction.

TABLE 3 TO § 217.606—JURISDICTIONAL ADJUSTMENTS BY OECD COUNTRY RISK CLASSIFICATION

OECD CRC	Jurisdictional Adjustment (percent)
0–1, including jurisdictions with no OECD country risk classification	0
2	20

TABLE 3 TO § 217.606—JURISDICTIONAL ADJUSTMENTS BY OECD COUNTRY RISK CLASSIFICATION—Continued

OECD CRC	Jurisdictional Adjustment (percent)
3	50
4–6	100
7	150

(2) *Scaling capital requirement.* When calculating (in accordance with § 217.607) the building block capital requirement for a building block parent, where the applicable capital framework of the appropriate downstream building block parent is a scalar-compatible framework for which the Board has not specified a capital requirement scaling modifier, the capital requirement scaling modifier is equal to:

$$\frac{\left(1 + Adjustment_{Scaling\ from}\right) * Requirement_{Scaling\ from}}{Requirement_{Scaling\ to}}$$

Where:

$Adjustment_{scaling\ from}$ is equal to the jurisdictional adjustment of the downstream building block parent;

$Requirement_{scaling\ from}$ is equal to the jurisdictional intervention point of the downstream building block parent; and

$Requirement_{scaling\ to}$ is equal to the jurisdictional intervention point of the upstream building block parent.

(3) *Scaling available capital.* When calculating (in accordance with § 217.608) the building block available capital for a building block parent, where the applicable capital framework of the appropriate downstream building block parent is a scalar-compatible framework for which the Board has not specified an available capital scaling modifier, the available capital scaling modifier is equal to zero.

§ 217.607 Capital Requirements under the Building Block Approach

(a) *Determination of building block capital requirement.* For each building block parent, *building block capital requirement* means the sum of the items

in paragraphs (a)(1) through (2) of this section:

(1) The company capital requirement of the building block parent;

(i) Recalculated under the assumption that members of the building block parent's building block had no investment in any downstream building block parent; and

(ii) Adjusted pursuant to paragraph (b) of this section;

(2) For each downstream building block parent, the adjusted downstream building block capital requirement ($BBCR_{ADJ}$), which equals:

$$BBCR_{ADJ} = BBCR_{DS} \cdot CRSM \cdot AS$$

Where:

(i) $BBCR_{DS}$ = The building block capital requirement of the downstream building block parent recalculated under the assumption that the downstream building block parent had no upstream investment in the building block parent;

(ii) $CRSM$ = The appropriate capital requirement scaling modifier under § 217.606; and

(iii) AS = The building block parent's allocation share of the downstream building block parent.

(b) *Adjustments in determining the building block capital requirement.* A supervised insurance organization subject to this subpart must adjust the company capital requirement for any building block parent as follows:

(1) *Internal credit risk charges.* A supervised insurance organization must deduct from the building block parent's company capital requirement any difference between:

(i) The building block parent's company capital requirement; and

(ii) The building block parent's company capital requirement recalculated excluding capital requirements related to potential for the possibility of default of any company in the supervised insurance organization.

(2) *Permitted accounting practices and prescribed accounting practices.* A supervised insurance organization must deduct from the building block parent's company capital requirement any difference between:

(i) The building block parent's company capital requirement, after making any adjustment in accordance with paragraph (b)(1) of this section; and

(ii) The building block parent's company capital requirement, after making any adjustment in accordance with paragraph (b)(1) of this section, recalculated under the assumption that neither the building block parent, nor any company that is a member of that building block parent's building block, had prepared its financial statements with the application of any permitted accounting practice, prescribed accounting practice, or other practice, including legal, regulatory, or accounting procedures or standards, that departs from a solvency framework as promulgated for application in a jurisdiction.

(3) *Transitional measures in applicable capital frameworks.* A supervised institution must deduct from the building block parent's company capital requirement any difference between:

(i) The building block parent's company capital requirement; and

(ii) The building block parent's company capital requirement recalculated under the assumption that neither the building block parent, nor any company that is a member of the building block parent's building block, had prepared its financial statements with the application of any grandfathering or transitional measures under the building block parent's applicable capital framework, unless the application of these measures has been approved by the Board.

(4) *Risks of certain intermediary entities.* Where a supervised insurance organization has made an election with respect to a company not to treat that company as a material financial entity pursuant to § 217.605(c), the supervised insurance organization must add to the company capital requirement of any building block parent, whose building block contains a member, with which the company engages in one or more transactions, and for which the company engages in one or more transactions described in § 217.605(c)(2) with a third party, any difference between:

(i) The building block parent's company capital requirement; and

(ii) The building block parent's company capital requirement recalculated with the risks of the company, excluding internal credit risks described in paragraph (b)(1) of this section, allocated to the building block parent, reflecting the transaction(s) that the company engages in with any member of the building block parent's building block.[1]

(5) *Investments in own capital instruments.*

(i) A supervised insurance organization must deduct from the building block parent's company capital requirement any difference between:

(A) The building block parent's company capital requirement; and

(B) The building block parent's company capital requirement recalculated after assuming that neither the building block parent, nor any company that is a member of the building block parent's building block, held any investment in the building block parent's own capital instrument(s), including any net long position determined in accordance with paragraph (b)(5)(ii) of this section.

(ii) *Net long position.* For purposes of calculating an investment in a building block parent's own capital instrument under this section, the net long position is determined in accordance with § 217.22(h), provided that a separate account asset or associated guarantee is not regarded as an indirect exposure unless the net long position of the fund underlying the separate account asset (determined in accordance with § 217.22(h) without regard to this paragraph) equals or exceeds 5 percent of the value of the fund.

(6) *Risks relating to title insurance.* A supervised insurance organization must add to the building block parent's company capital requirement the amount of the building block parent's reserves for claims pertaining to title insurance, multiplied by 300 percent.

§ 217.608 Available Capital Resources under the Building Block Approach

(a) *Qualifying capital instruments.*

(1) Under this subpart, a qualifying capital instrument with respect to a building block parent is a capital instrument that meets the following criteria:

(i) The instrument is issued and paid-in;

(ii) The instrument is subordinated to depositors and general creditors of the building block parent;

(iii) The instrument is not secured, not covered by a guarantee of the building block parent or of an affiliate of the building block parent, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument in relation to more senior claims;

(iv) The instrument has a minimum original maturity of at least five years. At the beginning of each of the last five years of the life of the instrument, the amount that is eligible to be included in building block available capital is reduced by 20 percent of the original amount of the instrument (net of redemptions), and is excluded from building block available capital when the remaining maturity is less than one year. In addition, the instrument must not have any terms or features that require, or create significant incentives

[1] The total allocation of the risks of the intermediary entity to building block parents must capture all material risks and avoid double counting.

for, the building block parent to redeem the instrument prior to maturity.[1]

(v) The instrument, by its terms, may be called by the building block parent only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called sooner upon the occurrence of an event that would preclude the instrument from being included in the building block parent's company available capital or building block available capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*). In addition:

(A) The top-tier depository institution holding company must receive the prior approval of the Board to exercise a call option on the instrument.

(B) The building block parent does not create at issuance, through action or communication, an expectation the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the Board-regulated institution must either: Replace any amount called with an equivalent amount of an instrument that meets the criteria for regulatory capital under this section;[2] or demonstrate to the satisfaction of the Board that following redemption, the Board-regulated institution would continue to hold an amount of capital that is commensurate with its risk.

(vi) Redemption of the instrument prior to maturity or repurchase requires the prior approval of the Board.

(vii) The instrument meets the criteria in § 217.20(d)(1)(vi) through (ix) and § 217.20(d)(1)(xi), *except that* each instance of ''Board-regulated institution'' is replaced with ''building block parent'' and, in § 217.20(d)(1)(ix), ''tier 2 capital instruments'' is replaced with ''qualifying capital instruments''.

(2) *Differentiation of tier 2 capital instruments.* For purposes of this subpart, tier 2 capital instruments of a top-tier depository institution holding company are instruments issued by any inventory company that are qualifying capital instruments under paragraph (a)(1) of this section,[3] other than those qualifying capital instruments that meet all of the following criteria:

(i) The holders of the instrument bear losses as they occur equally, proportionately, and simultaneously with the holders of all other qualifying capital instruments (other than tier 2 capital instruments) before any losses are borne by holders of claims on the top-tier depository institution holding company with greater priority in a receivership, insolvency, liquidation, or similar proceeding.

(ii) The paid-in amount would be classified as equity under GAAP.

(iii) The instrument meets the criteria in § 217.20(b)(1)(i) through (vii) and in § 217.20(b)(1)(x) through (xiii).

(b) *Determination of building block available capital.* (1) For each building block parent, *building block available capital* means the sum of the items described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section:

(i) The company available capital of the building block parent:

(A) Less the amount of downstreamed capital owned by any member of the building block parent's building block;[4] and

(B) Adjusted pursuant to paragraph (c) of this section;

(ii) For each downstream building block parent, the adjusted downstream building block available capital ($BBAC_{ADJ}$), which equals:

$$BBAC_{ADJ} = (BBAC_{DS} - UpInv + ACSM) \cdot AS$$

Where:

(A) $BBAC_{DS}$ = The building block available capital of the downstream building block parent;

(B) $UpInv$ = the amount of any upstream investment held by that downstream building block parent in the building block parent;[5]

(C) $ACSM$ = The appropriate available capital scaling modifier under § 217.606; and

(D) AS = The building block parent's allocation share of the downstream building block parent.

(2) *Single tier of capital.* If there is more than one tier of company available capital under a building block parent's applicable capital framework, the amounts of company available capital from all tiers are combined in calculating building block available capital in accordance with paragraph (b) of this section.

(c) *Adjustments in determining building block available capital.* For purposes of the calculations required in paragraph (b) of this section, a supervised insurance organization must adjust the company available capital for any building block parent as follows:

(1) *Non-qualifying capital instruments.* A supervised insurance organization must deduct from the building block parent's company available capital any accretion arising from any instrument issued by any company that is a member of the building block parent's building block, where the instrument is not a qualifying capital instrument.

(2) *Insurance underwriting RBC.* When applying the U.S. federal banking capital rules as the applicable capital framework for a building block parent, a supervised insurance organization must add back into the building block parent's company available capital any amounts deducted pursuant to section _.22(b)(3) of those rules.

(3) *Permitted accounting practices and prescribed accounting practices.* A supervised insurance organization must deduct from the building block parent's company available capital any difference between:

(i) The building block parent's company available capital; and

(ii) The building block parent's company available capital recalculated under the assumption that neither the building block parent, nor any company that is a member of that building block parent's building block, had prepared its financial statements with the application of any permitted accounting practice, prescribed accounting practice, or other practice, including legal, regulatory, or accounting procedures or standards, that departs from a solvency framework as promulgated for application in a jurisdiction.

(4) *Transitional measures in applicable capital frameworks.* A supervised institution must deduct from the building block parent's company available capital any difference between:

(i) The building block parent's company available capital; and

(ii) The building block parent's company available capital recalculated under the assumption that neither the building block parent, nor any company that is a member of the building block parent's building block, had prepared its financial statements with the application of any grandfathering or transitional measures under the building block parent's applicable capital framework, unless the

[1] An instrument that by its terms automatically converts into a qualifying capital instrument prior to five years after issuance complies with the five-year maturity requirement of this criterion.

[2] A building block parent may replace qualifying capital instruments concurrent with the redemption of existing qualifying capital instruments.

[3] For purposes of this paragraph (a)(2) of this section, the supervised insurance organization evaluates the criteria in paragraph (a)(1) of this section with regard to the building block in which the issuing inventory company is a member.

[4] The amount of the downstreamed capital is calculated as the impact, excluding any impact on taxes, on the company available capital of the building block parent of the building block of which the owner is a member, if the owner were to deduct the downstreamed capital.

[5] The amount of the upstream investment is calculated as the impact, excluding any impact on taxes, on the downstream building block parent's building block available capital if the owner were to deduct the investment.

application of these measures has been approved by the Board.

(5) *Deduction of investments in own capital instruments.*

(i) A supervised insurance organization must deduct from the building block parent's company available capital any investment by the building block parent in its own capital instrument(s), or any investment by any member of the building block parent's building block in capital instruments of the building block parent, including any net long position determined in accordance with paragraph (c)(5)(ii) of this section, to the extent that such investment(s) would otherwise be accretive to the building block parent's building block available capital.

(ii) *Net long position.* For purposes of calculating an investment in a building block parent's own capital instrument under this section, the net long position is determined in accordance with § 217.22(h), provided that a separate account asset or associated guarantee is not regarded as an indirect exposure unless the net long position of the fund underlying the separate account asset (determined in accordance with § 217.22(h) without regard to this paragraph) equals or exceeds 5 percent of the value of the fund.

(6) *Reciprocal cross holdings in the capital of financial institutions.* A supervised insurance organization must deduct from the building block parent's company available capital any investment(s) by the building block parent in the capital of unaffiliated financial institutions that it holds reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, to the extent that such investment(s) would otherwise be accretive to the building block parent's building block available capital.

(d) *Limits on certain elements in building block available capital of top-tier depository institution holding companies.*

(1) *Investment in capital of unconsolidated financial institutions.* (A) A top-tier depository institution holding company must deduct, from its building block available capital, any accreted capital from an investment in the capital of an unconsolidated financial institution that is not an inventory company, that exceeds twenty-five percent of the amount of its building block available capital, prior to application of this adjustment, excluding tier 2 capital instruments. For purposes of this paragraph, the amount of an investment in the capital of an unconsolidated financial institution is calculated in accordance with § 217.22(h), *except that* a separate account asset or associated guarantee is not an indirect exposure.

(B) The deductions described in paragraph (d)(1)(A) of this section are net of associated deferred tax liabilities in accordance with § 217.22(e).

(2) *Limitation on tier 2 capital instruments.* A top-tier depository institution holding company must deduct any accretions from tier 2 capital instruments that, in the aggregate, exceed the greater of:

(i) 62.5 percent of the amount of its building block capital requirement; and

(ii) The amount of instruments subject to paragraphs (e) or (f) of this section that are outstanding as of the submission date.

(e) *Treatment of outstanding surplus notes.* A surplus note issued by any company in a supervised insurance organization prior to November 1, 2019, is deemed to meet the criteria in paragraphs (a)(1)(iii) and (vi) of this section if:

(1) The surplus note is a company capital element for the issuing company;

(2) The surplus note is not owned by an affiliate of the issuer; and

(3) The surplus note is outstanding as of the submission date.

(f) *Treatment of certain callable instruments.* Notwithstanding the criteria under paragraph (a)(1) of this section, an instrument with terms that provide that the instrument may be called earlier than five years upon the occurrence of a rating event does not violate the criterion in paragraph (a)(1)(v) of this section, provided that the instrument was a company capital element issued prior to January 1, 2014, and that such instrument satisfies all other criteria under paragraph (a)(1) of this section.

(g) *Board approval of a capital instrument.*

(1) A supervised insurance organization must receive Board prior approval to include in its building block available capital for any building block an instrument (as listed in this section), issued by any company in the supervised insurance organization, unless the instrument:

(i) Was a company capital element for the issuer prior to May 19, 2010, in accordance with the applicable capital framework that was effective as of that date and the underlying instrument meets the criteria to be a qualifying capital instrument (as defined in paragraph (a) of this section); or

(ii) Is equivalent, in terms of capital quality and ability to absorb losses with respect to all material terms, to a company capital element that the Board determined may be included in regulatory capital under this subpart pursuant to paragraph (g)(2) of this section, or may be included in the regulatory capital of a Board-regulated institution pursuant to § 217.20(e)(3).

(2) After determining that an instrument may be included in a supervised insurance organization's regulatory capital under this subpart, the Board will make its decision publicly available, including a brief description of the material terms of the instrument and the rationale for the determination.

* * * * *

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 7. The authority citation to part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

Subpart B—Company-Run Stress Test Requirements for Certain U.S. Banking Organizations with Total Consolidated Assets over $10 Billion and Less Than $50 Billion

■ 8. Section 252.13 is amended by revising paragraphs (b)(1)(ii) to read as follows:

§ 252.13 Applicability.

* * * * *

(b) * * *

* * * * *

(ii) Any savings and loan holding company with average total consolidated assets (as defined in § 252.12(d)) of greater than $10 billion, excluding companies subject to part 217, subpart J of this chapter; and''

* * * * *

Editorial Note: The following Exhibit will not publish in the Code of Federal Regulations.

Exhibit

Editorial Note: This section will not publish in the Code of Federal Regulations.

Capital Requirements for Insurance Depository Institution Holding Companies Comparing Capital Requirements in Different Regulatory Frameworks

Preface

The Board of Governors of the Federal Reserve System is responsible for protecting the safety and soundness of depository institutions affiliated with

holding companies. This responsibility requires regulating the capital of holding companies of groups that conduct both depository and insurance operations.[1] Unfortunately, the insurance and banking sectors do not share any common capital assessment methodology. Existing capital assessment methodologies are tailored to either banking or insurance and unsuitable for application to the other sector.[2]

The Board proposes relying on these existing sectoral capital assessment methodologies to assess capital for most holding companies that own both insured depository institutions and insurers. In this proposed approach, capital requirements would be aggregated across sectors to calculate a group-wide capital requirement. Just as adding money denominated in different currencies requires exchange rates, meaningfully aggregating capital resources and requirements calculated under different regulatory frameworks requires some translation mechanism between them. We refer to this process of translating capital measures between regulatory frameworks as ''scaling.''

Executive Summary

This white paper examines scaling. Scaling has not previously been the subject of academic research, and industry practitioners don't agree on the best methodology.

This paper introduces a scaling method based on historical probability of default (PD) and explains why the Board's proposal uses this approach. This method uses historical default rates as a shared economic language to enable translation. Concretely, scalars pair solvency ratios that have identical estimated historical insolvency rates. An analysis of U.S. data produces the simple scaling formulas below.

NAIC Authorized Control Level Risk Based Capital = .0106 * Risk Weighted Assets

NAIC Total Adjusted Capital = Bank Tier 1 Capital + Bank Tier 2 Capital − .063 * Risk Weighted Assets

This paper also compares the PD method and alternatives, including those suggested by commenters in response to the Board's advance notice of proposed rulemaking (ANPR).[3] While other implementable methods make broad assumptions regarding equivalence, the historical PD method only assumes that companies have equivalent financial strength when defaulting.[4] The major disadvantage of the PD approach is that it needs extensive data. Plentiful data exists on U.S. markets but not many international markets. Because of this and because the Board's current population of supervised insurance groups has immaterial international insurance operations, scalars for other jurisdictions were not developed.

Key Concepts

- Scaling can be simplified into the calculation of two parameters: (1) A required capital scalar and (2) an available capital scalar.
- There are at least three considerations of importance in assessing the scaling methods: (1) Reasonableness of the assumptions, (2) ease of implementation, and (3) stability of the parameterization.
- Our analysis identifies a trade-off between the reasonableness of a methodology's assumptions and the easiness of its implementation. Easily producing stable results generally requires bold assumptions about the comparability of regulatory frameworks.
- The Board's recommended scaling approach (PD method) relies on an analysis of historical default rates in the different regulatory frameworks.

Introduction

In its ANPR of June 2016, the Board proposed a building block approach (BBA) for regulating the capital of banking organizations with substantial insurance operations.[5] For these institutions, the building block approach would first calculate the capital resources and requirements of its subsidiary institutions in different sectors. After making adjustments that provide consistency on key items and ensure risks are not excluded or double counted, the building blocks would be scaled to a standard basis and then aggregated to calculate enterprise-level available capital and required capital.

Building blocks originate in regulatory frameworks, referred to as ''regimes,'' with different metrics and scales. They need to be standardized before they can be stacked together. We refer to the process of translating capital measures from different regimes into a common standard as ''scaling.'' Based on the firms that would be subject to the proposed rule currently, only two regimes would be material: the regime applicable to U.S. banks and the regime applicable to U.S. insurers, which is the National Association of Insurance Commissioner (NAIC) Risk-Based Capital (RBC) requirements.[6] These regimes use starkly different rules, accounting standards, and risk measures. While both the banking and insurance risk-based capital standards use risk factors or weights to derive their capital requirements, they differ in the risks captured, the risk factors used, and the base measurement that is multiplied by these factors. In banking, the regulatory risk measure applies risk weights to assets and off-balance-sheet activities. This produces risk-weighted assets (RWA). In insurance, the reported risk metric—''Authorized Control Level Risk Based Capital Requirement (ACL RBC)''—uses a different methodology. Among other differences, this methodology emphasizes risks on liabilities and gives credit for diversification between assets and liabilities.

Scaling Framework and Assessment Criteria

Scaling translates available capital (AC) and required capital (RC) between two different regimes. We refer to the original regime as the applicable regime and the output regime—under which comparisons are ultimately made—as the common regime. The Board's proposal uses NAIC RBC as the common regime.

The scaling formulas below provide a generalized scaling framework with two parameters and enough flexibility to represent our proposal and all scaling methods suggested by commenters. One parameter, which we refer to as the required capital or $\mathbb{S}_{RC}$, applies to RC in the applicable regime and captures the average difference in the ''stringency'' of the regimes' RC calculations and the units used to express the RC. We assume that differences in stringency between regimes' risk measurements can be modeled by a single multiplicative factor. The second parameter, which we refer to as the available capital scalar or $\mathbb{S}_{AC}$, adjusts for the relative conservatism of the AC. This parameter represents the additional amount of conservatism in the calculation of AC in the applicable regime relative to the common regime. Unlike the multiplicative scaling of

[1] 12 U.S.C. 5371.

[2] Insurance methodologies are also generally country specific.

[3] Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities, 81 FR 38,631 (June 14, 2016), *https://www.gpo.gov/fdsys/pkg/FR-2016-06-14/pdf/2016-14004.pdf.*

[4] See the *Historical Probability of Default Section* for details of this method. An empirical check on the assumption regarding companies defaulting at similar levels of financial strength can be found at [reasonableness of assumptions discussion].

[5] This approach is expanded upon in the Board's proposed rule.

[6] Where material, unregulated financial activity would also be assessed under one of those regimes and aggregated.

required capital, we assume available capital is an additive adjustment that varies based on a company's risk. This allows the issuance of additional capital instruments, such as common stock, to increase available capital equally in both regimes, while still allowing for the regimes to value risky assets and liabilities with differing degrees of conservatism.

$RC_{common} = \mathbb{S}_{RC} * RC_{applicable}$

$AC_{common} = AC_{applicable} + \mathbb{S}_{AC}\ RC_{applicable}$

These scaling parameters also have graphical interpretations that illustrate their meaning. An equivalency line between the solvency ratios of regimes (AC divided by RC) has a slope of $\mathbb{S}_{RC}$ and intercept of $-\mathbb{S}_{AC}$when plotted with the common regime as the x-axis. Figure 1 depicts this relationship, and appendix 1 shows a full derivation of this graphical interpretation.

Figure 1. Illustration of hypothetical equivalence line

In this two-parameter framework, a scaling methodology represents a way of calculating $\mathbb{S}_{RC}$ and $\mathbb{S}_{AC}$. Possible scaling methodologies range from making very simple assumptions about equivalence to using complex methods involving data to estimate these relationships. There are at least three considerations of importance in assessing the scaling methods. We identify these as the reasonableness of the assumptions, ease of implementation, and stability of the parameterization.

The first of these is the reasonableness of the assumptions. Methodologies that make crude assumptions likely won't produce accurate translations. Accurate translations between regimes enable a more meaningful aggregation of metrics, thus allowing the Board to better assess the safety and soundness of institutions and ultimately to better mitigate unsafe or unsound conditions.

Another important consideration is the method's ease of implementation. The most theoretically sound methodology would lack practical value if it cannot be parameterized.

A final consideration is the stability of their parameterization—the extent to which changes in assumptions or data affect the value of the scalars. Scaling should be robust across time unless the underlying regimes change. This stability provides predictability to firms and facilities planning.

Historical Probability of Default

A sensible economic benchmark for solvency ratios is the insolvency or default rates associated with them, and this method uses these rates as a Rosetta stone for translating ratios between regimes. For example, under this method a bank solvency ratio that has historically resulted in a 5 percent PD translates to the insurance solvency ratio with an estimated 5 percent PD.[7]

Mechanically, this calculation uses (logistic) regressions to estimate the relationship between the solvency ratios and default probability.[8] Setting the logit of PD in both regimes equal to each other gives an equation that relates the solvency ratios in the two regimes as shown below.

$$a_{applicable} + b_{applicable} * \frac{AC_{applicable}}{RC_{applicable}} = \frac{\mathrm{PD}}{1 - \mathrm{PD}}$$
$$= a_{common} + b_{common} * \frac{AC_{common}}{RC_{common}}$$

In these formulas, ''b'' represents the slope of the estimated relationship between a regime's solvency ratio and (logistic) default probability and ''a'' represents the intercept. Simplifying this equation produces the equations below, as demonstrated in appendix 2.

[7] We need the PD to be monotonic on the financial strength ratios for this approach to produce a single mapping.

[8] The logistic transformation is used because the regression involves probabilities. If ordinary least squares were used instead, estimated probabilities of default could be lower than 0 percent or higher than 100 percent for some solvency ratios.

$$\mathbb{S}_{\mathrm{RC}} = \frac{b_{common}}{b_{applicable}}$$

$$\mathbb{S}_{\mathrm{AC}} = \frac{a_{applicable} - a_{common}}{b_{applicable}}$$

This section will illustrate the approach and describe how it was used to derive the proposed scalars for U.S. banking and U.S. insurance. The approach will then be discussed in terms of the three identified considerations for scaling methods. This analysis reveals that the method generally can provide an accurate and stable translation of regimes for which robust data are available, which is why the Board has proposed to rely on the method for setting the scalar between the U.S. banking regime and the U.S. insurance regime.

Application to U.S. Banking and Insurance

To apply this approach, we obtained financial data on depository institutions and insurers. Insurance financial data came from statutory financial statements. Bank data came from year-end Call Reports.[9] The Call Report, which is filed by the operating depository institutions, provides the best match for the insurance data, which is only for the operating insurance companies as of year end. The usage of operating company data also comports with the Board's proposed grouping scheme, which would be at a level below the holding company. For the solvency ratios, we used ACL RBC for insurers because it can easily be calculated from reported information and serves as the basis for state regulatory interventions in the NAIC's Risk-Based Capital for Insurer's Model Act.[10] Many different solvency ratios are calculated for banks. We used the total capitalization ratio. This broad regulatory capital ratio is the closest match in banking for ACL RBC for insurance in terms of which instruments are included.[11]

Several filters were applied to the data. Only data after 1998 and before 2015 were used based on data availability, state adoption of insurance risk-based capital laws, and the three-year default horizon discussed below.[12] Very small entities—those with less than $5 million in assets—were excluded from both sectors. These firms had total asset size only sufficient to pay a handful of claims or large loan losses; their default data appeared unreliable and could not generally be corroborated by news articles or other sources. Organizations with very high and low capital ratios were also excluded (insurance ratios $< -200\%$ or $>1500\%$ ACL RBC; banks with total capitalization $<3\%$ or $>20\%$ RWA). Additionally, carriers not subject to capital regulation and those that fundamentally differ from other insurers were excluded. These included captive insurers (for example, an insurer owned by a manufacturer that insures only that manufacturer); government-sponsored enterprises (for example, workers compensation state funds); and monoline group health or medical malpractice insurers. P&C fronting companies were also removed. Summary statistics showing the magnitude of these exclusions can be seen in appendix 3

We also obtained default data for the banking and insurance sectors. A three-year time horizon for defaults was used in both regimes to balance the competing considerations of wanting to observe a reasonable number of defaults beyond the most weakly capitalized companies and maximizing the number of data points that could be used in the regression.[13] Because of the Board's supervisory mission, ''default'' was defined as ceasing to function as a going concern due to financial distress. This definition did not always align with the point of regulatory intervention or commonly available data. Consequently, existing regulatory default data sets were supplemented to best align with the default definition.[14]

Insurance default data were obtained from the NAIC's Global Insurance Receivership Information Database (GRID).[15] Because some insurers cease to function as going concerns without being reported in this data set, which is voluntary and impacted by confidentiality, a supplemental analysis was also performed.[16] An insurer was also considered to be in default if it fell below the minimum capital requirement and (1) had its license suspended in any state, (2) was acquired, or (3) discontinued underwriting new businesses. Extensive checks were performed on random companies as well as all outliers (those with high RBC ratios that default and low RBC ratios that do not default). This resulted in the development of criteria above and the identification of some additional defaults based on news articles and other data sources.[17]

For banking organizations, default data were extracted from the FDIC list of failures.[18] For this analysis, banking organizations were also considered to be

[9] Call report data were downloaded from the publicly available Federal Financial Institutions Examination Council database and supplemented with internal data. See ''Bulk Data Download,'' Federal Financial Institutions Examination Council, *https://cdr.ffiec.gov/public/PWS/Download BulkData.aspx.*

[10] The BBA would not be impacted by using different multiples of these amounts because the required capital scalar is multiplicative. For instance, Company Action Level (CAL) RBC is two times ACL RBC. If this were used in the scaling regressions, all insurance solvency ratios would be cut in half. This would produce corresponding changes to the scaling equations and required capital ratios, but the overall capital requirement would remain constant when expressed in terms of dollars. Similarly, the rule would not be impacted by using some fraction of risk-weighted assets (for example, 8 percent) for banks.

[11] The proposed rule uses limits and other adjustments to further align the definition of regulatory capital between the two regimes and ensure sufficient quality of capital.

[12] For state adoption dates, see ''Risk Based Capital (RBC) for Insurers Model Act,'' National Association of Insurance Commissioners, *http://www.naic.org/store/free/MDL-312.pdf,* 15–20.

[13] The impact of this assumption was analyzed and is discussed in the context of the stability of the method's parameterization at in the subsection Stability of Parameterization.

[14] An empirical check on the reasonableness of these assumptions and alignment can be found on in the section below on reasonableness of assumptions.

[15] The NAIC's GRID database can be accessed at *https://i-site.naic.org/grid/gridPA.jsp.*

[16] The NAIC describes GRID as ''a voluntary database provided by the state insurance departments to report information on insurer receiverships for consumers, claimants, and guaranty funds'' at *https://eapps.naic.org/cis/. See also* NAIC, GRID FAQs, *available at https://i-site.naic.org/help/html/GRID%20FAQs.html (*''In some states a court ordered conservation may be confidential.'')

[17] A handful of companies were identified as no longer being going concerns based on qualitative sources such as news articles, rating agency publications, or in notes to the financial statements that could not easily be applied to all companies. Additionally, several companies were removed who appear to have ceased functioning as going concerns at a time prior to the sample based on the volume of premiums written. Two companies were dropped from the data set for having aberrant data.

[18] See *https://www.fdic.gov/bank/individual/failed/banklist.csv.*

in default if they were significantly undercapitalized (total capitalization below 6 percent of RWA) and did not recover, which might occur in a voluntary liquidation. Additionally, banking organizations with total capitalization ratios under 6 percent of RWA for multiple years were manually checked for indications that operations ceased. The different default rates by industry are shown in table 1 and figure 2.

TABLE 1—DEFAULT RATES BY INDUSTRY

Year	Insurance defaults	Bank defaults
2000	23	4
2001	23	3
2002	27	6
2003	28	3
2004	17	3
2005	10	0
2006	8	0
2007	5	1
2008	6	19
2009	12	112
2010	10	122
2011	9	80
2012	11	40
2013	9	12
2014	8	11
2015	3	5
2016	2	6
2017	2	3

Figure 2. Default rates by industry

To estimate the probabilities of default from these data, we used a logistic regression, which is commonly used with binary data, to estimate the parameters *a* and *b* in the equation below. The regression used cluster-robust standard errors with clustering by company. Additional details about these regressions can be found in table 2 with a discussion of their goodness of fit and robustness following in the sections below.

$$logit(PD_i) = a + b * (\frac{\mathrm{AC}}{RC})_i + \varepsilon_i$$

The parameters on the P&C and life insurance regressions were analyzed separately because the regimes are distinct; however, the regression results were very close to each other with no significant statistical difference..[19] The results of the combined insurance and banking regressions are displayed in table 2.

TABLE 2—INSURANCE AND BANKING REGRESSIONS

	Banking	P&C insurance	Life insurance	Combined insurance
Slope (b)	−66.392	−0.714	−0.662	−0.704
Robust Std. Err	(1.854)	(0.052)	(0.102)	(0.046)
Intercept (a)	3.723	−0.402	−0.602	−0.432
Robust Std. Err	(0.201)	(0.178)	(0.440)	(0.164)
Observations	92,215	21,031	6,862	27,893
Pseudo R^2	24.9%	23.3%	20.3%	23.3%

Using the formulas from the start of this section that relate logistic regression output to scaling parameters, $\mathbb{S}_{RC}$ = 1.06% and $\mathbb{S}_{AC}$ = 6.3%.

These results appear reasonable and suggest that the banking capital requirement is approximately equivalent to the insurance capital requirement but that the regimes differ in their structure. The insurance regime's conservative accounting rules lead to a conservative calculation of

[19] Because the two slope values are very close (−.662 and −.714), the p value of a test of differences is close to 50 percent). The constant terms show larger differences (−.402 vs. −.602) and could indicate that P&C companies have slightly less balance sheet conservatism compared with life insurers; however, the difference is not statistically significant either (p ~ .44).

available capital. These rules set life insurance reserves at above the best-estimate level, don't allow P&C carriers to defer acquisition expenses on policies, and don't give any credit for certain types of assets. Because of this conservative calculation of available capital, the required capital calculation is relatively lower with ACLR RBC translating to only about 1 percent of RWA.

Reasonableness of Assumptions

Because regulators design solvency ratios to identify companies in danger of failing, default rates are a natural benchmark for assessing them economically. Comparing solvency ratios based on this benchmark is more reasonable than the alternatives, but it does have limitations.

One important limitation is that definitions of default across sectors may be difficult to compare. To some extent, defaults are influenced by regulatory actions, which are entwined with the underlying regime itself. Although adjustments can be made (as we do with our default definition in the U.S. markets), there is likely still some endogeneity. However, defaults still provide a more objective assessment of the regime than the alternatives discussed in the *Review of Other Scaling Methods* under which these differences would be assumed not to exist. For instance, one primary alternative would be to scale by assuming the equivalency of regulatory intervention points. Another would assume that the accounting is comparable.

As a test of the comparability of the default definitions, we estimated each sector's loss given default. If the default definitions in both sectors were equivalent economically, then the cost of these defaults should also be close. Based on data from the FDIC, the average bank insolvency in the period studied was approximately 10.7% of assets with a median of 22.4%. The median is significantly higher than the mean because of the very large Washington Mutual failure. Excluding Washington Mutual, the mean insolvency cost was 18.7%. We estimated the cost of insurance insolvencies by comparing the cost to insurance guarantee fund assessments during the sample period with the assets of insurers that defaulted using our definition. This produced an estimate of insolvency costs of 16.9% of net admitted assets. This is between the median and mean of the bank distribution and close to the bank mean when Washington Mutual is excluded. This supports our assumption that institutions identified as defaulting can be considered to have comparable financial strength.

Historical insolvency rates also do not reflect regime changes and can be influenced by government support. In the application to U.S. banking and insurance, no adjustment was made for these factors, which are difficult to quantify and would likely offset each other to some extent over the period studied. Banking organizations have been more affected by past government support, which might imply the regressions underestimate PD, but there has recently been a significant tightening of the regime after the 2008 financial crisis, which would have an opposite effect.[20] Additionally, support from the major government programs during the financial crisis depended on the firm being able to survive without it. On the insurance side, government support during the crisis was much less extensive, but there has also not been a similar recent strengthening of the regime.[21] To the extent the regimes were to have material, directional changes, this assumption would be less reasonable and likely need to be revisited in a future study.

An additional limitation is the assumption of linearity in the relationship between solvency ratios and default probabilities after the logistic transformation. Figure 3 shows the goodness of fit of the PD estimation for U.S. banking and insurance. The blue dots represent actual observed default rates. The light red line represents the output from the regressions discussed above. The figures on the left are the same as those on the right after the logistic transformation.

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[20] Since the crisis, a number of reforms have been made to the banking capital requirements in the United States, including a reduction in the importance of internal models and additional regulation of liquidity. These reforms would make banks less likely to default at a given total capitalization ratio.

[21] The major changes to insurance regulation following the crisis have been the introduction of an Own Risk and Solvency Assessment along with some enterprise-wide monitoring. These would make insurers safer at a given capital ratio. The recently passed principle-based reserving requirements, which generally lowered reserves on many insurance products, would have the opposite effect.

Figure 3. Goodness of fit graphs of historical PD regressions

The regressions produce a reasonably good fit to the available data, but the linear fit breaks down for very highly capitalized companies in both sectors (see blue circles). Consistent with other research, beyond a certain point, capital does not appear to have a large impact on the probability of a company defaulting. We considered a piece-wise fit to address this issue, but decided against it for three reasons. First, this issue has little practical impact because it only affects very strongly capitalized companies. Differentiating between these companies is not the focus of the capital rule. Second, a piece-wise function would drastically increase the complexity of the process. Simple scaling formulas can be derived if a single logistic regression is used for each.[22] Translating piece-wise regressions into workable scaling formulas would require simplifications that could outweigh any otherwise improved accuracy. Third, the required number of parameters needed to fit a piece-wise model would more than double and introduce additional uncertainty about the parameters.

Ease of Implementation

The biggest disadvantage of this approach is data availability. The approach requires a large number of default events to calibrate the impact of the solvency ratio accurately. Although these data are available on the currently needed regimes, they may not be available in other regimes for which scalars could be needed in the future.

Stability of Parameterization

The parameter estimates appear stable and robust. As one basic measure of stability and robustness, we estimated the standard error of the scaling estimates by simulating from normal distributions with the mean of the underlying regression parameters and standard deviation of their standard error. This measure indicated a 95 percent confidence interval of between .010 and .013 for $\mathbb{S}_{RC}$ and between $-.054$ and $-.071$ for $\mathbb{S}_{AC}$. This confidence interval is a fairly tight range given the spread of other methods.

We also tested the robustness of the methodology on out of sample data. To do this, we split the sample at the year

[22] See appendix 2 for the derivation of the simple formulas if no piece-wise regression is used.

2010. Data from prior to 2010 was used to parameterize the model while data from 2010 and subsequent years was used to assess the goodness of fit. Figure 4 displays the results of this test. The model performs fairly well on this test. The goodness of fit on the out of sample data appears comparable to those within the entire data set.

Figure 4. Goodness of fit of methodology with out-of-sample data

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We also tested the parameterization for sensitivity to key assumptions, which would not be captured by the estimated standard errors. A description of these tests and the resulting scalars are displayed in table 3. We also attempted to test the impact of the exclusion of some data, including companies with very high or very low solvency ratios, but we found that the regression showed little relationship between the capital ratios and default probabilities in both regimes when outlier entities that have ratios that are orders of magnitude apart from typical companies are included.

TABLE 3—RESULTS OF ROBUSTNESS TESTS OF HISTORICAL PD METHOD

Name	Description	AC scalar (percent)	RC scalar (percent)
Baseline	Assumptions used in the proposal	−6.26	1.06
Excluding firms under $100 million	Firms with a largest size of less than $100 million in assets are excluded.	−6.51	1.17
Wider solvency ratio bounds	Insurance bounds are to allow ratios between −300% to 2000% of ACL RBC to be used in the regression. Banking bounds are similarly moved to 2% and 30% of RWA.	−6.06	1.10
Largest half of companies	The smallest 50% of companies as measured by their peak total asset size are excluded from both the banking and insurance samples.	−5.72	2.21
1 year default definition	A one year default horizon is used in place of the baseline three year window.	−6.15	0.96
No crisis	The financial crisis (2009–2010) is excluded from the sample by using a one-year default horizon and excluding observations from year end 2008 and year-end 2009.	−5.60	0.91

Summary and Conclusion

The use of historical default probabilities can produce a reasonable scalar for U.S. banking and insurance. The primary disadvantage is the data required, which may not be available for other jurisdictions. Because this method has a relatively robust parameterization, the parameters would not need to be updated on a set schedule and could be instead be revisited if new data or conditions suggest a change is warranted.

Review of Other Scaling Methods

Other methods exist for calibrating the scaling parameters. This section gives a description of these methods and compares them to the historical PD method based on the desired characteristics described before. The methods are arranged roughly in order of their ease of parameterization. At one end of the spectrum, not scaling is very simple, but it is not likely to produce an accurate translation. At the other end of the spectrum, scaling based on market-derived probabilities of default and scaling based on a granular analysis of each regime's methodologies have theoretical advantages but cannot be parameterized even for U.S. banking and U.S. insurance. Between these extremes, some methods can be parameterized but generally have less reasonable assumptions than the historical PD method.

Not Scaling

One scaling method would be to assume that no scaling is required, as might be tempting for solvency ratios of the same order of magnitude. This method would be equivalent to assuming that $\mathbb{S}_{ac}$ were equal to zero and $\mathbb{S}_{rc}$ were equal to one.

Although this approach would be very stable and not require parameterization, the assumption generally appears unreasonable because of the many differences between regimes. A typical ACL RBC ratio would be hundreds of percent. The average bank operates with an RWA ratio near 16 percent. Furthermore, although the numerators in these ratios might be deemed as comparable under certain circumstances, the denominators are conceptually very different. The denominator in insurance is required capital; the denominator in banking is risk-weighted assets.

Scaling by Interpolating Between Assumed Equivalent Points

This category of methods would take two assumed equivalent solvency ratios and use interpolation between these to produce an assumed equivalence line and the implied scaling parameters. The methods in this category would vary primarily in terms of how they derive the assumed equivalency points.

TABLE 4—ANALYSIS OF POTENTIAL SIMPLE EQUIVALENCY ASSUMPTIONS

Assumed equivalence	Reasonableness of assumptions	Ease of parameterization	Stability of parameterization
Available capital calculations.	Regimes are known to differ materially in how they compute key aspects of available capital including insurance reserves.	Parameterized by assumption.	Very stable by assumption.
Regulatory intervention levels.	Regulatory objectives vary, which could justify intervening at different levels.	Very easy	Very stable because regulatory intervention points do not frequently change.
Industry average capital levels.	Corporate structure considerations in each of these industries are very different, and the average financial strength is unlikely going to be comparable.	Easy	Least stable—the industry's capital ratio frequently changes and the ratio of U.S. industry averages has varied by almost 50% between 2002 and 2007.

It is possible to mix and match from these assumptions to produce a scaling methodology as illustrated in figure 5. In this figure, each of the three assumptions is plotted as an assumed equivalence point. For example, an 8 percent level of bank capital and 200 percent of ACL RBC translate to comparable regulatory interventions so (200 percent, 8 percent) is shown as the regulatory intervention equivalence point. An assumption that scaling is not required on available capital translates to equivalence at (0 percent, 0 percent) because a company with no available capital in one regime would also have no available capital after scaling. Three different lines are illustrated which show the three different ways these assumptions could be combined to produce scaling methodology.

Figure 5. Interpolation methods illustration

Most commenters on the ANPR suggested one of these methods, but commenters were split as to which assumption was better. A plurality of commenters suggested not assuming equivalence in available capital calculations because, as the Board noted in the ANPR, regimes do differ significantly in how they calculate available capital. However, one disadvantage of this method is that the average capital levels in a regime may not always be available, so it might not be possible to parameterize it for all regimes.

It is also possible to add different adjustments to these methods. For instance, rather than directly using the regulatory intervention points, one could first adjust these to make them more comparable. To the extent that one knew that the regulatory intervention point was set at a given level (for example, 99.9 percent over 1 year vs. 99.5 percent over one year) then it would be possible to adjust the intervention point in one regime to move it to a targeted confidence level that aligns with another regime. However, given that these targeted calibration levels are more aspiration than likely to ultimately be supported by empirical data, this adjustment does not significantly improve the reasonableness of the underlying assumptions.

Some other adjustments could marginally improve the analysis. For instance, although it is plausible that industries in similarly developed economies could be similar, assuming equivalence across starkly different economies is less reasonable. In particular, the level of general country risk within a jurisdiction is likely to affect both insurance companies and insurance regulators, and some adjustment for this could improve the method.

Although these adjustments do marginally improve the methods, methods in this category would still not be making as reasonable of assumptions as the historical PD method. We do not consider it appropriate to use any method in this category in setting the scalar between the Board's bank capital rule and NAIC RBC. This category of methods could, however, have utility where simple assumptions are needed to support calibration.

Scaling Based on Accounting Analysis

A different data-based method that was considered would use accounting data in place of default data. Under this method, the distribution of companies' income and surplus changes would be analyzed similarly to how the Board calibrated the surcharge on systemically important banks.[23] If companies routinely lost multiples of the regulatory capital requirement, the regulatory capital requirement likely is not stringent.

Turning this intuition into a scaling methodology requires an additional assumption about equivalent ratios.[24] Numbers can be scaled to preserve the probability of having this ratio (or worse) after a given time horizon. For example, if we define insolvency as having assets equal to liabilities and assume this definition is comparable in both regimes, then we can scale capital ratios based on the probability of a loss larger than the capital ratio being observed. If historically x percent of banks have experienced losses larger than their current capital ratio over a given time horizon, then this ratio would be scaled to the insurance solvency ratio that x percent of insurers have observed losses larger than. A derivation of scaling formulas from these assumptions is contained in appendix 4.

Although this method appears more reasonable than the simple interpolation methods, the assumptions are not as sound as for the historical PD method. Although there is some endogeneity with defaults, there is much more with accounting data. Regimes differ greatly in how they calculate net income and surplus changes such that benchmarking against a distribution of these values may not bring the desired comparability. The additional assumption required on equivalence is also problematic as it would essentially require incorporating one of the

[23] Board of Governors of the Federal Reserve System, *Calibrating the GSIB Surcharge,* (Washington: Board of Governors, July 20, 2015), *https://www.federalreserve.gov/aboutthefed/boardmeetings/gsib-methodology-paper-20150720.pdf.*

[24] This parameter and assumption were not necessary in calibrating the surcharge on systemically important banks because that only depended on the change in default probability as capital changes, rather than the absolute magnitude of the default probability.

problematic assumptions discussed in the previous section on interpolation.

In terms of the ease of parameterization, the method ranks somewhere between the historical PD method and the simple methods based on interpolation. Income data are plentiful relative to both historical default data and market-derived default data. This ubiquity of the data could allow for calibration of additional regimes and allow changes in regimes to be picked up before default experience emerges.

To parameterize this method for U.S. banking and insurance, we started with the distribution of bank losses discussed in the calibration of the systemic risk charge for banks (see figure 6).

Figure 6. Returns on risk-weighted assets (RORWA) (bottom five percentiles, 50 largest BHCs in each quarter, 2Q87 through 5Q14)

Source: Board of Governors of the Federal Reserve System, *Calibrating the GSIB Surcharge*, (Washington: Board of Governors, July 2015), 8.

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To apply this method to insurance, historical data on statutory net income relative to a company's authorized control level were extracted from SNL. Data were collected on the 95 insurance groups with the relevant available data in SNL and over $10 billion in assets as of 2006.[26] Quarterly data points were used over the period of time for which they were available (2002 to 2016). A regression was then run on the estimated percentiles and log of the net income values to smooth the distribution and allow extrapolation. Figure 7 shows the distribution of ACL RBC returns resulting from this analysis.

[25] Federal Reserve, *GSIB Surcharge*, at 8

[26] Ninety-five groups met the size criteria, but three of these groups did not have RBC or income data and produced errors when attempting to pull the data. Two of these companies were financial guarantors.

Unlike with historical PD, an analysis of the top 50 life and P&C groups based on year-end 2006 assets under this method strongly suggested a different calibration. Historically, P&C carriers are significantly less likely than life carriers to experience large losses relative to their risk-based capital requirements. In 2008, nearly half the largest life insurance groups experienced losses that were above their authorized control level regulatory capital requirement. P&C insurers were much less likely to experience comparable losses. Table 5 shows the scalars produced when the NAIC RBC life regime is used as the base.

TABLE 5—SCALARS BASED ON ACCOUNTING ANALYSIS RESULTS

	AC scalar (percent)	RC scalar (percent)
P&C NAIC RBC	−12.82	20.5
Bank Capital	−.7	1.6

Scaling Based on a Sample of Companies in Both Regimes

Another scaling method would be to analyze a group of companies in both regimes. From a sample of companies in both regimes, it would be possible to run a regression to parameterize an equivalency line that represents the expected value in the common regime based on their information in the applicable regime.

Although analyzing a single group of companies under both regimes would provide a solid foundation for assuming equivalence theoretically, there are problems with this method under the stated criteria.

One issue is that calculating a given company's ratio under both regimes would likely not be appropriate because it would involve applying the regime outside of its intended domain. Applying the bank capital rules to insurers or the insurance capital rules to banks for calculating the scalar will not necessarily give comparable results. Although a result for a bank could be calculated under the insurance capital rules, this result may not really be comparable to insurers scoring similarly because their risk profiles differ. Indeed, the lack of a suitable regime for companies in both sectors is the primary reason the Board is proposing the BBA rather than applying one of the existing sectoral methodologies to the consolidated group.

Another disadvantage of this method is the difficulty of implementation. Companies typically do not calculate their results under multiple regimes. The limited available data, including the data from the Board's prior QIS, do not statistically represent the situations where a scalar is needed. Barriers to obtaining a representative sample of companies make this method very difficult to parameterize.[27]

Because of these problems, we do not recommend using this methodology as a basis for scaling under the proposal.

Scaling Based on Market-Derived PDs

The intuition of this method is similar to the historical probability of default method, but it would use market data to calibrate the relationship between solvency ratios and expected defaults. Market data can be used to calculate implied default probabilities with some additional assumptions. Credit default swap (CDS) prices or bond spreads depend heavily on default probabilities, and a Merton model can translate equity prices and volatilities into default probabilities.

Using market-derived default probabilities in place of historical data would have theoretical advantages over the recommended method. Because market signals are forward looking, this method could better capture changes in regimes. It might also be better able to address issues with past government support if the market no longer perceives institutions as likely to be rescued.

Although theoretically appealing, the data limitations prevent this method from being used. Bonds are heterogenous and not frequently traded; equity prices are difficult to translate into default probabilities. Even in the largest markets where CDS data exists, only on a handful of companies have CDS information, and these companies

[27] The limitations of this method may not apply in the international insurance context where the development of an appropriate international capital standard for insurance companies might make it possible to benchmark various insurance regimes.

are not necessarily representative of the broader market. For US insurance, an additional issue is that regulatory ratios are not available at the holding company level and market data are unavailable at the operating company level.[28]

We attempted to parameterize the scalar for the U.S. market using CDS data from Bloomberg and simple assumptions on recovery rates, but were unable to produce sensible results. Although the historical data show a strong relationship between capital levels and default probabilities, the strong relationship did not hold in our CDS analysis.

Several data restrictions might explain this issue. Only a small number of issuers have observable credit default spreads. Additionally, these are generally at the holding company level, which necessitated making assumptions for insurers as no group solvency ratio exists. Additionally, only relatively well-capitalized banking organizations appear to have CDSs traded currently, potentially creating a section bias. The historical PD data demonstrates that beyond a certain point, capital does not strongly affect default probability.

Other potential explanations of this result exist. Changes in risk aversion and liquidity premiums across the panel period could also explain the results. Time-fixed effects were included in some specifications of the regressions, but they did not improve the outcome of this method. Endogeneity between banks' held capital and their stress testing results may also contribute to the lack of sensible results. Because of the lack of sensible results, we do not recommend using this method to set the scalars.

Scaling Based on Regime Methodology Analysis

Another method would be to try to derive the appropriate scalars from a bottom-up analysis of the regimes, including the factors applied to specific risks and the components of available capital. Unfortunately, the differences between the regimes can be inventoried, but such an inventory cannot theoretically or practically be turned into a scaling methodology. In each regime, the risks captured are tailored to those present in the sector. The insurance methodology has complex rules around the calculation of natural catastrophe losses, and the bank regime has complex rules that apply for institutions that have significant market-making operations. Deriving an appropriate scaling methodology from the bottom up based on these differences would require quantifying each of them and then weighting to these differences to calculate an average. This calculation would be infeasible between banking and insurance regimes given the number of differences. Additionally, there are theoretical problems with trying to derive a weighting methodology from the differences that appropriately reflects the risk profiles of both banks and insurers.

Conclusion

This white paper describes our attempt to identify and evaluate different scaling methodologies. We find the PD approach based on historical data could be used to translate information between regimes in a way that preserves the economic meaning of solvency ratios. This method, however, requires data that are not currently available for some regimes outside of the United States. The election of the scaling approach is therefore a choice between using a single simple approach to scaling in all economies or differentiating the scaling approach by country and using the historical PD domestically. We recommend the latter. Although this approach will involve more work and some uncertainty for companies operating in countries with limited data, it should allow for scaling that is more accurate and aid comparability.

Scalars for non-U.S. regimes are not specified in the proposed rule given the Board's supervisory population. These may be set through individual rulemakings as needed. For the scalar between Regulation Q and NAIC RBC, the Board's proposal relies on the historical probability of default method.

We believe that the historical PD method derived in this paper will produce the most faithful translation of financial information between the U.S. banking and insurance regimes. Historical insolvency rates are currently the most credible economic benchmark to assess regimes against, and the long track record and excellent data on both the insurance and the bank U.S. regimes make this analysis feasible.

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[28] Although in some cases a sum of the capital of subsidiaries may be a reasonable proxy for the capital of the group, this approach would not be true for many entities including those with large foreign operations or using affiliated reinsurance transactions (captives). Only a handful of companies have reasonable proxies available for both NAIC RBC and the market-implied default rate of the company.

Appendix 1: Graphical Interpretation of Scaling Parameters

Derivation

We assume that there is some linear transformation between solvency ratios in different regimes, which we decompose into AC and RC to facilitate aggregation.

$$\alpha + \beta * \frac{\mathrm{AC_{common}}}{\mathrm{RC_{common}}} = \frac{\mathrm{AC_{applicable}}}{\mathrm{RC_{applicable}}}$$

Solving for the ratio in the common regime and then rewriting:

$$\frac{\mathrm{AC_{common}}}{\mathrm{RC_{common}}} = \left(\frac{\mathrm{AC_{applicable}}}{\mathrm{RC_{applicable}}} - \alpha\right) * \frac{1}{\beta}$$

$$\frac{\mathrm{AC_{common}}}{\mathrm{RC_{common}}} = \frac{\mathrm{AC_{applicable}} - \alpha * \mathrm{RC_{applicable}}}{\beta * \mathrm{RC_{applicable}}}$$

If the denominators and numerators are equal then:

$$\mathrm{RC_{common}} = \beta * \mathrm{RC_{applicable}}$$

$$\mathrm{AC_{common}} = \mathrm{AC_{applicable}} - \alpha * \mathrm{RC_{applicable}}$$

Using the equations for $\mathbb{S}_{\mathrm{RC}}$ and $\mathbb{S}_{\mathrm{AC}}$:

$$\mathbb{S}_{\mathrm{RC}} = \beta$$

$$\mathbb{S}_{\mathrm{AC}} = -\alpha$$

Appendix 2: Derivation of the Historical Probability of Default Formulas

Using a logistic regression, the probability of a company defaulting can be expressed as

$p(d) = \frac{1}{e^{a+b*\frac{AC}{RC}}}$ where a and b are fit with the regression, AC is available capital and RC is required capital.

Setting the two default probabilities equal to each other to preserve this relationship when scaling produces:

$$\frac{1}{e^{a_{applicable}+b_{applicable}*\frac{AC_{applicable}}{RC_{applicable}}}} = \mathrm{p(d)} = \frac{1}{e^{a_{common}+b_{common}*\frac{AC_{common}}{RC_{common}}}}$$

These equations can then be simplified to allow calculation of the scaled solvency ratio.

$$a_{applicable} + b_{applicable} * \frac{AC_{applicable}}{RC_{applicable}} = a_{common} + b_{common} * \frac{AC_{common}}{RC_{common}}$$

$$b_{applicable} * \frac{AC_{applicable}}{RC_{applicable}} = a_{common} - a_{applicable} + b_{common} * \frac{AC_{common}}{RC_{common}}$$

$$\frac{AC_{applicable}}{RC_{applicable}} = \frac{a_{common} - a_{applicable}}{b_{applicable}} + \frac{b_{common}}{b_{applicable}} * \frac{AC_{common}}{RC_{common}}$$

Using the graphical-interpretation formulas in the prior annex, the scalars are:

$$\mathbb{S}_{\mathrm{AC}} = -\frac{a_{common} - a_{applicable}}{b_{applicable}} = \frac{a_{applicable} - a_{common}}{b_{applicable}}$$

$$\mathbb{S}_{\mathrm{RC}} = \frac{b_{common}}{b_{applicable}}$$

Appendix 3: Data Summary Statistics

Table A.1 shows summary statistics on banks and insurers. The left side of this table shows the statistics when all firms are excluded. The right side shows the filtered data used for the regressions.

Table A.1. Summary statistics on insurers and banks

	All Firms							Baseline Assumptions						
	mean	sd	p5	p25	p50	p75	p95	mean	sd	p5	p25	p50	p75	p95
Total Assets	410,000	2,100,000	20,000	56,000	120,000	270,000	1,200,000	460,000	2,300,000	26,000	69,000	140,000	310,000	1,400,000
Risk Weighted Assets	290,000	1,700,000	11,000	35,000	79,000	180,000	820,000	340,000	1,900,000	18,000	47,000	99,000	220,000	1,000,000
RWA Ratio	22%	133%	10%	12%	15%	20%	37%	14%	3%	10%	12%	14%	16%	19%
Bank Observations	122,147							92,215						
Net Admitted Assets	1,800,000	11,000,000	2,800	14,000	56,000	300,000	4,900,000	3,000,000	16,000,000	7,300	35,000	150,000	710,000	11,000,000
ACL RBC Ratio	69365%	6700000%	276%	575%	971%	2491%	37816%	728%	324%	262%	477%	690%	952%	1332%
Insurance Observation	54,663							27,893						
Dollar Figures are in Thousands														

Appendix 4: Derivation of Accounting Analysis Scaling Formulas

Using a logarithmic regression between a company's income relative to their required capital yields the following formulas:

$$\frac{Income}{RC} = a + b * \ln(probability)$$

$$Prob\ (Income < r) = e^{\frac{r-a}{b}}$$

Setting the probabilities of loss (negative income) greater than the solvency ratio equal under the regimes yields:

$$e^{\frac{-r_{common}-a_{common}}{b_{common}}} = e^{\frac{-r_{applicable}-a_{applicable}}{b_{applicable}}}$$

Solving for the solvency ratio in the applicable regime:

$$\frac{-r_{applicable} - a_{applicable}}{b_{applicable}} = \frac{-r_{common} - a_{common}}{b_{common}}$$

$$\frac{r_{applicable} + a_{applicable}}{b_{applicable}} = \frac{r_{common} + a_{common}}{b_{common}}$$

$$r_{applicable} + a_{applicable} = \frac{r_{common} + a_{common}}{b_{common}} * b_{applicable}$$

$$r_{applicable} = \frac{r_{common} + a_{common}}{b_{common}} * b_{applicable} - a_{applicable}$$

$$r_{applicable} = \frac{b_{applicable}}{b_{common}} * r_{common} + (a_{common} * \frac{b_{applicable}}{b_{common}} - a_{applicable})$$

Using the formulas related to the graphical interpretation of the scaling formula, these formulas become

$$\mathbb{S}_{\mathrm{AC}} = (a_{applicable} - a_{common} * \frac{b_{applicable}}{b_{common}})$$

$$\mathbb{S}_{\mathrm{RC}} = \frac{b_{applicable}}{b_{common}}$$

By order of the Board of Governors of the Federal Reserve System, October 2, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–21978 Filed 10–23–19; 8:45 am]

BILLING CODE 6210–01–C

FEDERAL REGISTER

Vol. 84 Thursday,

No. 206 October 24, 2019

Part IV

The President

Proclamation 9952—National Character Counts Week, 2019

Proclamation 9953—National Forest Products Week, 2019

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 9952 of October 18, 2019

National Character Counts Week, 2019

By the President of the United States of America

A Proclamation

Since our Nation's founding, we have recognized that the good character of our people is vital to maintaining our freedom. The strength of our Union and the defense of our precious liberty require both constant vigilance and moral clarity. During National Character Counts Week, we reaffirm our commitment to developing and demonstrating admirable qualities to enrich our lives and the lives of others. In doing so, we are confident that we can positively influence the next generation of our Nation's leaders and inspire them to lead lives of virtue and integrity.

As history teaches us, no person or piece of legislation is capable of securing and advancing freedom for a nation that fails to instill moral principles in its people. Parents, mentors, and educators have been instrumental in forming and developing values in our young people for generations, and cultivating character is critical for our Nation's youth. Building strong character in our youth helps provide them with a moral compass that will help them navigate life's many challenges and decisions, and we have an obligation to set a great example for the next generation. To advance this goal of developing a solid foundation for social responsibility in our young people, First Lady Melania Trump is promoting the importance of the values of kindness, compassion, and respect through her BE BEST initiative.

Our American story is rich with famous examples of those with outstanding character, including President Washington's admirable humility, President Lincoln's strong will and honesty, and President Eisenhower's courage. Character worthy of our Nation's praise is also found in the lives of ordinary Americans. From the service members of our Armed Forces and law enforcement officials to public servants and educators, our communities are filled with patriots who demonstrate selflessness, honor, respect, and devotion to duty as they perform their daily responsibilities. These virtues are also found in volunteers who reach out to those in need, members of the clergy who pray for the brokenhearted, children who befriend the bullied, and all those who extend compassion and kindness to others. These Americans fortify our Nation's ideals and influence future generations by leading lives governed by principle and conviction. By their example, they remind us that character is developed consciously through exemplary effort and respect for others.

Throughout this week, and each day of our lives, may we strive to demonstrate good character through our thoughts, discourse, and deeds in our homes, schools, workplaces, and houses of worship. Let us set an example for others of the timeless values of respect, compassion, justice, tolerance, fairness, and integrity. May we never forget that our Nation is only as strong as the virtue and character of our citizenry.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 20 through October 26, 2019, as National Character Counts Week. I call upon public officials, educators, parents, students, and all Americans to observe this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.

[FR Doc. 2019–23434
Filed 10–23–19; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 9953 of October 18, 2019

National Forest Products Week, 2019

By the President of the United States of America

A Proclamation

Our Nation's forests and woodlands provide millions of Americans with an abundance of job opportunities, goods, and recreational activities. During National Forest Products Week, we pay tribute to the forest products industry for the important contributions it makes to our society and economy, and we recommit to keeping our wooded landscapes vibrant and strong.

Ninety-six percent of the industrial wood used in the United States comes directly from domestic supplies, making the forest products sector a truly American industry. The millions of acres of forests across our country supply the resources for paper and packaging materials, lumber for our homes, renewable energy materials, and countless other products. In addition to the tremendous impact the forest products industry has on our economy, businesses in this sector are at the forefront of conservation efforts, practicing responsible resource management and maintaining a strong commitment to preserving our abundant forests.

My Administration is working to protect our Nation's forests so that the forest products industry can continue to manufacture goods for domestic and global markets. Last year, I signed an Executive Order aimed at increasing responsible forest management and coordinating Federal, State, tribal, and local assets to prevent and combat the wildfires that have sadly devastated parts of our Nation's woodlands. I also signed the Agriculture Improvement Act of 2018, which will help preserve the health of our forests and increase economic opportunities for the entire forest products sector. This bipartisan legislation promotes active management of natural resources, including our forests, and maintains strong rural development and research initiatives that benefit communities where the forest products industry drives local economies. It also promotes using America's forest materials, like cross-laminated timber—a strong, resilient product—as an innovative approach to constructing tall wooden buildings.

This week, we recognize the importance of the raw materials our forested lands supply for the production of goods throughout our country and around the world. We also pledge to support the proper management of our forests and woodlands so that they can continue to help power our economy and provide recreational opportunities for Americans for generations to come.

Recognizing the economic value of the products yielded in our Nation's forests, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as ''National Forest Products Week'' and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 20 through October 26, 2019, as National Forest Products Week. I call upon all Americans to observe this week with appropriate ceremonies and activities and to reaffirm our commitment to our Nation's forests.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.

[FR Doc. 2019–23435
Filed 10–23–19; 11:15 am]
Billing code 3295–F0–P

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