

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 43

RIN 3038-AE60

### Real-Time Public Reporting Requirements

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing revisions to its regulations setting forth the real-time public reporting and dissemination requirements for swap data repositories (“SDRs”), derivatives clearing organizations (“DCOs”), swap execution facilities (“SEFs”), designated contract markets (“DCMs”), swap dealers (“SDs”), major swap participants (“MSPs”), and swap counterparties that are neither SDs nor MSPs. The Commission is also proposing revisions that, among other things, change the “block trade” definition, change the block swap categories, update the block thresholds and cap sizes, and adjust the delay for the public dissemination of block transactions.

**DATES:** Comments must be received on or before May 20, 2020.

**ADDRESSES:** You may submit comments, identified by RIN number 3038-AE60, by any of the following methods:

- *CFTC Website:* <https://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the website.

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

- *Hand Delivery/Courier:* Same as Mail, above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (“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.<sup>1</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

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## I. Background and Introduction

### A. Reporting Rules Review

The Commission’s real-time public reporting regulations were adopted in 2012 and are located in part 43 of the Commission’s regulations. The 2012 rulemaking set forth regulations that require swap counterparties, SEFs, and DCMs to report publicly reportable swap transactions (“PRST”) to SDRs.<sup>2</sup> In addition, the 2012 RTR Final Rule set forth regulations that require SDRs to publicly disseminate swap transaction and pricing data (“STAPD”) in real-time.<sup>3</sup> In 2013, the Commission adopted a block trade rule<sup>4</sup> to implement the statutory requirements of Commodity Exchange Act (“CEA”) section 2(a)(13)(E)(i)–(iv).<sup>5</sup>

Several years ago, the Division of Market Oversight (“DMO”) conducted a review of the Commission’s swap reporting rules. After completing that review, on July 10, 2017, DMO announced<sup>6</sup> its Roadmap to Achieve High Quality Swaps Data (“Roadmap”),<sup>7</sup> consisting of a comprehensive review to, among other things: “[i] Evaluate real-time reporting regulations in light of goals of liquidity, transparency, and price discovery in the swaps market[; and (ii)] Address ongoing issues of reporting packages, prime brokerage, allocations, risk mitigation services/compressions, EFRPs, and post-priced swaps by clarifying obligations and identifying those distinct types of transactions to increase the utility of the real-time public tape.”<sup>8</sup>

In April 2019, the Commission adopted its first notice of proposed rulemaking (“NPRM”) as part of the

<sup>2</sup> Real-Time Public Reporting (“RTR”) of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012) (“2012 RTR Final Rule”); 17 CFR 43.3(a)(1)–(3) and (b)(1).

<sup>3</sup> See *id.*; 17 CFR 43.3(b)(2).

<sup>4</sup> Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866 (May 31, 2013) (“Block Trade Rule”).

<sup>5</sup> CEA section 2(a)(13)(E)(i)–(iv). These CEA sections contain provisions (e.g., time delays) that the Commission must include in its required rulemakings governing public reporting of STAPD for the categories of swaps set forth in CEA sections 2(a)(13)(C)(i) and (ii), 7 U.S.C. 2(a)(13)(C)(i) and (ii).

<sup>6</sup> See CFTC Letter 17-33, DMO Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (July 10, 2017), available at <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/17-33.pdf>.

<sup>7</sup> The Roadmap is available at [https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo\\_swapdataplan071017.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf).

<sup>8</sup> Roadmap at 11.

Roadmap review.<sup>9</sup> The 2019 Part 49 NPRM proposes amendments to streamline and clarify the Commission's SDR regulations in parts 23, 43, 45, and 49. Among other things, the 2019 Part 49 NPRM proposes modifications to the existing requirements on SDRs for confirming the accuracy of swap data with swap counterparties, and proposes requiring reporting counterparties to verify the accuracy of swap data.

The Commission has received extensive feedback that addressed many swap reporting topics.<sup>10</sup> In connection with the Roadmap review, DMO conducted extensive outreach with commenters. DMO held calls and meetings, and reviewed the comment letters to better understand the challenges facing market participants and their suggestions on how to improve real-time public reporting. Comments raised on specific issues are discussed in the relevant sections throughout this release.

After reviewing the Roadmap feedback, the Commission is proposing revisions to the following aspects of the part 43 real-time public reporting regulations: The method and timing of real-time reporting and public dissemination, generally and for specific types of swaps; the delay and anonymization of the public dissemination of block trades or large notional trades; the standardization and validation of real-time reporting fields; the delegation of specific authority to Commission staff; and the clarification of specific real-time reporting questions and common issues.<sup>11</sup>

### *B. Statutory and Regulatory Framework for Real-Time Public Reporting*

Section 2(a)(13)(B) of the CEA authorizes the Commission to make STAPD available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery. Section 2(a)(13)(C) requires that the Commission publish rules for the public availability of STAPD. Section 2(a)(13)(D) permits the Commission to require registered entities to publicly disseminate STAPD.

In 2012, the Commission adopted part 43 to implement rules providing for the public availability of STAPD as directed by section 2(a)(13).<sup>12</sup> Section 2(a)(13)(E)

required that the Commission's rules contain provisions for: (i) Ensuring the STAPD publicly disseminated does not identify the swap counterparties; (ii) specifying the criteria for large notional swaps (block trades), for particular markets and contracts; (iii) specifying an appropriate time delay for reporting block trades to the public; and (iv) taking into account whether the public disclosure will materially reduce market liquidity. In 2013, the Commission adopted the Block Trade Rule to further implement the statutory requirements of CEA section 2(a)(13)(E)(i)-(iv).<sup>13</sup>

Part 43 currently requires reporting parties to report PRSTs to SDRs as soon as technologically practicable ("ASATP") after execution.<sup>14</sup> Part 43 defines a PRST as: (i) Any executed swap that is an arm's-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or (ii) any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap.<sup>15</sup>

Part 43 currently defines execution as an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such terms under applicable law.<sup>16</sup> In addition, execution is defined to occur simultaneously with or immediately following the affirmation of the swap.<sup>17</sup>

For a PRST executed on or pursuant to the rules of a SEF or DCM, a party to such transaction satisfies its requirement to report the transaction to an SDR by executing it on the SEF or DCM.<sup>18</sup> For off-facility transactions, § 43.3(a)(3) specifies the reporting party for PRSTs and requires the reporting party to report the swap to an SDR ASATP following execution.

SDRs are required to ensure that STAPD is publicly disseminated ASATP after receiving it from a SEF, DCM, or reporting party, unless it is subject to a time delay described in § 43.5, in which case the PRST must be publicly disseminated in the manner described in § 43.5.<sup>19</sup> Regulation 43.3(b)(3), the "embargo rule," generally prohibits SEFs, DCMs, SDs, and MSPs from disseminating STAPD to their customers

and participants prior to the public dissemination of such data to an SDR.

The STAPD to be disseminated in real-time consists of the data elements listed in appendix A to part 43.<sup>20</sup> SDRs are permitted to request additional information from reporting parties, SEFs, and DCMs, but may not publicly disseminate it.<sup>21</sup> SDRs must comply with other regulations concerning how STAPD is disseminated, including ensuring they do not disclose the identities of the counterparties;<sup>22</sup> restrictions on disclosing underlying assets for certain swaps in the other commodity asset class;<sup>23</sup> and rounding and capping notional or principal amounts.<sup>24</sup>

With respect to the delay for block trades, the Commission assigned swap contracts to "swap categories" in the Block Trade Rule for the purpose of applying a common appropriate minimum block size ("AMBS") to different swap transactions. To create these swap categories, the Commission divided swaps into five asset classes: Interest rates; equity; credit; foreign exchange; and other commodities. The Commission then split these asset classes into the various swap categories.<sup>25</sup>

The Commission phased-in the time delays for the public dissemination of block trades based on four factors: (1) Whether the swap is executed on or pursuant to the rules of a SEF or DCM; (2) the swap's asset class; (3) whether the swap is mandatorily cleared; and (4) whether at least one counterparty is an SD or MSP.<sup>26</sup>

The initial time delays were: 30 minutes for blocks executed on a SEF or DCM;<sup>27</sup> 30 minutes for large notional off-facility swaps ("LNOFs")<sup>28</sup> subject to mandatory clearing with a SD/MSP counterparty;<sup>29</sup> 4 hours for LNOFs subject to mandatory clearing with no SD/MSP counterparty;<sup>30</sup> 1 hour for

<sup>20</sup> 17 CFR 43.4(b).

<sup>21</sup> 17 CFR 43.4(c).

<sup>22</sup> 17 CFR 43.4(d)(1).

<sup>23</sup> 17 CFR 43.4(d)(4).

<sup>24</sup> 17 CFR 43.4(g)-(h).

<sup>25</sup> 17 CFR 43.6(b).

<sup>26</sup> 17 CFR 43.5.

<sup>27</sup> 17 CFR 43.5(c)(2) and (d)(1). After the first year, the delay reduced to 15 minutes. 17 CFR 43.5(d)(2).

<sup>28</sup> Large notional off-facility swaps are off-facility swaps with notional or principal amounts at or above the AMBS applicable to such PRST and that are not a block trade as defined in § 43.2. 17 CFR 43.2 (definition of "large notional off-facility swap").

<sup>29</sup> 17 CFR 43.5(c)(3) and (e)(2)(i). After the first year, the delay reduced to 15 minutes. 17 CFR 43.5(e)(2)(ii).

<sup>30</sup> 17 CFR 43.5(c)(3) and (e)(3)(i). During year 2, the time delay reduced to 2 hours. 17 CFR

<sup>9</sup> See generally Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044 (May 13, 2019) ("2019 Part 49 NPRM").

<sup>10</sup> Comment letters are available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824>.

<sup>11</sup> At the same time, the Commission is proposing a separate NPRM for publication in the **Federal Register** amending the part 45 swap data reporting regulations ("2020 Part 45 NPRM").

<sup>12</sup> 2012 RTR Final Rule.

<sup>13</sup> See Block Trade Rule.

<sup>14</sup> 17 CFR 43.3(a).

<sup>15</sup> 17 CFR 43.2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 17 CFR 43.3(a)(2).

<sup>19</sup> 17 CFR 43.3(b)(2).

LNOFs not subject to mandatory clearing in the interest rate, credit, foreign exchange, or equity asset classes with at least one SD/MSP counterparty;<sup>31</sup> 4 hours for LNOFs in the other commodity asset class not subject to mandatory clearing with at least one SD/MSP counterparty;<sup>32</sup> and 48 business hours for LNOFs in all asset classes not subject to mandatory clearing for which neither counterparty is an SD/MSP.<sup>33</sup> The Commission has not established post-initial AMBS under § 43.6(f)(1).

## II. Proposed Amendments to Part 43

### A. § 43.1—Purpose, Scope, and Rules of Construction

The Commission is proposing several non-substantive changes to § 43.1. The Commission is proposing to remove § 43.1(b). Regulation 43.1(b)(1), titled “Scope,” states that part 43 applies to all swaps, as defined in CEA § 1a(47),<sup>34</sup> and lists certain categories of swaps as examples. Regulation 43.1(b)(2) states that part 43 applies to registered entities and parties to a swap and lists certain categories of swap parties. The Commission preliminarily believes that these provisions are superfluous, given that the scope of what part 43 covers is clear from various CEA sections and the operative provisions of part 43.

The Commission also proposes to redesignate current § 43.1(c), entitled “Rules of construction,” as § 43.1(b). The first sentence of § 43.1(c) currently reads as follows: The examples in this part and in appendix A to this part are not exclusive. The Commission proposes to delete the reference to “appendix A” to reflect that the Commission proposes to replace appendix A with new appendix C.<sup>35</sup> The Commission is not proposing to remove this full requirement, however, in case there are other places within

part 43 in which market participants would rely on examples.

The Commission also proposes to delete § 43.1(d), entitled “Severability.” Regulation 43.1(d) currently provides that if any provision of this part, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application. The Commission believes that a severability provision is not appropriate because, without knowing which provision a future court might hold invalid, it is unclear that the Commission would interpret all related remaining provisions of part 43 as continuing to be effective without the invalid provision(s), and the Commission wishes to maintain the flexibility to make that determination at the time of any such holding.

### B. § 43.2—Definitions

The Commission is proposing several changes to § 43.2. The Commission is proposing to add a number of new definitions, amend certain existing definitions, and remove certain definitions. Within each of those categories, because § 43.2 is arranged alphabetically, the Commission discusses its proposed changes to § 43.2 in that order as well, except as otherwise noted.

Currently, § 43.2 does not have lettered paragraphs. The Commission is proposing to add new paragraphs (a) and (b) to § 43.2. Proposed new paragraph (a) would contain all of the definitions in current § 43.2, as the Commission proposes to modify them. Proposed new paragraph (b) would provide that terms not defined in part 43 have the meanings assigned to those terms in § 1.3 of the Commission’s regulations.

#### 1. Proposed New Definitions

The Commission is proposing to add a definition of “execution date” to § 43.2. As proposed, “execution date” would mean the date, determined by reference to eastern time, on which swap execution has occurred. This proposed new definition is used in a discussion of proposed changes to the reporting deadline for post-priced swaps (“PPSs”) in section II.C.2. below.

The Commission is proposing to add a definition of “post-priced swap” to § 43.2. As proposed, a “post-priced swap” would mean an off-facility swap for which the price has not been determined at the time of execution. This proposed new definition is used in

a discussion of proposed changes to reporting deadlines for PPSs in section II.C.2. below.

The Commission is proposing to add a definition of “reporting counterparty.” The Commission notes that the definition itself would be the same as the current definition of “reporting party” in § 43.2. This proposed new definition is used in a discussion of proposed changes to the § 43.3 regulations for the method and timing of real-time public reporting in section II.C.1. below.

The term “swap execution facility” is used throughout parts 43 and 45. While part 45 provides a definition of “swap execution facility,” no such definition exists in part 43. Therefore, in order to harmonize parts 43 and 45, the Commission is proposing to add a definition of “swap execution facility” in part 43. As proposed, “swap execution facility” means a trading system or platform that is a swap execution facility as defined in CEA section 1a(50) and in § 1.3 of this chapter and that is registered with the Commission pursuant to CEA section 5h and § 37 of this chapter. The proposed definition reflects the proposed non-substantive minor technical changes that are proposed to the definition of “swap execution facility” in the concurrent part 45 proposal.

The Commission is proposing to add a definition of “swap transaction and pricing data” to § 43.2. As proposed, “swap transaction and pricing data” means all data for a swap in appendix C to part 43 required to be reported or publicly disseminated pursuant to part 43. The Commission believes that providing a definition for the type of data addressed in part 43 should help distinguish between the different types of data reported pursuant to the different reporting regulations.

The Commission is also proposing to add the following six definitions to § 43.2: “Mirror swap;” “pricing event;” “prime broker;” “prime brokerage agency arrangement;” “prime brokerage agent;” and “trigger swap.” These proposed definitions are all related to swaps entered into by prime brokers. Because all of these six proposed definitions are used in the text of proposed § 43.3(a)(6) or are used in one or more of the proposed definitions that are in turn used in proposed § 43.3(a)(6), all of the six proposed definitions are set forth and discussed in section II.C.4. below.

#### 2. Proposed Amendments to Existing Definitions

The Commission is proposing non-substantive ministerial changes to the

43.5(e)(3)(ii). After year 2, the time delay reduced to 1 hour. 17 CFR 43.5(e)(3)(iii).

<sup>31</sup> 17 CFR 43.5(c)(4) and (f)(1). After the first year, the time delay reduced to 30 minutes. 17 CFR 43.5(f)(2).

<sup>32</sup> 17 CFR 43.5(c)(5) and (g)(1). After the first year, the time delay reduced to 2 hours. 17 CFR 43.5(g)(2) and (g)(3).

<sup>33</sup> 17 CFR 43.5(c)(6) and (h)(1). During year 2, the time delay reduced to 36 business hours. 17 CFR 43.5(h)(2). After year 2, the time delay reduced to 24 business hours. 17 CFR 43.5(h)(3).

<sup>34</sup> 7 U.S.C. 1a(47).

<sup>35</sup> As discussed in section II.E.3., the Commission is proposing to delete appendix C in connection with changes to the block delays. In its place, the Commission is proposing to update the list of STAPD elements in current appendix A and move them to appendix C. At the same time, DMO is publishing draft technical specifications on <https://www.cftc.gov> for comment.

following definitions in § 43.2: “As soon as technologically practicable;” “asset class;” “novation;” “other commodity;” and “reference price.”

The Commission is also proposing to amend the definition of “appropriate minimum block size” in § 43.2.

Currently, § 43.2 defines “appropriate minimum block size” to mean the minimum notional or principal amount for a category of swaps that qualifies a swap within such category as a block trade or large notional off-facility swap. This proposed amended definition is used in a discussion of proposed changes to the § 43.5(a) regulations for the time delays for the public dissemination of STAPD in section II.E.1. below.

The Commission is proposing to amend the definition of “block trade” in § 43.2. Currently, § 43.2 defines “block trade” to mean a PRST that: (1) Involves a swap that is listed on a registered SEF or DCM; (2) occurs away from the registered SEF’s or DCM’s trading system or platform and is executed pursuant to the registered SEF’s or DCM’s rules and procedures; (3) has a notional or principal amount at or above the AMBS applicable to such swap; and (4) is reported subject to the rules and procedures of the registered SEF or DCM and the rules described in part 43, including the appropriate time delay requirements set forth in § 43.5.

In November 2018, the Commission issued a comprehensive proposal to amend the SEF regulatory framework.<sup>36</sup> Among other things, the 2018 SEF NPRM proposed to amend the definition of “block trade” as part of the proposal’s holistic approach to amending the SEF regulatory framework. Given the complex, expansive, and comprehensive nature of the 2018 SEF Proposal, however, the Commission continues to evaluate it.

In the interim, in order to provide regulatory and legal certainty to SEFs and market participants, the Commission recently proposed to address certain outstanding no-action relief, including relief related to block trades that SEFs and market participants have operated under for several years.<sup>37</sup> In particular, in the 2020 SEF NPRM, the Commission proposed an amendment to condition (2) of the block trade definition that would read as follows: (2) Is executed on the trading system or platform, that is not an order book as defined in § 37.3(a)(3), of a

registered SEF or occurs away from a registered SEF’s or DCM’s trading system or platform and is executed pursuant to the registered SEF’s or DCM’s rules and procedures.<sup>38</sup> While the Commission is proposing additional amendments to the “block trade” definition in this NPRM, this NPRM is consistent with the proposed amendments to the definition of “block trade” under the 2020 SEF NPRM.

The Commission is proposing to create a two part definition of “block trade” in § 43.2. Paragraph (3) of the current definition of “block trade”<sup>39</sup> would be incorporated into paragraph (1) of the “block trade” definition, which would apply to “off-facility swaps.”<sup>40</sup> The proposed “block trade” definition from the 2020 SEF NPRM, which would apply to swaps that are not “off-facility swaps” and that have specified connections to a SEF or a DCM, would become paragraph (2) of the proposed “block trade” definition in this NPRM.<sup>41</sup> Moreover, the Commission believes these proposed changes would eliminate the need for separate definitions of block trades and large notional off-facility swaps.<sup>42</sup>

<sup>38</sup> In the 2020 SEF NPRM, the Commission explained that (1) “permitting execution of block trades on a SEF’s non-[o]rder [b]lock trading systems or platforms promotes the statutory SEF goal of promoting the trading of swaps on SEFs” and (2) “for swap block trades that are intended to be cleared and executed on a SEF’s non-[o]rder [b]lock trading system or platform, the Commission believes that the proposed revised definition would (i) allow [futures commission merchants (“FCMs”)] to conduct pre-execution credit screenings in accordance with § 1.73; and (ii) allow SEFs to facilitate those screenings in accordance with the Commission’s proposed requirement under § 37.702(b).” 2020 SEF NPRM at 9419.

<sup>39</sup> This paragraph currently reads: Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap.

<sup>40</sup> As proposed, paragraph (1) of the “block trade” definition would read: (1) With respect to an off-facility swap, a publicly reportable swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such swap. The Commission is also proposing to make minor changes to the term “off-facility swap,” as discussed below in this section.

<sup>41</sup> As proposed, paragraph (2) of the “block trade” definition would read: (2) With respect to a swap that is not an off-facility swap, a publicly reportable swap that: (a) Involves a swap that is listed on a swap execution facility or designated contract market; (b) Is executed on the trading system or platform, that is not an order book as defined in § 37.3(a)(3), of a swap execution facility or occurs away from a swap execution facility’s or designated contract market’s trading system or platform and is executed pursuant to the swap execution facility’s or designated contract market’s rules and procedures; (c) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (d) Is reported subject to the rules and procedures of the swap execution facility or designated contract market and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5.

<sup>42</sup> See also n. 38, *supra* (noting the Commission’s belief that the 2020 SEF NPRM would promote the

Therefore, as discussed below in section II.B.3., the Commission is removing the definition of large notional off-facility swaps from its regulations.

The Commission is proposing to amend the definition of “embedded option” in § 43.2 by removing the reference to “confirmation” at the end of the current definition.<sup>43</sup> As proposed, “embedded option” would mean any right, but not an obligation, provided to one party of a swap by the other party to the swap that provides the party holding the option with the ability to change any one or more of the economic terms of the swap. As discussed below in section II.B.3., the Commission is proposing to remove references to confirmations in part 43.

The Commission is proposing to amend the definition of “execution” in § 43.2 by replacing the reference to execution occurring “orally, in writing, electronically, or otherwise” with “by any method” to shorten the definition without substantively altering it.<sup>44</sup> In addition, the Commission is proposing to remove the phrase that execution occurs simultaneous with or immediately following the affirmation of the swap.<sup>45</sup> As proposed, “execution” would mean an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms under applicable law.

The Commission is proposing to amend the definition of “off-facility swap” in § 43.2 by removing the reference to “publicly reportable” and “registered.”<sup>46</sup> The Commission is proposing to remove the requirement that the swap be publicly reportable because determining whether a swap transaction is an off-facility swap depends only on where a swap was executed; whether it is also a PRST is

statutory goal of promoting trading on SEFs and help to facilitate the pre-execution credit screening by SEFs and FCMs for swap block trades intended to be cleared).

<sup>43</sup> Embedded option is currently defined as any right, but not an obligation, provided to one party of a swap by the other party to the swap that provides the party holding the option with the ability to change any one or more of the economic terms of the swap as those terms previously were established at confirmation (or were in effect on the start date). 17 CFR 43.2.

<sup>44</sup> Execution is currently defined as an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law. Execution occurs simultaneous with or immediately following the affirmation of the swap. 17 CFR 43.2.

<sup>45</sup> As explained in the following section II.B.3., the Commission is proposing to remove references to “affirmation” in § 43.2 because affirmation is not currently used in any of the part 43 regulations.

<sup>46</sup> Off-facility swap is currently defined as any PRST that is not executed on or pursuant to the rules of a registered swap execution facility or designated contract market. 17 CFR 43.2.

<sup>36</sup> See Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018) (“2018 SEF NPRM”).

<sup>37</sup> See Swap Execution Facility Requirements and Real-Time Reporting Requirements, 85 FR 9407 (Feb. 19, 2020) (“2020 SEF NPRM”).

irrelevant. The Commission is proposing to remove the reference to “registered” for the reasons discussed below in section II.C.1.a.

The Commission is proposing to amend the definition of “public dissemination and publicly disseminate” in § 43.2. Currently, § 43.2 defines “public dissemination and publicly disseminate” as to publish and make available STAPD in a non-discriminatory manner, through the internet or other electronic data feed that is widely published and in machine-readable electronic format. Separately, current § 43.3(d)(1) requires that SDRs “publicly disseminate” STAPD in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved, and analyzed.

The Commission is concerned that the definition of “public dissemination and publicly disseminate” currently varies enough from § 43.3(d)(1) to create ambiguity for SDRs as to the format they must use in publicly disseminating STAPD. For instance, the definition of “publicly disseminate” requires that access be non-discriminatory, but the requirement for SDRs to “publicly disseminate” STAPD in § 43.3(d)(1) does not explicitly require that access be non-discriminatory.

Therefore, the Commission is proposing to re-locate the qualification in current § 43.3(d)(1) that SDRs publicly disseminate STAPD in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved, and analyzed to the definition of “public dissemination and publicly disseminate” in § 43.2.<sup>47</sup> As revised, the definition of “public dissemination and publicly disseminate” would mean to make freely available and readily accessible to the public [STAPD] in a non-discriminatory manner, through the internet or other electronic data feed that is widely published. Such public dissemination shall be made in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved, and analyzed.<sup>48</sup>

The Commission is proposing to amend the definition of “trimmed data set” in § 43.2 by changing the standard

<sup>47</sup> As discussed below in section II.C.8., the Commission is proposing to remove current § 43.3(d)(1) in conjunction with moving the substance of the requirement to the definition of “publicly disseminate.”

<sup>48</sup> The revised definition of “public dissemination and publicly disseminate” is also discussed below in section II.C.7. with respect to the responsibilities of SDRs to make publicly disseminated STAPD available to the public.

deviation used in the calculation of the trimmed data set from four to two for the “other commodity” asset class, and from four to three for all other asset classes.<sup>49</sup> This proposed amended definition is used in a discussion of proposed changes to the § 43.6(c) regulations for determining AMBSs and cap sizes discussed in section II.F.2. below.

### 3. Proposed Removal of Definitions

The Commission is proposing to remove the definition of “Act” from § 43.2 because the Commission preliminarily believes the definition of “Act” is unnecessary in part 43 because the term is defined in § 1.3.

The Commission is proposing to remove the definition of “business day” from § 43.2 because the Commission preliminarily believes that the definition of “business day” is unnecessary in part 43 because it is defined in § 1.3. Further, the Commission is proposing to remove the definition of “business hours” because it believes the definition of “business hours” would no longer be necessary as a result of the Commission’s proposal to remove references to “business hours” in the § 43.5 regulations for the timing delays for block trades. Those proposed changes are discussed below in section II.E.

The Commission is proposing to remove from § 43.2 the “confirmation” definition and the following related definitions: “Affirmation” and “confirmation by affirmation.” The Commission believes these definitions are unnecessary in part 43, and have created confusion as the terms are not used in any of the regulations in part 43.

The Commission is proposing to remove from § 43.2 the definition of “executed.” The Commission believes the current definition is vague. In addition, the Commission believes the proposed definition for “execution date,” discussed above in section II.B.1. would provide the specificity that the current “executed” definition lacks.

The Commission is proposing to remove from § 43.2 the definition of “real-time public reporting.” Currently, § 43.2 defines “real-time public reporting” as the reporting of data relating to a swap transaction, including price and volume, ASATP after the time at which the swap transaction has been executed. The CEA currently already defines “real-time public reporting” as

<sup>49</sup> Trimmed data set is currently defined as a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of 10, computing the mean, and excluding transactions that are beyond four standard deviations above the mean. 17 CFR 43.2.

to report data relating to a swap transaction, including price and volume, ASATP after the time at which the swap transaction has been executed.”<sup>50</sup> Therefore, to avoid creating confusion, the Commission is proposing to remove the definition in part 43 because it would be redundant.

The Commission is proposing to remove the definition of “reporting party” because it is proposing to add a definition of “reporting counterparty” to § 43.2 that would be the same as the current definition of “reporting party” in § 43.2, as discussed above in section II.B.1.

The Commission is proposing to remove the following definitions from § 43.2 as a result of proposed changes to §§ 43.5 and 43.6 for block trades and large notional off-facility swaps: “Futures related swap,” “large notional off-facility swap,” “major currencies,” “non-major currencies,” and “super-major currencies.” Those proposed changes are discussed below in sections II.E. and II.F.

The Commission is proposing to remove the following definitions from § 43.2 as a result of proposed changes to simplify the definition of “novation:” “Remaining party,” “transferee,” and “transferor.”

The Commission is proposing to remove the “unique product identifier” (“UPI”) definition from § 43.2. “Unique product identifier” is currently only used in § 43.4(e). The Commission is proposing to delete current § 43.4(e), which is discussed below in section II.D.1. Therefore, the Commission believes the definition of UPI in § 43.2 is no longer necessary.

The Commission is proposing to remove the definition of “widely published” from § 43.2. “Widely published” means to publish and make available through electronic means in a manner that is freely available and readily accessible to the public. “Widely published” is currently referenced in the definition for “public dissemination and publicly disseminate” as the standard by which SDRs must publish data.<sup>51</sup> The Commission believes that the term “widely published” has a clear meaning and that the definition therefore is unnecessary and may cause confusion.

### Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 43.2. The Commission requests specific comment on the following:

<sup>50</sup> 7 U.S.C. 2(a)(13)(A).

<sup>51</sup> The term “widely published” is also used in current § 43.6(g)(4) for currency conversions.

(1) Does the Commission's proposed definition of "execution date" present problems for SEFs, DCMs, SDRs, or reporting counterparties? Should the Commission instead adopt a definition that aligns with other regulations, including, for instance, the definition of "day of execution" in § 23.501(a)(5)(i)?<sup>52</sup>

*C. § 43.3—Method and Timing for Real-Time Public Reporting*

1. § 43.3(a)(1)–(3)—Method and Timing for Reporting Off-Facility Swaps and Swaps Executed on or Pursuant to the Rules of a SEF or a DCM

a. § 43.3(a)(1)—General Rule

The Commission is proposing a number of clarifying and substantive changes to § 43.3(a)(1). As background, § 43.3(a)(1) currently: (i) Requires reporting parties to report PRSTs to SDRs ASATP after execution; and (ii) states that for purposes of part 43, a registered SDR includes any SDR provisionally registered with the Commission pursuant to part 49 of this chapter.

The Commission proposes to make a non-substantive amendment to § 43.3(a)(1) by changing the reference to the person required to report a PRST to an SDR ASATP after execution. The current term "reporting party" is defined in § 43.2 as the party to a swap with the duty to report a PRST in accordance with this part and section 2(a)(13)(F) of the Act. The Commission proposes to replace the reference to the catchall term "reporting party" with more specific references to the persons that, depending on the circumstances, have the reporting obligation for a PRST, namely: A reporting counterparty; a SEF; or a DCM.<sup>53</sup> The Commission is also proposing to slightly reword § 43.3(a)(1) for brevity and to

<sup>52</sup> For the purposes of § 23.501, "day of execution" means the calendar day of the party to the swap transaction that ends latest, provided that if a swap transaction is—(a) entered into after 4:00 p.m. in the place of a party; or (b) entered into on a day that is not a business day in the place of a party, then such swap transaction shall be deemed to have been entered into by that party on the immediately succeeding business day of that party, and the day of execution shall be determined with reference to such business day. 17 CFR 23.501(a)(5)(i). For the purposes of § 23.501, "business day" means any day other than a Saturday, Sunday, or legal holiday. 17 CFR 23.501(a)(5)(ii).

<sup>53</sup> To limit repetition, this change will not be discussed in each section throughout this release. The circumstances dictating which of these specific persons has the PRST reporting obligation are specified in existing and proposed §§ 43.3(a)(2) and (3). Although the Commission is not proposing to change these circumstances, the Commission is proposing other changes to §§ 43.3(a)(2) and (3), which are discussed below in this section ILC.1.

add a cross-reference to proposed §§ 43.3(a)(2)–(6), which address matters such as who must report PRSTs and the timing thereof. Proposed §§ 43.3(a)(2)–(6) would provide additional detail about how (and, in the case of proposed § 43.3(a)(6), whether) the ASATP requirement would apply to real-time public reporting of certain swap transactions and by certain reporting parties. Consequently, the Commission is also proposing to add language to § 43.3(a)(1) stating that it would be "subject to" proposed §§ 43.3(a)(2)–(6) to reflect that, with respect to the transactions and persons covered by proposed §§ 43.3(a)(2)–(6), the provisions thereof apply instead of the general ASATP requirement of proposed § 43.3(a)(1).

The Commission also is proposing to add a requirement that the PRST reporting required pursuant to proposed §§ 43.3(a)(1)–(6) be done in the manner set forth in proposed § 43.3(d), discussed below in section ILC.8.

Finally, the Commission proposes to delete the sentence in § 43.3(a)(1) stating that for purposes of this part, a registered SDR includes any SDR provisionally registered with the Commission pursuant to part 49 of this chapter and proposes to replace references to registered SDRs with references to SDRs in proposed § 43.3(a) specifically and throughout part 43.<sup>54</sup> The Commission has also proposed to remove the term "registered swap data repository" from part 49.<sup>55</sup> The term "registered swap data repository" is not needed in part 49 because a definition of "swap data repository" already exists in § 1.3,<sup>56</sup> and the definition is identical to the definition contained in section 1a(48) of the CEA.<sup>57</sup> Because the definitions in § 43.2 have the meanings assigned to them in § 1.3 unless the context otherwise requires, the definition of "swap data repository" already applies to part 43, and would continue to apply to part 43, including proposed § 43.3(a), thus removing the need for a separate defined term for "registered swap data repository."

<sup>54</sup> To limit repetition, this change will not be discussed in each section throughout this release.

<sup>55</sup> See Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044, 21101.

<sup>56</sup> See 17 CFR 1.3 (definition of "swap data repository") (This term means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps).

<sup>57</sup> 7 U.S.C. 1a(48) (The term "SDR" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps).

Furthermore, the word "registered" in the term "registered swap data repository" creates unnecessary confusion as to whether part 43 applies to entities that are in the process of registering as SDRs or are provisionally registered pursuant to § 49.3(b); part 43 applies to SDRs whether they are registered or provisionally registered. The Commission emphasizes that removing the defined term "registered swap data repository" is a technical amendment that does not in any way modify the requirements applicable to current or future SDRs.

Therefore, revised § 43.3(a)(1) would require reporting counterparties, SEFs, or DCMs to report any PRST to an SDR ASATP after execution subject to § 43.3(a)(2)–(6) and in the manner set forth in § 43.3(d).

b. § 43.3(a)(2)—Swaps Executed on or Pursuant to the Rules of a SEF or a DCM

The Commission is proposing several amendments to § 43.3(a)(2). As background, current § 43.3(a)(2) states that a party to a PRST can satisfy its part 43 real-time public reporting obligations by executing PRSTs on or pursuant to the rules of a SEF or DCM.

The Commission is proposing to replace the language in § 43.3(a)(2) with the current requirement in § 43.3(b)(1). Current § 43.3(b)(1) states that SEFs and DCMs satisfy their real-time public reporting obligations by transmitting STAPD to SDRs ASATP after the PRST was executed on or pursuant to the rules of the trading platform or facility. Revised § 43.3(a)(2) would therefore state that SEFs or DCMs must report PRSTs executed on or pursuant to the rules of a SEF or DCM ASATP after execution. As a result, § 43.3(a)(2) would contain SEFs' and DCMs' part 43 reporting obligations instead of § 43.3(b)(1). In revising § 43.3(a)(2), the Commission would also replace the reference to a "registered [SEF]" with a reference to SEFs because, similar to the reasoning discussed above in section ILC.1.a. with respect to "registered" SDRs, the term "registered" is unnecessary and could create confusion.<sup>58</sup> The Commission considers the above amendments to be non-substantive.

c. § 43.3(a)(3)—Off-Facility Swaps

The Commission proposes to amend § 43.3(a)(3) in two respects. As background, current § 43.3(a)(3) requires reporting parties to report all off-facility swaps to an SDR for the appropriate

<sup>58</sup> The Commission is proposing this change elsewhere in part 43. To limit repetition in this release, the change will not be discussed repeatedly in this preamble.

asset class in accordance with the rules set forth in part 43 ASATP following execution, and sets out the reporting hierarchy for these PRSTs.<sup>59</sup>

The Commission proposes to clarify in §§ 43.3(a)(3)(iii)–(v) that, in situations where the parties to an off-facility PRST must designate which of them is the reporting counterparty, they must make such designation prior to the execution of the off-facility PRST so that there is no delay in reporting the off-facility PRST pursuant to part 43, as there could be if the parties do not make such designation until after the off-facility PRST is executed or cannot agree on such designation.

Because the Commission is proposing to add part 43 reporting requirements specific to PPSs, clearing swaps, and mirror swaps, respectively, in proposed new §§ 43.3(a)(4)–(6), the Commission proposes to introduce proposed § 43.3(a)(3) with except as otherwise provided in paragraphs (a)(4)–(6) of this section. The proposed part 43 reporting requirements applicable to PPSs, clearing swaps and mirror swaps are discussed below in sections II.C.2.–4., respectively.

## 2. § 43.3(a)(4)—Post-Priced Swaps

The Commission is proposing new § 43.3(a)(4) to address issues market participants face in reporting PPSs. As background, the purpose of CEA § 2(a)(13), the primary source of the Commission's authority to promulgate real-time public reporting rules, is to authorize the Commission to make [STAPD] available to the public in such form and *at such times as the Commission determines appropriate to enhance price discovery*.<sup>60</sup> Congress also directed the Commission to include provisions in its real-time reporting rules that take into account whether the public disclosure will materially reduce market liquidity.<sup>61</sup> Swap counterparties must report STAPD to the appropriate registered entity *in a timely manner as may be prescribed by the Commission*.<sup>62</sup> The Commission, therefore, has some discretion in determining when STAPD should be reported and publicly disseminated.

Regulation 43.3(a) generally requires the reporting party for each PRST to report it to an SDR ASATP after execution of the transaction. Market participants have raised concerns with complying with the ASATP requirement for a category of swaps with respect to

which one or more terms are unknown at the time the swap is executed. One Roadmap commenter suggested that such swaps should only be reported when all of the final primary economic terms of the transaction are determined, rather than at execution.<sup>63</sup>

The Commission understands that these swaps are generally characterized by the price, size and/or other terms of the transaction being contingent upon the outcome of SD hedging, market results during an observation period (a point in time or a longer period), or the occurrence of certain events—such as the price for a swap underlier being determined at the close of trading on a trading platform—that occur after an SD accepts a client request (collectively, “Variable Terms”). Although the parties may know the non-Variable Terms at the time of execution,<sup>64</sup> the Variable Terms generally are not known until the subsequent dealer hedging or other market activity has taken place because the Variable Terms are, wholly or partly, contingent on the occurrence of such triggers and determined, wholly or in part, by some aspect of such contingencies.

The Commission understands that some market participants do not report swaps with Variable Terms to SDRs until hours, or even days, after the execution thereof.<sup>65</sup> Reporting parties have contended that they report these swaps to SDRs only after the Variable Terms are set because (i) they want to foreclose the possibility of market participants “front running” reporting parties’ customers’/counterparties’ swaps; and (ii) neither reporting parties nor SDRs have the technological processes in place to support reporting prior to the determination of a numerical price, volume or other Variable Terms.

Currently, PPSs and other swaps with Variable Terms not determined at execution (“Variable Terms Swaps”) account for a significant but unknown percentage of swaps that are not reported to SDRs in a timely manner.<sup>66</sup>

<sup>63</sup> Letter from The International Swaps and Derivatives Association (“ISDA”) and The Securities Industry and Financial Markets Association (“SIFMA”) (“Joint ISDA–SIFMA Letter”) (Aug. 21, 2017) at 10.

<sup>64</sup> “Execution” is defined in § 43.2, in relevant part, as an agreement by the parties to the terms of a swap that legally binds the parties to such swap terms under applicable law.

<sup>65</sup> However, this approach is not followed universally: Other market participants report PPSs differently. For example, some market participants report to an SDR PPSs with a price of zero at the time of execution and amend the price reported to the SDR once the price is known.

<sup>66</sup> The percentage is unknown because there is no SDR data field to indicate that a swap is a PPS. Although, as noted above, some reporting parties

However, through Roadmap outreach, the Commission has learned that these PPSs and other Variable Terms Swaps may constitute a large percentage of certain market participants’ equity derivatives business subject to CFTC jurisdiction.<sup>67</sup> The Commission preliminarily believes that the reporting of PPSs and other Variable Terms Swaps is not consistent across SDs, with some reporting swaps shortly after execution and others not reporting until the Variable Terms are known.

The Commission also preliminarily believes that the reporting of PPSs ASATP after execution but before the price is determined does not serve a significant price discovery function and that the omission of a price, or the use of a placeholder price, by reporting parties who report PPSs before the price is determined may confuse market participants or constitute unhelpful “noise” on the public tape. The Commission understands that requiring public reporting of PPSs before their prices are determined could allow market participants to transact in swaps ahead of any necessary hedging by SDs, potentially disadvantaging the SDs’ counterparties driving the PPS transactions by increasing the cost of the hedges. This could, in turn, lead such counterparties to forego the use of swaps to achieve their investment or other goals, thereby reducing swap market liquidity.

However, the Commission seeks to balance permitting the delayed reporting of swaps that appear to lack a significant price discovery benefit with encouraging or permitting indefinitely delayed reporting of PPSs. The latter possibility could encourage swap counterparties to structure some of their swaps as PPSs to take advantage of the longer proposed reporting deadline for PPSs.<sup>68</sup>

In light of the foregoing, the Commission is proposing a longer deadline for reporting STAPD for certain PPSs than for PRSTs generally. To effectuate such longer deadline, the

may report PPSs with zero or blank prices or other Variable Terms and later amend such reports once the Variable Terms are known, there are other reasons a zero price may be reported or that blanks may be reported for the Variable Terms, so there currently is no definitive method of quantifying the scope of the PPS reporting issue.

<sup>67</sup> One market participant estimated that PPSs are a bigger percentage of equity swaps than of any other asset class and constitute approximately 80–90% of CFTC-reportable equity swaps.

<sup>68</sup> However, to the extent the Commission’s proposal raises concerns in this regard, § 23.402(a)(1) does require SDs to have written policies and procedures reasonably designed to prevent a swap dealer from evading or participating in or facilitating an evasion of any provision of the CEA or any regulation promulgated thereunder.

<sup>59</sup> The Commission is not proposing substantive amendments to the reporting hierarchy.

<sup>60</sup> 7 U.S.C. 2(a)(13)(B) (emphasis added).

<sup>61</sup> 7 U.S.C. 2(a)(13)(E)(iv).

<sup>62</sup> 7 U.S.C. 2(a)(13)(F) (emphasis added).

Commission proposes to add new § 43.3(a)(4) to its regulations. Proposed § 43.3(a)(4)(i) would permit the reporting counterparty to delay reporting a PPS to an SDR until the earlier of the price being determined and 11:59:59 p.m. eastern time on the execution date.<sup>69</sup> Proposed § 43.3(a)(4)(i) would further provide that, if the price of a PRST that is a PPS is not determined by 11:59:59 p.m. eastern time on the execution date, the reporting counterparty shall report to an SDR by 11:59:59 p.m. eastern time on the execution date all STAPD for such PPS other than the price and any other then-undetermined Variable Terms and shall report each such item of previously undetermined STAPD ASATP after such item is determined.<sup>70</sup> Proposed § 43.3(a)(4)(ii) would provide that the more lenient proposed reporting deadline in § 43.3(a)(4)(i) would not apply to PRSTs with respect to which the price is known at execution but one or more other Variable Terms are not yet known at the time of execution.<sup>71</sup>

### 3. § 43.3(a)(5)—Clearing Swaps

The Commission proposes to amend § 43.3(a) to add DCOs to the reporting counterparty hierarchy for clearing swaps that are PRSTs. As background, in 2016, the Commission adopted rules that, among other things, added DCOs to the hierarchy for determining the reporting counterparty for clearing swaps in § 45.8.<sup>72</sup> Although the Cleared

Swap Final Rule added DCOs to the reporting counterparty hierarchy in § 45.8, it did not add DCOs to the reporting hierarchy in part 43.

Most clearing swaps are the result of an original swap being accepted for clearing by a DCO. In these cases, there is no part 43 real-time public reporting for the clearing swaps. For most clearing swaps, there is no conflict between the part 43 and part 45 reporting hierarchies.

However, there are limited circumstances in which DCOs create clearing swaps for which there is no original swap, and the clearing swaps may meet the definition of a PRST in part 43, while also being required to be reported pursuant to part 45. In these circumstances, the part 43 and part 45 reporting hierarchies may conflict. For example, if a DCO enters into PRSTs to manage the default of a clearing member, the DCO would be the reporting counterparty under § 45.8(i) but not under current § 43.3(a)(3).

To avoid this conflict, the Commission proposes to add DCOs to the hierarchy in § 43.3 for clearing swaps. Proposed § 43.3(a)(5) would state that notwithstanding the provisions of paragraphs (a)(1)–(3) of this section, if a clearing swap, as defined in § 45.1 of this chapter, is a PRST, the DCO that is a party to such swap shall be the reporting counterparty and shall fulfill all reporting counterparty obligations for such swap as soon as technologically practicable after execution.

### 4. § 43.3(a)(6)—Mirror Swaps

As explained above, the CEA authorizes the Commission to make STAPD available to the public in such form and *at such times as the Commission determines appropriate to enhance price discovery*.<sup>73</sup> In 2017, DMO announced its intention to review the reporting regulations to address ongoing issues of reporting prime brokerage transactions.<sup>74</sup> As a result of

counterparty and shall fulfill all reporting counterparty obligations for such swap.

<sup>73</sup> 7 U.S.C. 2(a)(13)(B) (emphasis added).

<sup>74</sup> Roadmap at 11. DMO has previously provided no-action relief from the real-time public reporting requirements for swaps executed pursuant to prime brokerage arrangements in response to concerns that reporting both legs of prime brokerage transactions would incorrectly suggest the presence of more trading activity and price discovery in the market than actually exists. See CFTC Letter No. 12–53, Time-Limited No-Action Relief from (i) Parts 43 and 45 Reporting for Prime Brokerage Transactions, and (ii) Reporting Unique Swap Identifiers in Related Trades under Part 45 by Prime Brokers (Dec. 17, 2012), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@rlrlettergeneral/documents/letter/12-53.pdf>. The Financial Markets Lawyers Group (“FMLG”) and the International Swaps and Derivatives

this review, and as discussed below in this section, the Commission is proposing new regulations in § 43.3(a)(6) to help ensure that the STAPD associated with mirror swaps, which some market participants view as duplicative, non-price-forming data, does not distort the volume of trading activity or unnecessarily impede price discovery for market participants and others who rely on the real-time public tape for those purposes. The Commission notes that the swap data associated with all mirror swaps would be required to be reported to SDRs pursuant to part 45 so the Commission can fulfill its risk monitoring, compliance, and market manipulation responsibilities.

The Commission understands that prime brokerage swaps begin with a counterparty opening an account with a prime broker (“PB”) that grants limited agency powers to the counterparty. These limited powers enable the counterparty, as an agent for the PB, to enter into swaps with approved executing dealers (“ED”), subject to specific limits and parameters, such as credit limits and collateral requirements. The PB also enters into “give-up” arrangements with approved EDs in which the EDs agree to negotiate swaps with the counterparty, acting as an agent for the PB, within the specified parameters and to face the PB as counterparty for the resulting ED–PB swap (“ED–PB Swap”).

The Commission understands that in a prime brokerage swap, the counterparty seeks bids for the desired swap from one or more of the approved EDs, within the parameters established by the PB. Once the counterparty and ED agree on the terms, the Commission believes that both the counterparty and ED provide a notice of the terms to the PB, and those terms constitute the ED–PB Swap, which the PB must accept if: The swap is with an approved ED; the counterparty and ED have committed to the material terms; and the terms are within the parameters established by the PB. Once the ED–PB Swap is accepted by the PB, the PB enters into a mirror swap (“Mirror Swap”) with the counterparty with identical economic terms and pricing, subject to adjustment, as a result of the prime brokerage servicing fee.

In 2012, DMO granted no-action relief, subject to conditions described below, where: (i) An ED reports an ED–

Association (“ISDA”), which requested the relief that DMO provided in CFTC Letter No 12–53, also sought and received relief from certain reporting requirements of part 45 of the Commission’s rules, but this proposal discusses only the part 43 reporting aspects of the relief.

<sup>69</sup> By “11:59:59 p.m. eastern time on the execution date,” the Commission means 11:59:59 p.m. in the eastern time zone of the United States on the date the relevant swap is executed, irrespective of where either counterparty’s headquarters or personnel or office involved in executing the swap are located and irrespective of any other factors. This could result in the reporting counterparty having more or less time to report a swap depending on how close it is to 11:59:59 p.m. eastern time at execution in any time zones relevant to the reporting counterparty reporting the STAPD.

<sup>70</sup> While the proposed definition of “post-priced swap” would be a swap for which the price has not been determined at the time of execution, such a swap with *additional* terms that are also not determined at the time of execution would also fall within the proposed “post-priced swap” definition. Consequently, if a PPS also has non-price terms that are not determined at the time of execution, a value for such non-price terms must be reported ASATP after it is determined. If a placeholder value that satisfies the allowable values parameters for an unknown Variable Term was previously reported for such undetermined STAPD, then such STAPD must be corrected ASATP after it is determined.

<sup>71</sup> The Commission notes that when the price is known at execution but one or more Variable Terms are not yet known, the reporting counterparty must report the swap ASATP and then amend the swap later to report the Variable Terms.

<sup>72</sup> Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 81 FR 41736 (June 27, 2016) (“Cleared Swap Final Rule”). Specifically, § 45.8(i) now states, in relevant part, if the swap is a clearing swap, the DCO that is a counterparty to such swap shall be the reporting



PB Swap under part 43, including any required post-trade event reporting; and (ii) the related Mirror Swap is not reported for part 43 purposes by the ED, PB or any other party, unless there is a modification to the economic terms of the ED–PB swap.<sup>75</sup> The relief was conditioned on: The allocation of part 43 reporting responsibilities being agreed upon by the parties; the ED and the PB each being a registered SD; and the ED–PB Swap and Mirror Swap having identical economic terms and pricing, subject to adjustment in the case of the Mirror Swap as a result of a prime brokerage servicing fee.<sup>76</sup>

CFTC Letter No. 12–53 expired on June 30, 2013, but the Commission believes that concerns about the impact on price discovery of mirror swap STAPD on the public tape are still concerns today. To address these concerns, the Commission is proposing new § 43.3(a)(6), and related definitions in § 43.2(a). The Commission believes the proposed regulations would address issues raised by swaps executed pursuant to prime brokerage arrangements and related mirror swaps.<sup>77</sup>

#### a. Proposed New Definitions

The Commission is proposing to add the term “prime brokerage agency arrangement” to § 43.2(a). “Prime brokerage agency arrangement” would mean an arrangement pursuant to which a prime broker authorizes one of its clients, acting as agent for such prime broker, to cause the execution of a trigger swap. The Commission proposes to use the term “prime brokerage agency arrangement” in the new proposed definitions of “prime brokerage agent” and “trigger swap” in § 43.2(a) to establish the parameters of the proposed new definition of a “mirror swap,” also in § 43.2(a), which would not be reportable under part 43 if it satisfied the terms of proposed § 43.3(a)(6)(i). The Commission’s goal in proposing the “prime brokerage agency arrangement” definition and using it in other definitions in § 43.2(a) is to help ensure that the scope of unreported mirror swaps is limited to swaps that are, among other things, integrally related to

trigger swaps and their related pricing events.

The Commission is proposing to add the term “prime brokerage agent” to § 43.2(a) as a new definition that would mean a client of a prime broker who causes the execution of a trigger swap acting pursuant to a prime brokerage agency arrangement.

The Commission is also proposing to add the term “prime broker” to § 43.2(a). “Prime broker” would mean with respect to a mirror swap and its related trigger swap, a swap dealer acting in the capacity of a prime broker with respect to such swaps. The Commission proposes to use the term “prime broker” in the proposed definitions of “prime brokerage agency arrangement,” “prime brokerage agent,” and “trigger swap” in § 43.2(a), and in proposed § 43.3(a)(6), to establish the parameters of when a “mirror swap” would not be reportable under part 43 if it satisfied the terms of proposed § 43.3(a)(6)(i).

The Commission is proposing to add the term “trigger swap” to § 43.2(a) as a new definition that would mean a swap: (1) That is executed pursuant to one or more prime brokerage agency arrangements;<sup>78</sup> (2) to which a prime broker is a counterparty or both counterparties are prime brokers; (3) that serves as the contingency for, or triggers, the execution of one or more corresponding mirror swaps; and (4) that is a PRST that is required to be reported to a swap data repository pursuant to this part and part 45 of this chapter. The Commission proposes to use the term “trigger swap” as an element of a “mirror swap,” which the Commission proposes to make not reportable.<sup>79</sup>

The Commission is proposing to add the term “pricing event” to § 43.2(a) as a new definition that would mean the completion of the negotiation of the material economic terms and pricing of a trigger swap. The Commission is proposing to use the term “pricing

event” in proposed § 43.3(a)(6)(i) to make it clear when execution of a trigger swap, which would be required to be reported under proposed § 43.3(a)(6)(iv) (discussed below in section II.C.4.b.), occurs.

The Commission is proposing to add the term “mirror swap” to § 43.2(a) to mean a swap: (1) To which a prime broker is a counterparty or both counterparties are prime brokers; (2) that is executed contemporaneously with a corresponding trigger swap; (3) that has identical terms and pricing as the contemporaneously executed trigger swap (except that a mirror swap, but not the corresponding trigger swap, may include any associated prime brokerage service fees agreed to by the parties and except as provided in the final sentence of this “mirror swap” definition); (4) with respect to which the sole price forming event is the occurrence of the contemporaneously executed trigger swap; and (5) the execution of which is contingent on, or is triggered by, the execution of the contemporaneously executed trigger swap. The notional amount of a mirror swap may differ from the notional amount of the corresponding trigger swap, including, but not limited to, in the case of a mirror swap that is part of a partial reverse give-up;<sup>80</sup> *provided, however*, that in such cases, (i) the aggregate notional amount of all such mirror swaps to which the prime broker that is a counterparty to the trigger swap is also a counterparty shall be equal to the notional amount of the corresponding trigger swap and (ii) the market risk and contractual cash flows of all such mirror swaps to which a prime broker that is not a counterparty to the corresponding trigger swap is a party will offset each other (and the aggregate notional amount of all such mirror swaps on one side of the market and with cash flows in one direction shall be equal to the aggregate notional amount of all such mirror swaps on the other side of the market and with cash flows in the opposite direction), resulting in each prime broker having a flat market risk position.

The Commission is proposing to define the term “mirror swap” to delineate a group of swaps that do not have to be reported under part 43 if the related conditions set forth in proposed § 43.3(a)(6) are satisfied. The Commission preliminarily believes that because the terms and pricing of a trigger swap and its related mirror swaps are the same, part 43 reporting of both a trigger swap and the related

<sup>75</sup> See *id.* at 5.  
<sup>76</sup> *Id.*  
<sup>77</sup> The Commission notes that the Securities and Exchange Commission (“SEC”) has adopted a different approach with respect to security-based swaps, with the result that mirror security-based swaps would be PRSTs and thus reported. See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 81 FR 53546, at 53583–86 (Aug. 12, 2016) (declining to exempt from public dissemination certain prime brokerage SBSs discussed therein).

<sup>78</sup> The Commission understands that some pricing events (as proposed to be defined in § 43.2(a) and as discussed in the paragraph following the paragraph in the body of the preamble with which this footnote is associated) that result in trigger swaps and related mirror swaps (*e.g.*, in the context of a reverse give-up, which is discussed below in section II.C.4.b.) are negotiated by persons that are acting pursuant to a prime brokerage agency arrangement with more than one prime broker. The Commission understands that some pricing events that lead to related trigger swaps and related mirror swaps (*e.g.*, in the context of a double give-up, which is discussed below in section II.C.4.b.) are negotiated by two persons that are each acting pursuant to a prime brokerage agency arrangement with its respective prime broker.

<sup>79</sup> See proposed § 43.6(a)(6)(i), discussed below in section II.C.4.b.

<sup>80</sup> A “partial reverse give-up” is described below in section II.C.4.b.

mirror swaps could falsely indicate the occurrence of two or more (depending on how many mirror swaps there are for a given trigger swap) pricing events and incorrectly suggest the presence of more trading activity and price discovery in the market than actually exist.

The Commission preliminarily believes the STAPD of trigger swaps should be reported pursuant to part 43 ASATP after the occurrence of the related pricing event for the following reasons: (1) All the terms of a trigger swap are determined at the time of its related pricing event, so execution of the trigger swap occurs at that time (as stated expressly in proposed § 43.3(a)(6)(i)), so the ASATP clock should “start ticking” at that time; (2) any delay in the mirror swap counterparties learning of the related trigger swap terms should not delay part 43 reporting of the trigger swap given that the mirror swaps would not be reported under proposed § 43.3(a)(6);<sup>81</sup> (3) one or both of the parties to a pricing event often are the reporting counterparties in other swaps so have the infrastructure in place to report the related trigger swap ASATP after the execution of the pricing event; and (4) to the extent that (3) is untrue, one or more of the prime brokers involved in the related mirror swaps (all of whom currently are SDs, the Commission understands) can amend the terms of their prime brokerage arrangements (as proposed to be defined in § 43.2) to require the parties thereto who are also parties to pricing events to ensure that their prime brokers learn of the terms of the pricing events in a manner that is sufficiently timely to permit their prime brokers to report trigger swaps ASATP after the execution of the related pricing events.

The Commission is proposing to use the word “contemporaneously” in clause (2) of the “mirror swap” definition (*i.e.*, a swap “that is executed contemporaneously with a corresponding trigger swap”) rather than “simultaneously” to reflect the fact that it may take some time for potential parties to a mirror swap to receive the terms of such mirror swap from the parties to the related trigger swap and to verify that the terms of the potential mirror swap are within the parameters established by the governing prime

<sup>81</sup> To the extent a trigger swap is outside the permitted scope of a prime brokerage arrangement, as proposed to be defined in § 43.2(a), the relevant party can cancel it. The Commission understands that this happens today but preliminarily believes that the potential for a trigger swap to be cancelled as a result of its being outside the scope of the relevant prime brokerage arrangement, as proposed to be defined in § 43.2(a), should not delay reporting STAPD.

brokerage arrangement, as proposed to be defined in § 43.2(a). However, the Commission expects the parties to a trigger swap to promptly convey those terms to the relevant prime broker(s) that would be a party or parties to related mirror swaps; any delay in conveying such terms should not be used as an opportunity to find additional counterparties to take part in unreported mirror swaps.<sup>82</sup> The Commission may construe any purported mirror swaps resulting from such activity as not executed contemporaneously with the related trigger swap, and thus not within the scope of the proposed mirror swap definition or, as a result, proposed § 43.3(a)(6), and therefore reportable under §§ 43.3(a)(1)–(3), as applicable, depending on the facts and circumstances.

The Commission is proposing the language regarding associated prime brokerage service fees in clause (3) of the proposed “mirror swap” definition (*i.e.*, as is relevant here, a swap that has identical terms and pricing as the contemporaneously executed trigger swap (except that a mirror swap, but not the corresponding trigger swap, may include any associated prime brokerage service fees agreed to by the parties)) to reflect that a mirror swap may contain fees that a prime broker that is a counterparty to a mirror swap may charge its counterparty to that mirror swap as a fee for serving as a prime broker in such swap. The Commission understands that prime brokers typically charge their clients a service fee for the swap intermediation service that prime brokers provide (*i.e.*, serving as swap counterparties in lieu of counterparties that prime brokers’ clients would prefer not to face as swap counterparties for credit reasons). The prime broker service fee is meant to reflect prime brokers’ credit intermediation costs as well as prime brokers’ back-office and middle-office administrative services costs related to trigger swaps and mirror swaps (*e.g.*, booking, reconciling, settling and maintaining such trigger swaps and mirror swaps). The prime broker service fee is typically agreed upon by a prime broker and its client before a pricing event. To be considered prime brokerage service fees for purposes of clause (3) of the proposed “mirror swap” definition, such fees must be limited to the

<sup>82</sup> This could include, but would not be limited to, a potential party to a mirror swap receiving the terms of a related trigger swap from one party to the trigger swap and seeking additional counterparties to a mirror swap while waiting to receive the matching terms of the trigger swap from the other party thereto.

foregoing purpose and cannot contain any other elements.<sup>83</sup>

#### b. Other Proposed Regulations

Proposed new § 43.3(a)(6)(i) would provide that a mirror swap, which the Commission is proposing to define in § 43.2(a), as discussed above in section II.B.1., is not a PRST. Proposed new § 43.3(a)(6)(i) would also state that, for purposes of determining when execution occurs under §§ 43.3(a)(1)–(3), execution of a trigger swap shall be deemed to occur at the time of the pricing event for such trigger swap.

Proposed new § 43.3(a)(6)(ii) would provide parameters for determining which counterparty is the reporting counterparty for a given trigger swap in situations where it is unclear, with respect to a given set of swaps, which are mirror swaps and which is the related trigger swap. More specifically, proposed new § 43.3(a)(6)(ii) would state that if, with respect to a given set of swaps, it is unclear which are mirror swaps and which is the related trigger swap (including, but not limited to, situations where there is more than one prime broker counterparty within such set of swaps and situations where the pricing event for each set of swaps occurs between prime brokerage agents of a common prime broker), the PBs would be required to determine which swap is the trigger swap and which are mirror swaps. Proposed new § 43.3(a)(6)(ii) would also specify that, with respect to the trigger swap to which a PB is a party, the counterparty that falls within the highest level of the reporting counterparty determination hierarchy set forth in § 43.3(a)(3) is the reporting counterparty; proposed new § 43.3(a)(6)(ii) would further specify that, if both counterparties fall within the same level of that hierarchy, they must determine who is the reporting counterparty for such trigger swap pursuant to §§ 43.3(a)(3)(iii), (iv), or (v), as applicable. Proposed new § 43.3(a)(6)(ii) would add that, notwithstanding the foregoing, if the counterparty to a trigger swap that is not a PB is an SD, then that counterparty will be the reporting counterparty for the trigger swap.

<sup>83</sup> For example, the Commission would not consider a purported prime brokerage service fee providing the prime broker or its counterparty exposure to a commodity to be a prime brokerage service fee within the meaning of clause (3) of the proposed “mirror swap” definition, as a result of which the related “mirror swap” would not be a mirror swap, and thus would not be within the scope of proposed § 43.3(a)(6) (discussed below in section II.C.4.b.), and therefore would be reportable under §§ 43.3(a)(1)–(3), as applicable, depending on the facts and circumstances.

Proposed new § 43.3(a)(6)(iii) would provide that, if, with respect to a given set of swaps, it is clear which are mirror swaps and which is the related trigger swap, the reporting counterparty for the trigger swap shall be determined pursuant to § 43.3(a)(3).

Proposed new § 43.3(a)(6)(iv) would provide that trigger swaps described in proposed § 43.3(a)(6)(ii) (situations in which it is unclear which of a set of swaps are mirror swaps and which is the related trigger swap) and (iii) (situations in which it is clear which of a set of swaps are mirror swaps and which is the related trigger swap) shall be reported pursuant to the requirements set out in §§ 43.3(a)(2) or (a)(3), as applicable, except that the provisions of proposed § 43.3(a)(6)(ii), rather than of proposed § 43.3(a)(3), shall govern the determination of the reporting counterparty for purposes of the trigger swaps described in proposed § 43.3(a)(6)(ii).

CFTC Letter No. 12–53 provided relief for what it termed a “Typical Prime Brokerage Transaction” in which an ED that is an SD agrees with its counterparty to the terms of matching swaps entered into between the ED and the counterparty’s PB and between the PB and the counterparty. The Commission understands that the scope of proposed § 43.3(a)(6) would expand the scope of CFTC Letter No. 12–53 in that it would encompass both the “typical prime brokerage transactions” covered by CFTC Letter No. 12–53 and at least three other forms of PB transactions: reverse give-up PB swaps; partial reverse give-up PB swaps; and double give-up PB swaps. The Commission understands that other forms of prime brokerage swap transactions also may be covered by proposed § 43.3(a)(6) and does not intend, by describing herein reverse give-up PB swaps, partial reverse give-up PB swaps, and double give-up PB swaps, to limit the scope of proposed § 43.3(a)(6) to such forms of prime brokerage swap transactions.

In a reverse give-up PB swap structure, the executing broker (“EB”) <sup>84</sup> and one or more clients of a PB, or of both PBs involved in the structure, <sup>85</sup>

<sup>84</sup> The Commission understands that EBs are always SDs today, but proposed § 43.3(a)(6) does not require EBs to be SDs. EBs play the same role in the prime brokerage swap transactions discussed in today’s proposal that EDs did in CFTC Letter No. 12–53. Thus, other than when it is discussing CFTC Letter No. 12–53, which used the term “ED,” the Commission is using the term EB rather than ED in the preamble to reflect the fact that proposed § 43.3(a)(6) does not require EBs to be SDs.

<sup>85</sup> As noted above, the Commission understands that some pricing events (as proposed to be defined in § 43.2(a) and as discussed in the paragraph

negotiate swap terms forming the basis of a trigger swap entered into between the EB and a PB <sup>86</sup> and related mirror swaps entered into between the PB and one or more other PBs, the other PB(s) and one or more clients and, in some reverse give-up prime brokerage swap structures, the client and the EB-facing PB. <sup>87</sup> In a double give-up prime brokerage swap structure, a client of one PB and a client of a different PB negotiate with each other swap terms forming the basis of a trigger swap entered into between the two PBs <sup>88</sup> and of the related mirror swaps entered into between each of the PBs and its respective client.

CFTC Letter No. 12–53 permitted the ED to be the reporting party for the ED–PB Swap, subject to the conditions that the ED and PB allocated reporting responsibility between them and both parties were SDs. Proposed § 43.3(a)(6)(ii) would differ from the reporting structure in CFTC Letter No. 12–53 in that proposed § 43.3(a)(6)(ii) would instead incorporate the reporting counterparty hierarchy of § 43.3(a)(3). The goal of proposed § 43.3(a)(6)(ii) is to have each trigger swap be reported ASATP after its pricing event. The Commission understands that one counterparty to a trigger swap often will have participated in negotiating the related pricing event, so should be well-placed to report the trigger swap pursuant to part 43 in such circumstances, particularly if that counterparty is an SD, given that SDs are experienced with part 43 reporting. If the PB is an SD, but its counterparty is not, the PB would be the reporting

following the paragraph in the body of the preamble with which this footnote is associated) that result in trigger swaps and related mirror swaps (*e.g.*, in the context of a reverse give-up, which is discussed below in section ILC.4.b.) are negotiated by persons that are acting pursuant to a prime brokerage agency arrangement with more than one prime broker.

<sup>86</sup> The EB and the PB client are said to “give up” the swap that otherwise would have been entered into between the EB and the PB client to the EB and PB. That “given up” swap becomes the trigger swap.

<sup>87</sup> The mirror swaps between the PBs, pursuant to instructions from a client, are said to be “reverse give-ups” from the EB-facing PB to the other PB(s). If the reverse give-up is for 100% of the notional of the trigger swap, then the PB that is a swap counterparty to the EB in the trigger swap will not also be a swap counterparty to a client in a mirror swap. If the reverse give-up is for less than 100% of the notional of the trigger swap (*i.e.*, a partial reverse give-up), then there will be a mirror swap between: the EB-facing PB and at least one client participating in the partial reverse give-up; the EB-facing PB and each of the other PBs participating in the partial reverse give-up; and each of such other PBs and at least one of the clients participating in the partial reverse give-up.

<sup>88</sup> The two clients are said to “give up” to their respective PBs the swap that otherwise would be entered into between the two clients. That “given up” swap becomes the trigger swap.

counterparty for the trigger swap even though the PB may not learn of the pricing event for some time, although, pursuant to proposed § 43.3(a)(7), discussed below in section II.C.5., it could contract with a third-party service provider (which could include a party to the pricing event (*e.g.*, an EB)) to handle such reporting if it believes reporting such PRST in a timely manner (*i.e.*, ASATP after the pricing event, per proposed § 43.3(a)(6)(i)) would be problematic for it, while remaining fully responsible for such reporting. Similarly, even in circumstances in which neither counterparty to a trigger swap participated in negotiating the related pricing event (*e.g.*, a double give-up prime brokerage swap structure), such counterparties can contract with a third-party service provider to handle such reporting if they believe that reporting such trigger swap in a timely manner (*i.e.*, ASATP after the pricing event, per proposed § 43.3(a)(6)(i)) would be problematic for them, while remaining fully responsible for such reporting.

#### 5. § 43.3(a)(7)—Third-Party Facilitation of Data Reporting

The Commission proposes to add § 43.3(a)(7) to provide for the third-party facilitation of data reporting. As background, in the 2012 RTR NPRM, Real-Time Public Reporting of Swap Transaction Data, 75 FR 76140 (Dec. 7, 2010), the Commission noted that SEFs, DCMs, and SDRs may enter into contractual relationships with third party service providers to facilitate reporting, while remaining responsible for the reporting requirement under part 43. <sup>89</sup> Regulation 45.9 contains a parallel provision for part 45 reporting. Regulation 45.9 provides for third-party facilitation of data reporting, and specifies that registered entities and swap counterparties that contract with third-party service providers remain fully responsible for the reporting requirement under part 45. Proposed § 43.3(a)(7) would codify the Commission’s previously-stated position with respect to third party facilitation of part 43 reporting in a manner consistent with § 45.9 and expressly expand it to reporting parties for off-facility swaps. Therefore, proposed § 43.3(a)(7) would state that any person required by part 43 to report STAPD, while remaining fully responsible for reporting as required by part 43, may contract with a third-party service provider to facilitate reporting.

<sup>89</sup> Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1201.

#### 6. § 43.3(b)—Public Dissemination of Swap Transaction and Pricing Data

The Commission is proposing several revisions to the rules for SEFs, DCMs, SDs, MSPs, and SDRs in disseminating STAPD. First, as discussed above in section II.C.1.b., the Commission is proposing to move the substance of current § 43.3(b)(1) to revised § 43.3(a)(2).<sup>90</sup>

Second, the Commission is proposing to relocate current § 43.3(b)(2) to § 43.3(b)(1) and revise the regulation. As background, current § 43.3(b)(2) states that registered SDRs shall ensure that STAPD is publicly disseminated ASATP after such data is received from a SEF, DCM, or reporting party, unless such PRST is subject to a time delay described in § 43.5, in which case the PRST shall be publicly disseminated in the manner described in § 43.5.

The Commission is also proposing to replace the language in current § 43.3(b)(2) stating that SDRs shall “ensure” STAPD is publicly disseminated with an SDR shall publicly disseminate STAPD ASATP to clarify that SDRs must disseminate the data, rather than ensure it is done. The Commission believes that this revision should not result in any changes in current practice for SDRs. Finally, the Commission is proposing to replace the two references to “publicly reportable swap transaction” with references to “swap transaction and pricing data” for consistency both within proposed § 43.3(b)(1) and with § 43.5, which is cross-referenced by current § 43.3(b)(2) and would continue to be cross-referenced by proposed § 43.3(b)(1). Therefore, proposed § 43.3(b)(1) would state that an SDR shall publicly disseminate STAPD ASATP after receiving it from a SEF, DCM, or reporting counterparty, unless the STAPD is subject to a time delay described in § 43.5, in which case the SDR must publicly disseminate the STAPD pursuant to § 43.5.

Third, the Commission is proposing to relocate § 43.3(c)(1) to § 43.3(b)(2) in conjunction with the above relocation of § 43.3(b)(2) to § 43.3(b)(1). As background, current § 43.3(c)(1) states that any SDR that accepts and publicly disseminates STAPD in real-time shall comply with part 49 and shall publicly disseminate STAPD in accordance with part 43 ASATP upon receipt of such data, except as otherwise provided in part 43.

The Commission is proposing to locate the regulations for SDRs to follow

<sup>90</sup> Moving current § 43.3(b)(1) to § 43.3(a)(2) would consolidate the requirements for SEFs and DCMs to report STAPD in § 43.3(a)(2).

in disseminating STAPD in § 43.3(b). Because current § 43.3(c)(1) is an SDR obligation regarding the public dissemination of STAPD, the Commission believes it should be located in revised § 43.3(b). The Commission is also proposing to remove the last phrase of § 43.3(c)(1), which states that SDRs must publicly disseminate STAPD in accordance with part 43 ASATP upon receipt of such data, except as otherwise provided in part 43. The Commission believes this language unnecessary given the similar, but more precise, reference to § 43.5 in current § 43.3(b)(2) and in proposed § 43.3(b)(1), discussed above in this section II.C.6.<sup>91</sup> Therefore, proposed § 43.3(b)(2) would state that any SDR that accepts and publicly disseminates STAPD in real-time shall comply with part 49.

The Commission is proposing to redesignate current §§ 43.3(c)(2) and (3) as §§ 43.3(b)(4) and (5), respectively.

#### 7. § 43.3(c)—Availability of Swap Transaction and Pricing Data to the Public

The Commission is proposing to relocate the requirements to make STAPD available to the public from § 43.3(d)(2) to §§ 43.3(c)(1) and (2).<sup>92</sup> As background, current § 43.3(d)(2) specifies that SDRs must make “publicly disseminated” STAPD “freely available and readily accessible” to the public. Currently, publicly disseminated is defined to mean to publish and make available STAPD in a non-discriminatory manner, through the internet or other electronic data feed that is widely published and in machine readable electronic format.

The requirement in § 43.3(d)(2) supports the fairness and efficiency of markets and increases transparency, which in turn improves price discovery and decreases risk (e.g., liquidity risk).<sup>93</sup> Most SDRs currently make historical STAPD spanning multiple years available on their websites for market participants to download, save, and analyze.<sup>94</sup> However, without clear

<sup>91</sup> The reference in § 43.3(c)(1) to “except as otherwise provided in part 43” rather than solely to § 43.5 is unnecessarily broad, given that § 43.5 currently is the only regulation in part 43 containing a delay to public dissemination.

<sup>92</sup> As discussed above in section II.C.6., the Commission is proposing to relocate the text of current § 43.3(c)(1), as the Commission proposes to modify it, to § 43.3(b)(2), and current §§ 43.3(c)(2) and (3) as §§ 43.3(b)(4) and (5), respectively.

<sup>93</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1183.

<sup>94</sup> DTCC—SDR’s historical STAPD is available at <https://rtdata.dtcc.com/gtr/>; CME SDR’s historical STAPD is available at <https://www.cmegroup.com/market-data/repository/data.html>; and ICE Trade

requirements on how long SDRs must make this data available, or to make instructions available, a situation could arise where STAPD is reported, publicly disseminated, and then quickly or unreasonably made unavailable to the public. Removing STAPD in this fashion would deny the public a sufficient opportunity to review such data and ultimately impede the goals of increasing market transparency, improving price discovery, and mitigating risk.

Therefore, the Commission is proposing to move the requirement in current § 43.3(d)(2) to new §§ 43.3(c)(1) and (2), along with revising the definition of “publicly disseminate” in § 43.2,<sup>95</sup> to establish requirements for SDRs to make STAPD available to the public on their websites. First, the Commission is proposing to specify that SDRs must make STAPD available on their websites for a period of a least one year after the initial “public dissemination” of such data. Second, the Commission is proposing to move the format requirements for SDRs in making this STAPD available to the revised definition of “public dissemination.”<sup>96</sup>

Therefore, proposed § 43.3(c) would state that SDRs shall make: STAPD available on their websites for a period of time that is at least one year after the initial public dissemination thereof; instructions freely available on their websites on how to download, save, and search such STAPD; and STAPD that is publicly disseminated pursuant to part 43 available free of charge.

#### 8. § 43.3(d)—Data Reported to SDRs

##### a. § 43.3(d)(1)—Standards for Reporting STAPD to SDRs

As discussed above in section II.B.2., the Commission is proposing to relocate the current requirement for SDRs to use a specific format in making STAPD available to the public from § 43.3(d)(1) to the definition of “public dissemination and publicly disseminate” in § 43.2.

Currently, § 45.13(b) requires reporting entities or counterparties to use the facilities, methods, or data standards provided or required by the SDR to which the entity or counterparty reports the data. An SDR may permit reporting entities and counterparties to use various facilities, methods, or data standards, provided that its requirements in this regard enable it to

Vault’s historical STAPD is available at <https://www.icetradevault.com/tvus-ticker/#>.

<sup>95</sup> The revisions to the definition of “publicly disseminate” are discussed above in section II.B.2.

<sup>96</sup> *Id.*

report the data to the Commission in a format acceptable to the Commission, and transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission pursuant to § 45.13(a).

As explained in section III. below, the Commission had intended that part 43 data would be a subset of part 45 data reported to SDRs. As a result, § 45.13(b) indirectly required reporting entities or counterparties to use the data standards of their SDRs, as long as the standards enabled the SDR to report the data to the Commission in the format acceptable to the Commission. The Commission believes reporting counterparties would benefit from having a distinct regulatory requirement in part 43 for real-time public reporting. Therefore, the Commission is proposing § 43.3(d)(1), which would require reporting counterparties, SEFs, and DCMs to report the STAPD elements in appendix C in the form and manner provided in the technical specifications published by the Commission. The Commission is proposing a parallel requirement in § 45.13(a) in a separate part 45 NPRM.

#### b. § 43.3(d)(2)—Data Validations

As discussed above in section II.C.7., the Commission is proposing to relocate the current requirement for SDRs to make STAPD available to the public from § 43.3(d)(2) to §§ 43.3(c)(1) and (2).

Proposed § 43.3(d)(2) would require reporting counterparties, SEFs, and DCMs to satisfy SDR validation procedures when reporting STAPD to SDRs. Currently, the Commission's regulations do not require that SDRs validate STAPD. In a related NPRM, the Commission is proposing to require that SDRs implement validations, including on STAPD reported to SDRs.<sup>97</sup> As explained below in section II.C.9., the Commission is proposing to add related regulations for SDRs for STAPD validations in § 43.3(f). In general, § 43.3(f) would require SDRs to notify SEFs, DCMs, and reporting counterparties if the reported STAPD satisfied the SDR's validation procedures. The rule would further specify that SEFs, DCMs, and reporting counterparties have not fulfilled their reporting obligations until the STAPD passes an SDR's validation procedures.

The Commission believes that the SDR validation procedures in proposed § 43.3(f) would help improve the timeliness and accuracy of STAPD SDRs disseminate to the public. However, the Commission also believes that a companion requirement for reporting

counterparties, SEFs, and DCMs to satisfy SDR validation procedures is necessary. Without such a requirement, the Commission is concerned about ambiguity as to the responsibilities of reporting counterparties, SEFs, and DCMs to respond to and satisfy the validation requirements specified in proposed § 43.3(f).

#### c. § 43.3(d)(3)—SDR Facilities, Methods, and Data Standards

The Commission is proposing to delete current § 43.3(d)(3). Currently, § 43.3(d)(3) requires SDRs to provide to the Commission a hyperlink to the internet website where publicly disseminated STAPD can be accessed by the public. This requirement is unnecessary, as SDRs have this information on their websites in a manner that is simple for the Commission and market participants to locate.

Proposed § 43.3(d)(3) would require reporting counterparties, SEFs, and DCMs to use the facilities, methods, or data standards provided or required by the SDR to which the reporting counterparty, SEF, or DCM, reports the data. The Commission understands that reporting counterparties, SEFs, and DCMs are currently using the facilities, methods, or data standards provided or required by the SDRs to which they are reporting data. Otherwise, reporting counterparties, SEFs, and DCMs would be unable to send STAPD to SDRs. However, as discussed throughout this section II.C.8., specifying this requirement for market participants would provide regulatory certainty.

#### 9. § 43.3(f)—Data Validation Acceptance Message

The Commission is proposing new regulations for SDRs in validating STAPD in § 43.3(f). The Commission's regulations do not currently require that SDRs validate STAPD. The Commission understands, however, that SDRs have implemented validations as a best practice. As a result, each SDR runs a number of checks, or validations, on each STAPD message prior to publicly disseminating it. A failed validation can cause an SDR to reject the message without disseminating it to the public.

The Commission is concerned that the lack of validation requirements has resulted in reporting counterparties, SEFs, and DCMs being unaware of, or unfamiliar with, the existence of such validations. The Commission is concerned that the lack of awareness may be resulting in reporting counterparties, SEFs, and DCMs being unclear about their responsibilities to monitor their submissions to SDRs for

errors that may result in validation failures that ultimately result in non-dissemination. As a result, the Commission is proposing in § 43.3(d)(2) to require reporting counterparties, SEFs, and DCMs to satisfy SDR validation procedures when reporting STAPD to SDRs. The Commission is also proposing § 43.3(f) to make clear the requirement for each SDR to notify submitting parties of their failure to meet the SDR's validation procedures and that an entity's reporting obligation is not satisfied until the SDR's validation procedures have been satisfied.

Therefore, proposed § 43.3(f)(1) would require that for an SDR to validate each STAPD report submitted it, the SDR shall notify the reporting counterparty, SEF, or DCM submitting the report whether the report satisfied the data validation procedures of the SDR. The SDR would have to provide such notice ASATP after accepting the STAPD report. Proposed § 43.3(f)(1) would provide that an SDR may satisfy the validation requirements by transmitting data validation acceptance messages as required by proposed § 49.10.<sup>98</sup>

Proposed § 43.3(f)(2) would provide that if a STAPD report submitted to an SDR does not satisfy the data validation procedures of the SDR, the reporting counterparty, SEF, or DCM required to submit the report has not satisfied its obligation to report STAPD in the manner provided by § 43.3(d). The reporting counterparty, SEF, or DCM would not have satisfied its obligation until it submits the STAPD report in the manner provided by § 43.3(d), which includes the requirement to satisfy the data validation procedures of the SDR.

#### 10. § 43.3(h)—Timestamp Requirements

The Commission is proposing to delete the current timestamp requirements in § 43.3(h).<sup>99</sup> Regulation 43.3(h) sets forth timestamp requirements for registered entities, SDs, and MSPs with respect to STAPD for all PRSTs.<sup>100</sup> Pursuant to § 43.3(h)(1), SEFs

<sup>98</sup> The Commission is proposing new regulations for SDRs to validate STAPD in a separate Roadmap proposal amending parts 45, 46, and 49.

<sup>99</sup> The Commission notes that it has proposed to remove and reserve current § 43.3(g), and move the substance of the current requirements in § 43.3(g) regarding SDR hours of operation to § 49.28. See 2019 Part 49 NPRM at 20164. In this release, the Commission is proposing to relocate current § 43.3(i) to § 43.3(g), in conjunction with the proposed removal of current § 43.3(h) discussed above, as well as make conforming changes to the wording.

<sup>100</sup> In addition to allowing the Commission to monitor compliance with the timing requirements, timestamps also confirm for market participants that publicly reported STAPD is in fact being

<sup>97</sup> 2019 Part 49 NPRM.

and DCMs must timestamp STAPD relating to a PRST with the date and time, to the nearest second, of when such SEF or DCM receives data from a swap counterparty (if applicable), and transmits such data to an SDR for public dissemination. Pursuant to § 43.3(h)(2), SDRs must timestamp STAPD relating to a PRST with the date and time, to the nearest second when such SDR receives data from a SEF, DCM, or reporting party, and publicly disseminates such data. Pursuant to § 43.3(h)(3), SDs or MSPs must timestamp STAPD for off-facility swaps with the date and time, to the nearest second when such SD or MSP transmits such data to an SDR for public dissemination. Regulation 43.3(h)(4) requires that records of all timestamps required by § 43.3(h) must be maintained for a period of at least five years from the execution of the PRST.

As discussed in section III. below, the Commission is proposing an updated list of STAPD elements in appendix C where the timestamps described in § 43.3(h) would be covered. Therefore, the Commission proposes to remove the requirements in §§ 43.3(h)(1)–(3) for SEFs, DCMs, SDs, MSPs, and SDRs to timestamp STAPD.

In addition, the Commission believes that the separate recordkeeping requirement for timestamps is duplicative of other recordkeeping requirements for SEFs, DCMs, SDs, MSPs, and SDRs. For instance, SDRs must already keep swap data for five years following the final termination of the swap and for an additional ten years in archival storage.<sup>101</sup> In the 2019 Part 49 NPRM, the Commission is proposing to more clearly include part 43 STAPD in the recordkeeping requirement in § 49.12(b)(1).<sup>102</sup> SEFs, DCMs, SDs, and MSPs have similar recordkeeping requirements for swaps.<sup>103</sup> As a result, when timestamps are reported or disseminated, SEFs, DCMs, SDs, MSPs,

reported ASATP after transactions have been executed.

<sup>101</sup> See §§ 45.2(f) and (g) (containing recordkeeping requirements for SDRs); see also § 49.12(a) (referencing part 45 recordkeeping requirements). In the 2019 Part 49 NPRM, the Commission is proposing to move the requirements in §§ 45.2(f) and (g) to § 49.12. See Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044, 21103–04.

<sup>102</sup> The Commission is doing so by replacing the term “swap data” with “SDR data,” which the Commission proposes to define as data required to be reported pursuant to two or more of parts 43, 45, 46, or 49 of the Commission’s regulations. See Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044, 21103–04.

<sup>103</sup> 17 CFR 45.2(c) requires SDs, MSPs, SEFs, and DCMs subject to Commission jurisdiction to maintain records for each swap throughout the life of the swap for a period of at least five years following the final termination of the swap.

and SDRs subject to Commission jurisdiction have to maintain them as part of recordkeeping requirements separate from § 43.3(h)(4). Therefore, the Commission is also proposing to remove the requirement in § 43.3(h)(4) for these entities to keep records of the timestamps for at least five years from execution.

#### Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 43.3. In addition, the Commission requests specific comment on the following:

(2) Instead of permitting a delay for PPS, should reporting counterparties be required to submit PPSs ASATP after execution using the Post-priced swap indicator (59), leaving the price empty and then be required to update that entry after the price is determined?

(3) Should the Commission permit an indefinite delay for reporting STAPD for PPSs? In other words, should reporting such data be required only once the price and/or other Variable Terms is/are known regardless of how long that takes? The Commission notes that such swaps could be flagged on the public tape as PPSs once reported. Alternatively, should the Commission set a shorter deadline for reporting STAPD for PPSs?

(4) Should the Commission exclude from the PPS definition and/or from the reporting delay in proposed § 43.3(a)(4) swaps for which a price is not known at execution because it is contingent upon the outcome of SD hedging? Would permitting such swaps to receive the reporting delay in proposed § 43.3(a)(4) cause market participants to intentionally delay reporting in reliance on the need to hedge a swap where such market participants do not delay their reporting under current Commission reporting regulations?

(5) Should market participants be required to rely on the Commission’s block trade reporting delays and capping and rounding rules, rather than proposed § 43.3(a)(4), to avoid the front-running concerns discussed above in section II.C.2.? Conversely, are the CEA’s provisions and the Commission’s regulations sufficient to deter market participants from intentionally altering their behavior to delay their reporting of swaps for which a price is not known at execution because it is contingent upon the outcome of SD hedging?

(6) Should the Commission modify its PPS indicator in appendix C, or add another indicator, to require market participants to indicate whether a swap is a PPS because it is contingent upon the outcome of SD hedging?

(7) Should the Commission modify its PPS indicator, or add another indicator, to require market participants to indicate whether a swap is a PPS based on other common reasons, such as the price being determined based on the volume-weighted average price (also known as “VWAP”) of an index level at market close?

(8) The Commission understands that trade at settlement (“TAS”) futures orders<sup>104</sup> are displayed to the market when entered, in contrast to PPS executions under proposed § 43.3(a)(4). Do the similarities between PPSs and TAS futures orders warrant reporting PPSs when executed, rather than by the deadline specified in proposed § 43.3(a)(4)? Conversely, do PPSs’ relative illiquidity vis-a-vis TAS futures orders warrant the reporting delay in proposed § 43.3(a)(4)?<sup>105</sup>

(9) Did the Commission accurately describe the prime brokerage swap transaction structures discussed above? Should the real-time public tape reflect the number of mirror swaps related to a given trigger swap to provide information to the public on the number of prime brokerage swap transaction structures with multiple mirror swaps? Would such an indicator provide useful information to market participants?

(10) Should the Commission scale back the scope of the exclusion of mirror swaps from the PRST definition in proposed § 43.3(a)(6)(i) such that each of the following swaps would be PRSTs: (a) Swaps executed as part of partial reverse give-up arrangements and/or (b) swaps executed as part of other prime brokerage transaction structures in which the notional amount of a mirror swap may differ from the notional amount of the corresponding trigger swap? Should the Commission scale back the scope of the exclusion of mirror swaps from the PRST definition in proposed § 43.3(a)(6)(i) such that the exclusion would be limited to “plain vanilla” mirror swaps?

<sup>104</sup> See, e.g., *Trading at Settlement (TAS)*, CME Group Inc., available at <https://www.cme.com/trading/trading-at-settlement.html> (explaining that “Trading at Settlement (TAS) order types . . . allow you to buy or sell a contract at the settlement price”).

<sup>105</sup> See Paul Peterson, *Trading at Settlement for Agricultural Futures: Results from the First Month*, *farmdocdaily*, available at <https://farmdocdaily.illinois.edu/2015/07/trading-at-settlement-for-agricultural-futures.html> (Jul. 29, 2015) (noting that “[t]o prevent [“banging the close” and other forms of manipulation]. . . from happening in the ag markets, TAS is available only in the most liquid commodities, and only in the most liquid contract months” and “[s]ome energy market participants claim that . . . price discovery is reduced because TAS trades are simply assigned a price without having to compete (like a limit or ‘price’ order would) for a price in the open market”).

(11) If a SD executed one or more swaps to hedge a swap that the SD had executed with a counterparty, and the hedging swap(s) was/were executed at the same price as the swap being hedged, the hedging swap(s) generally would be a PRST or PRSTs and, thus, subject to part 43 reporting.<sup>106</sup> Given the similarity of such transaction structures to trigger swap-mirror swap transactions structures, is it appropriate to treat mirror swaps as non-PRSTs pursuant to proposed § 43.3(a)(6)?

(12) Should the Commission modify proposed § 43.2(a) to include a carve out for prime brokerage service fees to reflect that such fees might not be included in all such mirror swaps?

(13) Is the proposed definition of “prime broker” sufficient and clear enough to accurately describe the term as understood in common industry practice? Is it sufficiently narrow to limit the non-reporting of mirror swaps to transactions involving “prime brokers,” as that term is understood in the market? If the Commission should propose a different definition of “prime broker,” what should that definition be?

(14) In order to ensure data quality, should the Commission mandate a certain standard for reporting to the SDRs? If so, what standard should the Commission mandate and what would be the benefits of mandating this standard? If not, why should the Commission not mandate a standard?

*D. § 43.4—Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time*

**1. § 43.4(a)–(e)—Public Dissemination, Additional Swap Information, Anonymity, and Unique Product Identifiers**

The Commission proposes to make several primarily non-substantive changes to current §§ 43.4(a)–(e), (g) and (h). As background, § 43.4(a) generally requires that STAPD must be reported to an SDR so that the SDR can publicly disseminate it in real-time, including according to the manner described in § 43.4 and appendix A. The Commission proposes to delete current § 43.4(a). The Commission believes that current § 43.4(a) is overly general. As a result of removing current § 43.4(a), the Commission proposes to re-designate §§ 43.4(b)–(d) as §§ 43.4(a)–(c).

Current § 43.4(b) requires that any SDR that accepts and publicly

disseminates STAPD in real-time shall publicly disseminate the information described in appendix A, as applicable, for any PRST. The Commission proposes to re-designate § 43.4(b) as § 43.4(a), and make conforming changes. As proposed, § 43.4(a) would require that any SDR that accepts and publicly disseminates STAPD in real-time shall publicly disseminate the information for the STAPD elements in appendix C to part 43 in the form and manner provided in the technical specifications published by the Commission.

Current § 43.4(c) states that SDRs that accept and publicly disseminate STAPD in real-time may require reporting parties, SEFs, and DCMs to report to the SDR information necessary to compare the STAPD that was publicly disseminated in real-time to the data reported to an SDR pursuant to section 2(a)(13)(G) of the CEA or to confirm that parties to a swap have reported in a timely manner pursuant to § 43.3. The Commission proposes to re-designate § 43.4(c) as § 43.4(b) and make minor non-substantive changes.

Current § 43.4(d) contains regulations for maintaining the anonymity of the parties to a PRST. The Commission is proposing to re-designate § 43.4(d) as § 43.4(c) and make minor non-substantive changes. Among these changes, the Commission is proposing to remove current § 43.4(d)(4)(i)–(iii); re-designate § 43.4(d)(4) as § 43.4(c)(4); and consolidate the substance of §§ 43.4(d)(4)(i) and (iii) in proposed § 43.4(c)(4). These actions would remove the requirement in current § 43.4(d)(4)(ii) that registered SDRs publicly disseminate the actual assets underlying other commodity swaps that either reference one of the contracts described in appendix B to part 43<sup>107</sup> or that are economically related to such contracts.<sup>108</sup>

Currently, depending on the assets underlying other commodity swaps, such assets are either disseminated as reported or are disseminated as described in § 43.4(d)(4)(iii). Current § 43.4(d)(4)(iii) states that the underlying assets of swaps in the “other commodity” asset class that are not described in § 43.4(d)(4)(ii) shall be publicly disseminated by limiting the detail of the underlying assets. Current § 43.4(d)(4)(iii) also states that the identification of any specific delivery point or pricing point associated with the underlying asset of such “other commodity” swap shall be publicly disseminated pursuant to appendix E to part 43.

As proposed to be amended, § 43.4(c)(4) would provide the same geographic masking treatment for all assets underlying “other commodity” swaps, namely the geographic masking described in current § 43.4(d)(4)(iii). The Commission believed when adopting part 43 that other commodity swaps referencing or economically related to one of the contracts described in appendix B to part 43 were sufficiently liquid that publicly disseminating such information would not identify the swap counterparties<sup>109</sup> or materially reduce swap market liquidity.<sup>110</sup> However, the Commission preliminarily believes that other commodity swaps referencing, or economically related to, the contracts in appendix B may still be sufficiently bespoke to warrant additional masking. Consequently, the Commission proposes to remove the requirement in current § 43.4(d)(4)(ii) that registered SDRs publicly disseminate the actual assets underlying other commodity swaps that either reference one of the contracts described in appendix B to part 43 or that are economically related to such contracts. Because the Commission proposes to remove that requirement from current § 43.4(d)(4)(ii), the Commission also proposes to remove appendix B to part 43 from its regulations. The Commission also proposes to redesignate current appendix E as appendix B.

Finally, current § 43.4(e) permits SDRs to disseminate UPIs for certain data fields once a UPI is available. The Commission proposes to delete current § 43.4(e), which gives SDRs discretion regarding what fields to publicly disseminate after a UPI exists.<sup>111</sup> As discussed below in section III., the UPI will be addressed in the STAPD elements in appendix C.

**2. § 43.4(f)–(g)—Process To Determine Appropriate Rounded Notional or Principal Amounts**

Current § 43.4(f) requires that reporting parties, SEFs, and DCMs report the actual notional or principal amount of any swap, including block

<sup>109</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1211. CEA section 2(a)(13)(E)(i) requires the Commission to ensure that information disseminated pursuant to its real-time reporting rules does not identify swap “participants.” 7 U.S.C. 2(a)(13)(E)(i).

<sup>110</sup> CEA section 2(a)(13)(E)(iv) requires the Commission to take into account whether public disclosure pursuant to its real-time reporting rules will materially reduce market liquidity. 7 U.S.C. 2(a)(13)(E)(iv).

<sup>111</sup> The Commission has not yet designated a UPI and product classification system to be used in recordkeeping and swap data reporting pursuant to § 45.7.

<sup>106</sup> But see paragraph (2) of the “Publicly reportable swap transaction” definition in § 43.2, which states that examples of executed swaps that do not fall within the definition of publicly reportable swap transaction may include internal swaps between one-hundred percent owned subsidiaries of the same parent entity.

<sup>107</sup> See current § 43.3(d)(4)(ii)(A).

<sup>108</sup> See current § 43.3(d)(4)(ii)(B).

trades, to an SDR that accepts and publicly disseminates such data pursuant to part 43.<sup>112</sup>

As discussed above, the Commission is proposing to remove §§ 43.4(a) and (e), and re-designate § 43.4(b)–(d) as § 43.4(a)–(c). As a result of these changes, the Commission proposes to re-designate § 43.4(f) as § 43.4(d) and make minor non-substantive changes.

### 3. § 43.4(g)—Public Dissemination of Rounded Notional or Principal Amounts

As discussed above, the Commission is proposing to redesignate current § 43.4(f) as § 43.4(d). As a result of these changes, the Commission is proposing to re-designate current § 43.4(g) as § 43.4(e) and make minor non-substantive edits.

One of these non-substantive edits is a structural change in the regulations. Current § 43.4(g), titled “Public dissemination of rounded notional or principal amounts,” states that the notional or principal amount of a PRST, as described in appendix A to this part, shall be rounded and publicly disseminated by a registered SDR, and then sets out the rules for rounding.

The Commission is proposing to rephrase § 43.4(g), which would be re-designated as § 43.4(e), to state that the notional or principal amount of a PRST shall be publicly disseminated by an SDR subject to rounding as set forth in § 43.4(f) and a cap size as set forth in § 43.4(g).

Then, the rounding rules in current § 43.4(g) would be in a new section § 43.4(f) titled “Process to determine appropriate rounded notional or principal amounts.” Section § 43.4(f) would then contain the rounding rules for SDRs, subject to two substantive changes explained below, among other non-substantive changes.

The Commission proposes amending §§ 43.4(g)(8) and (9), which would be re-designated as §§ 43.4(f)(8) and (9). Current § 43.4(g)(8) requires a registered SDR to round the notional or principal amount of a PRST to the nearest one billion if it is less than 100 billion but equal to or greater than one billion. The Commission proposes to amend proposed § 43.4(f)(8) to require rounding to the nearest 100 million instead of one billion. Current § 43.4(g)(9) requires a registered SDR to round the notional or principal amount of a PRST to the nearest 50 billion if it is greater than 100 billion. The Commission proposes to amend § 43.4(f)(9) to require rounding to the nearest 10 billion and to add the words “equal to or” before “greater than 100 billion” to include swaps with

notional or principal amounts that are exactly 100 billion, the omission of which from the 2012 RTR Final Rule appears to have been an oversight.<sup>113</sup>

The Commission is concerned that broadly rounded notional or principal amounts could undermine the price discovery purpose of real time reporting.<sup>114</sup> The Commission is particularly concerned about swaps with notional or principal amounts over 1 billion, because there tend to be fewer swaps of such size relative to swaps with smaller notional or principal amounts. The Commission preliminarily believes that smaller rounding increments for the notional or principal amount of swaps covered by proposed §§ 43.4(f)(8) and (9) would improve price discovery for such swaps. Rounding the notional or principal amounts in smaller increments in proposed §§ 43.4(f)(8) and (9) also would be consistent with the rounding increments prescribed in § 43.4(g)(1)–(7) (*i.e.*, proposed § 43.4(f)(1)–(7)) on a percentage basis. The Commission preliminarily believes that the rounding increments in proposed §§ 43.4(f)(8) and (9) are sufficiently wide to protect the anonymity of swap counterparties, but invites comment on this issue. Additionally, the Commission intends to continue to limit geographic detail about delivery and pricing points and to provide notional or principal cap sizes, each of which further protects swap counterparties’ anonymity.<sup>115</sup>

### 4. § 43.4(h)—Process To Determine Cap Sizes

As a result of the above proposal to re-designate current § 43.4(g) as § 43.4(e) and create a separate section for rounding in § 43.4(f), the Commission is proposing to re-designate current § 43.4(h) as § 43.4(g). Current § 43.4(h)

contains, and proposed § 43.4(g) would contain, the cap size rules for SDRs.

As background, the initial cap sizes were to be equal to the greater of the initial AMBS for the respective swap category in appendix F or the respective cap sizes in § 43.4(h)(1)(i)–(v).<sup>116</sup> The Commission was to establish post-initial cap sizes, according to the process in § 43.6(f)(1), using reliable data collected by SDRs based on a one-year window of STAPD corresponding to each relevant swap category, recalculated no less than once each calendar year and using the 75-percent notional amount calculation described in § 43.6(c)(3) applied to the STAPD.<sup>117</sup> The Commission was to publish post-initial cap sizes on its website at <https://www.cftc.gov>,<sup>118</sup> and the caps were to be effective on the first day of the second month following the date of publication.<sup>119</sup>

Since the Commission has not yet moved to the post-initial period, the Commission now proposes to move to the post-initial cap sizes based on the 75% notional calculation, as the Commission directed itself to do in current § 43.4(h)(2). In addition, the Commission is proposing several amendments to the substance of the cap size regulations that the Commission will discuss in this section.

Structurally, the Commission proposes to remove the “initial cap sizes” and relabel the “post-initial cap sizes” as the “cap sizes.” Because the initial cap sizes will be superseded by the post-initial cap sizes once adopted, there is no longer any need to distinguish between initial cap sizes and post-initial cap sizes. Specifically, the Commission proposes to remove the initial cap sizes in § 43.4(h)(1) and establish cap sizes, which would not be referred to as post-initial cap sizes, in proposed § 43.4(g) that align with the

<sup>113</sup> The omission of swaps with notional or principal amounts of exactly 100 billion did not change the rounding result. Although such swaps are not presently subject to rounding due to their omission from § 43.4(g)(9), even if they were included therein, because their notional or principal amount is a round number already, they would not have been rounded, and would not be rounded as a result of proposed § 43.4(f)(9). However, because all swaps with notional or principal amounts of greater than 100 billion will be rounded to the nearest 10 billion if § 43.4(f)(9) is adopted as proposed, such swaps would still obtain the anonymizing benefits of §§ 43.4(f)(8) and (9) when 100 billion is the nearest number to round to pursuant to §§ 43.4(f)(8) or (9), as applicable.

<sup>114</sup> See CEA section 2(a)(13), 7 U.S.C. 2(a)(13) (stating that the purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery).

<sup>115</sup> See proposed §§ 43.4(c)(4) (limiting geographic detail) and 43.4(g) (notional or principal cap sizes).

<sup>116</sup> 17 CFR 43.4(h)(1). If appendix F did not provide an initial AMBS for a particular swap category, the initial cap size for such swap category would be equal to the appropriate cap size as set forth in § 43.4(h)(1)(i)–(v). As discussed in section II.F.3., the Commission is proposing to remove appendix F and publish the AMBSs and cap sizes on the Commission’s website, <https://www.cftc.gov>. Current § 43.4(h)(1) also requires SDRs, when publicly disseminating the notional or principal amounts for each such category, to disseminate the cap size specified for a particular category rather than the actual notional or principal amount in those cases where the actual notional or principal amount of a swap is above the cap size for its category. Current § 43.4(h) does not explicitly state that an SDR must publicly disseminate swap data subject to the cap size limit, but the Commission clarified this requirement in the preamble to the 2012 RTR Final Rule. See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1214.

<sup>117</sup> 17 CFR 43.4(h)(2).

<sup>118</sup> 17 CFR 43.4(h)(3).

<sup>119</sup> 17 CFR 43.4(h)(4).

<sup>112</sup> 17 CFR 43.4(f)(1)–(2).



methodology for setting block sizes in proposed § 43.6(e).

The initial cap sizes for the asset classes other than equities are currently equal to the greater of the initial AMBS set forth in appendix F to part 43 or the applicable cap size set forth in §§ 43.4(h)(1)(i)–(v). Appendix F sets forth initial AMBS by asset class and, within asset class, by various other categories. Current §§ 43.4(h)(1)(i)–(v) contain cap sizes for swaps, categorized by asset class,<sup>120</sup> expressed in notional or principal amounts.

The proposed cap sizes would be based on a 75-percent notional amount calculation for a select set of swap categories in the interest rate, credit, foreign exchange (“FX”) (consisting of U.S. currency and specified non-U.S. currency pairs), and other commodity asset classes,<sup>121</sup> as the Commission had intended when finalizing the Block Trade Rule. The Commission proposes to establish the cap sizes for these swap categories set forth in proposed §§ 43.6(b)(1)(i) (interest rate), (b)(2)(i)–(vii) (credit), (b)(4)(i) (FX), and (b)(5)(i) (other commodity), using the same methodology that the Commission proposes to use to establish AMBSs for those categories, but using a 75% notional amount calculation for the cap sizes rather than the 67% notional amount calculation that the Commission proposes to use to establish AMBSs.<sup>122</sup>

Additionally, the proposed cap sizes for those swap categories containing swaps with limited trading activity in the interest rate, credit, equity, FX, and other commodity asset classes would be set at USD 100 million, USD 400 million, USD 250 million, USD 150 million, and USD 100 million, respectively, in § 43.4(g)(4)–(8).<sup>123</sup>

Furthermore, as discussed below in II.F.2., the Commission also proposes to revise the current 75-percent notional amount calculation currently used for

<sup>120</sup> For swaps in the interest rate asset class, there are three separate cap sizes for different tenors.

<sup>121</sup> The Commission is not proposing to revise the current cap size for equities in § 43.4(h)(1)(iii). Instead, the Commission proposed to redesignate current § 43.4(h)(1)(iii) as § 43.4(g)(6) and leave the cap size for swaps in the equity category as USD 250 million.

<sup>122</sup> See section II.F.3. below for a discussion of the Commission’s proposal to revise the process to determine AMBS. As mentioned above, using the 75% notional amount calculation would be consistent with what the Commission had intended when it adopted the Block Trade Rule. See 17 CFR 43.4(h)(2).

<sup>123</sup> Proposed § 43.4(g)(4)–(8) would reference the regulations containing the categories for swaps with limited trading activity: § 43.6(b)(1)(i) (interest rate); § 43.6(b)(2)(viii) (credit); § 43.6(b)(3) (equity); § 43.6(b)(4)(iii) (FX); § 43.6(b)(5)(ii) (other commodity). The Commission’s process for determining these categories is discussed in section II.F.1. below.

setting post-initial cap sizes and, as discussed below in II.F.1, to revise the swap categories used to calculate cap sizes.

The Commission preliminarily believes that requiring itself to recalculate the cap size no less than once each calendar year, as required by current § 43.4(h)(2)(i), could lead to frequent updates to systems for SDRs without a clear benefit to the real-time public tape. Instead, the Commission is proposing a flexible approach to determine if recalculating those cap sizes, based on the 75-percent notional amount calculation, is merited. The Commission expects to evaluate the swap markets and trading in the proposed swap categories on an ongoing basis. The Commission believes this approach would strike the right balance between updating the cap sizes when doing so would benefit the public tape and not wanting to require SDRs to make unnecessary system changes.

For those cap sizes for which the Commission has established fixed USD amounts, there is no calculation or calculation method to update. Instead, the Commission expects to propose new cap sizes for these swap categories in the future if the Commission believes it warranted.

#### Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 43.4. In addition, the Commission specifically requests comment on the following:

(15) Each of § 43.4(f)(1)–(9) directs an SDR to “round” to the nearest specified amount, rather than to round up or down to the nearest specified amount. Should the Commission specify in proposed §§ 43.4(f)(1)–(9) that an SDR must round up, or down, to the nearest specified amount and in which circumstances an SDR must round up or down to the nearest specified amount? If so, what rounding convention should the Commission specify?

(16) Should the Commission require the removal of any caps that were applied pursuant to § 43.4(h) after six months and thereby reveal the actual notional amount of any capped amounts once six months has passed? Would six months be long enough to mitigate any anonymity concerns?

#### E. § 43.5—Time Delays for Public Dissemination of Swap Transaction and Pricing Data

##### 1. § 43.5(a)—General Rule

The Commission proposes several changes to § 43.5(a). Current § 43.5(a) states that the time delay for the real-

time public reporting of a block trade or LNOF begins upon execution, as defined in § 43.2. Current § 43.5(a) goes on to state that it is the responsibility of the registered SDR that accepts and publicly disseminates STAPD in real-time to ensure that the block trade or LNOF STAPD is publicly disseminated pursuant to part 43 upon the expiration of the appropriate time delay described in §§ 43.5(d) through (h).

The Commission proposes to change the reference to “public reporting” of a block trade or LNOF to “dissemination” thereof to reflect that reporting counterparties report STAPD to an SDR pursuant to part 43 but SDRs “disseminate” it by making such STAPD public. The Commission also proposes to remove references to LNOF transactions in § 43.5(a), and throughout part 43, to reflect that the Commission is proposing to establish, in § 43.5(c), discussed below in section II.E.3., a single time delay for public dissemination of STAPD of a swap with a notional or principal amount at or above the AMBS. The other proposed changes to § 43.5(a) are ministerial, conform to the proposed removal of §§ 43.5(c)–(h), or are discussed elsewhere in this NPRM.

As revised, proposed § 43.5(a) would state that the time delay for the real-time public dissemination of a block trade begins upon execution, as defined in § 43.2(a). Proposed § 43.5(a) would go on to state that it is the responsibility of the SDR that accepts and publicly disseminates STAPD in real-time to ensure that the STAPD for block trades is publicly disseminated pursuant to part 43 upon the expiration of the appropriate time delay described in § 43.5(c).

##### 2. § 43.5(b)—Public Dissemination of Publicly Reportable Swap Transactions Subject to a Time Delay

The Commission proposes to remove unnecessary text from § 43.5(b). Currently, § 43.5(b) uses a three-part description of the timing for a registered SDR to publicly disseminate STAPD that is subject to a time delay. Specifically, § 43.5(b) states that a registered SDR shall publicly disseminate STAPD that is subject to a time delay pursuant to this paragraph, as follows: (1) *No later than* the prescribed time delay period described in this paragraph; (2) *no sooner than* the prescribed time delay period described in this paragraph; and (3) *precisely upon* the expiration of the time delay period described in this paragraph.<sup>124</sup> The Commission proposes to remove the

<sup>124</sup> Emphasis added.

requirements of §§ 43.5(b)(1) and (2) that registered SDRs must disseminate the specified STAPD *no sooner than, and no later than* the prescribed time delay period and to retain the requirement of § 43.5(b)(3) that SDRs must disseminate the specified STAPD *precisely upon* the expiration of the time delay period. The *precisely upon* language implicitly includes prohibitions on both disseminating the STAPD sooner than the prescribed time delay period and disseminating it any later than such period, so these proposed changes are not substantive. The Commission also proposes to make ministerial rephrasing amendments to § 43.5(b).

As revised, proposed § 43.5(b) would state that an SDR shall publicly disseminate STAPD that is subject to a time delay precisely upon the expiration of the time delay period described in § 43.5(c).

### 3. § 43.5(c)–(h)—Removal of Certain Regulations Related to Time Delays

The Commission proposes to remove current §§ 43.5(c)–(h) and add a new § 43.5(c) that requires SDRs to implement a time delay of 48 hours for disseminating STAPD for each applicable swap transaction with a notional or principal amount above the corresponding AMBS, if the parties to the swap have elected block treatment. Because the time delays in proposed § 43.5(c) would replace the time delays in current appendix C, the Commission also proposes to remove appendix C.<sup>125</sup>

Current § 43.5(c) provides interim time delays for each PRST, not just block trades and LNOFs, until an AMBS is established for such PRST. The Commission adopted § 43.5(c) in case compliance with part 43 was required before the establishment of AMBSs.<sup>126</sup> Because the Commission has now established AMBSs by swap category,<sup>127</sup> current § 43.5(c) is no longer applicable. Therefore, the Commission proposes to remove current § 43.5(c).

Current §§ 43.5(d)–(h) phased in the various time delays for the dissemination of swap block trades and LNOFs over a one to two year period. The Commission believed when it adopted those regulations that

“providing longer time delays for public dissemination during the first year or years of real-time reporting [would] enable market participants to perfect and develop technology and to adjust hedging and trading strategies in connection with the introduction of post-trade transparency.”<sup>128</sup> Now that the phasing in of the time delays in current §§ 43.5(d)–(h) is complete, the Commission is proposing to remove the text remaining from the phase-in concept.

Current §§ 43.5(d)–(h) provide specific time delays for the public dissemination of STAPD by an SDR.<sup>129</sup> As background, CEA section 2(a)(13)(E)(iv) directs the Commission to take into account whether public disclosure of STAPD “will materially reduce market liquidity.” When the Commission adopted the Block Trade Rule in 2013, the Commission understood that the publication of detailed information regarding “outsize swap transactions” (*i.e.*, block trades and LNOFs) could expose swap counterparties to higher trading costs.<sup>130</sup> In this regard, the publication of detailed information about an outsize swap transaction could alert the market to the possibility that the original liquidity provider to the outsize swap transaction will be re-entering the market to offset that transaction. Other market participants, alerted to the liquidity provider’s large unhedged position, would have a strong incentive to exact a premium from the liquidity provider when the liquidity provider seeks to enter into offsetting trades to hedge this risk. As a result, liquidity providers may be deterred from becoming counterparties to outsize swap transactions if STAPD is publicly disseminated before liquidity providers can adequately offset their positions.

If a liquidity provider agrees to execute an outsize swap transaction, it likely will charge the counterparty the additional cost associated with hedging this transaction. In consideration of these potential outcomes, the Commission established the time delays for block trades and LNOFs to balance public transparency and the concerns that post-trade reporting would reduce

market liquidity.<sup>131</sup> The Commission noted when proposing the time delays for block trades and LNOFs that it would continue to analyze and study the effects of increased transparency on post-trade liquidity in the context of block trades and LNOFs.<sup>132</sup>

When the Commission adopted the block delays in 2012, it noted that commenters to the proposal recommended a range of time delays for public dissemination of block trades and LNOFs, including end-of-day, 24 hours, T+1, T+2, a minimum of four hours, and 180 days.<sup>133</sup> In the Roadmap, DMO stated an intention to evaluate real-time reporting regulations in light of goals of liquidity, transparency, and price discovery in the swaps market.<sup>134</sup> In response, the Commission received additional comments on the block delays.

One commenter generally supported DMO’s efforts to review public dissemination requirements in light of product liquidity, and asserted that DMO should consider whether there should be increased time delays for public reporting of block trades.<sup>135</sup> Another commenter requested that as DMO considered whether to shorten reporting deadlines and, relatedly, public dissemination of the data, DMO evaluate the impacts, if any, on market liquidity and counterparty confidentiality.<sup>136</sup> This commenter went on to explain that any changes in the speed for public dissemination could potentially be counterproductive and harmful and could further the need to examine block trade thresholds to protect counterparties and markets.<sup>137</sup>

In response to a later-announced Commission review of its rules, a commenter expressed concern that, with respect to block trades, fifteen minutes is too short a window within which to execute large hedging programs, which typically take several days or even weeks to execute, and current block trade reporting delays do not give end-users sufficient flexibility for creating

<sup>131</sup> Cf. Federal Reserve Bank of New York Staff Reports, An Analysis of OTC Interest Rate Derivatives Transactions: Implications for Public Reporting (Mar. 2012, revised Oct. 2012) at 3 (explaining that most post-trade reporting regimes allow for reduced reporting requirements for large transactions since immediate reporting of trade sizes has the potential to disrupt market functioning, deter market-making activity, and increase trading costs).

<sup>132</sup> See Real-Time Public Reporting of Swap Transaction Data, 75 FR 76140, 76159 n.67 (Dec. 7, 2010).

<sup>133</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1216.

<sup>134</sup> Roadmap at 11.

<sup>135</sup> Joint ISDA–SIFMA Letter at 9.

<sup>136</sup> Letter from SIFMA–AMG at 3.

<sup>137</sup> *Id.*

<sup>125</sup> As discussed in section III, the Commission is proposing to replace appendix C with the list of STAPD elements that would be publicly disseminated by SDRs.

<sup>126</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217 (stating “it is possible that compliance with part 43 may be required before the establishment of [AMBSs] for certain asset classes and/or groupings of swaps within an asset class”).

<sup>127</sup> See § 43.6 (setting forth the block sizes for various swap categories).

<sup>128</sup> Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217.

<sup>129</sup> The time delays are discussed above in section I.B.

<sup>130</sup> See Block Trade Rule at 32871 n.44 (stating that an “outsize swap transaction” is a transaction that, as a function of its size and the depth of the liquidity of the relevant market (and equivalent markets), leaves one or both parties to such transaction unlikely to transact at a competitive price).

efficient trade execution strategies without the risk of potentially revealing counterparty identities.<sup>138</sup> According to this commenter, anecdotal evidence suggests that data mining is pervasive, and that market participants have reported repeated instances in which markets have moved away from them shortly after beginning to execute large transactions as part of a hedging strategy.<sup>139</sup>

DMO and the Commission did receive comments supporting the current, shorter, block delay. One commenter stated that the “delay periods governing block trades should be minimized to what is truly essential and the size thresholds should be similarly high to minimize opacity in the market.”<sup>140</sup> Similarly, another commenter requested that given the existing 15 minute delay from real-time public reporting, the Commission should endeavor to update the block thresholds using recent market data to avoid risking that too many, or not enough, transactions are eligible for the delay from real-time public reporting requirements.<sup>141</sup>

In particular, the Commission is receptive to concerns that market participants may generally seek to hedge their portfolios before the close of business on the day a swap is executed, which would seem to support an either 24-hour or end-of-day reporting delay. The Commission understands that there are many variables that influence the time a market participant may take to put on a hedge, including risk tolerance to a price change, the risk of information leakage, the asset class involved and perceived demand for the hedge from other market participants, as well as consideration of the deadlines imposed by other authorities.<sup>142</sup> In light of these considerations, the Commission proposes to extend the delay to 48 hours for all block trades as a conservative measure to account for potential situations when a market participant requires additional time to place a

hedge position without significant unfavorable price movement and to create some consistency with the disclosure requirements of other authorities for non-liquid swaps.

A 48 hour time delay would extend, in each case, the time delay applicable to block trades or LNOFs pursuant to current §§ 43.5(d)–(g).<sup>143</sup> The longest current time delay is the 24 business hour time delay in § 43.5(h)(3) for LNOFs that are not subject to mandatory clearing or are exempt from such mandatory clearing and in which neither counterparty is an SD or MSP. Due to weekends and holidays, that delay is often longer than 48 hours. Although the proposed 48 hour time delay may in some cases be shorter than the 24 business hour time delay,<sup>144</sup> as noted above, the Commission preliminarily believes that a 48 hour time delay is more appropriate and should be sufficient.

#### Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 43.5. In particular, the Commission requests comment on the following:

(17) The Commission understands that for many trades that meet the definition of a block trade, the hedging process is often completed as quickly as possible and typically by the end of the trading day in which the block trade is executed so that the liquidity provider can establish its profit or loss on the transaction. On the other hand, some block trades that are very large in size or have unique characteristics could take longer than a single trading period to hedge. To balance the competing interest of price discovery and allowing hedging to occur, should the Commission consider two delay periods? For example, would a 15 minute, one hour, end of day, or 24 hour time delay be appropriate for swaps that fall within a 67 percent to 90 or 95 percent of the total notional amount of transactions range, while block trades that exceed the higher level would have a 48 hour time delay? If so, what would be the appropriate ranges for the total notional amounts and time delay

periods? The Commission invites comments on all aspects of the block delay, including how the Commission should analyze swaps in each asset class for the purpose of analyzing the block delay with respect to data sets and methodologies, among other factors.

#### F. § 43.6—Block Trades

##### 1. § 43.6(b)—Swap Categories

In the Block Trade Rule, the Commission assigned swap contracts to “swap categories” for the purpose of applying a common AMBS to different swap transactions.<sup>145</sup> Section 43.6(a) states that the Commission shall establish the AMBS for PRSTs based on the swap categories set forth in § 43.6(b) in accordance with the provisions set forth in paragraphs (c), (d), (e), (f) or (h) of § 43.6, as applicable.<sup>146</sup>

To create the swap categories, the Commission divided swap contracts into five asset classes: Interest rates; equity; credit; FX; and other commodity. The Commission then subdivided these asset classes into the various swap categories in § 43.6(b). The swap category criteria used by the Commission were intended to address the following two policy objectives: (1) Categorizing together swaps with similar quantitative or qualitative characteristics that warrant being subject to the same AMBS; and (2) minimizing the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.<sup>147</sup>

The Commission is concerned that some of the current swap categories include multiple swap transaction types that have different average notional amounts resulting in an AMBS for the swap category that has a disparate impact on swap transaction types that currently fall within the same swap category. For instance, current swap categories group together economically distinct swaps, such as interest rate swaps (“IRs”) denominated in U.S. dollars (“USD IRs”) and IRs denominated in Japanese yen (“JPY

<sup>138</sup> Letter from the Financial Services Roundtable at 27.

<sup>139</sup> *Id.*

<sup>140</sup> Letter from Better Markets at 7.

<sup>141</sup> Letter from Citadel at 3.

<sup>142</sup> The Commission notes that the European Union’s regulatory technical standards on transparency requirements for trading venues and investment firms for non-equity financial instruments under MIFID II (commonly referred to as RTS 2) provides that large-in scale swap transactions are eligible for deferred publication for two working days. See Article 8 of (EU) 2017/583 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (July 14 2016).

<sup>143</sup> The Commission supports setting the same time delay for all outside swap transactions. The Commission believes that setting dissimilar (*i.e.*, relatively shorter and longer) time delays for different swap transactions may inappropriately disadvantage hedging the risk of swaps in certain categories compared to hedging the risk of others, as discussed below in the context of § 43.5(h)(3).

<sup>144</sup> For example, during a typical five business day work week, a block trade executed midday Monday would have to be disseminated no later than midday Tuesday, whereas a 48 hour time delay would permit delaying the dissemination of such swap until midday Wednesday.

<sup>145</sup> As discussed above in section II.D.3., the process to determine cap sizes in proposed § 43.4(g) depends on the swap categories in proposed § 43.6(b) and the methodologies in proposed § 43.6(c).

<sup>146</sup> Regulation 43.6(c) sets forth the methodologies to determine AMBS and cap sizes. Regulation 43.6(d) specifies that there are no AMBSs for equity swaps. Regulation 43.6(e) sets forth the initial AMBSs, and § 43.6(f) sets forth the post-initial process to set AMBSs. Regulation 43.6(h) sets forth special provisions relating to AMBSs and cap sizes. The proposed changes to each of §§ 43.6(c), (e), and (f) will be discussed in II.F.2., 3., and 4., respectively. The Commission is not proposing to amend § 43.6(d).

<sup>147</sup> See Block Trade Rule at 32872.

IRSs”). Because the notional amounts of USD IRS transactions is, on average, higher than the notional amounts of JPY IRS transactions, the Commission preliminarily believes that the current IRS AMBS, which includes transactions from a group of currencies, is too high for some products, like JPY IRSs, and too low for others, like USD IRSs. In other words, USD IRSs are eligible for a dissemination delay, even though a delay may be unnecessary for a counterparty to hedge the trade at minimal additional cost due to the trade size, and that JPY IRSs are not eligible for a dissemination delay when the Commission preliminarily believes a delay is necessary for a counterparty to hedge the trade without incurring material additional costs due to the trade size.

In publishing the Block Trade Rule, the Commission had to rely on a small, private data set limited to IRSs and credit swaps.<sup>148</sup> Today, the Commission is able to analyze swap data from the SDRs. As described in the below sections, based on Commission staff analysis of SDR swap data across all asset classes, as well as discussions with market participants, the Commission preliminarily believes it is appropriate to re-evaluate the current swap categories for IRSs, credit swaps, FX swaps, and other commodity swaps in § 43.6(b).<sup>149</sup>

Although maintaining a limited set of swap categories is necessary, as a practical matter, to implement the block protocol and avoid excess complications and costs for market participants, the Commission believes that the AMBS for a swap category should be suited to the specific swap products in the swap category. Consequently, in some cases, the Commission is recommending increasing the number of swap categories to encompass smaller sets of swap transactions. The Commission preliminarily believes that the amendments to the categories proposed below would allow better tailoring of the block size to the profile of the swap transactions within the applicable swap category.

For the below analysis, Commission staff reviewed swap data from SDRs for a one-year period from May 2018 to May 2019 to develop swap categories that would generate block sizes suitable for

the individual swap products in the category. The Commission then identified the proposed criteria discussed below as the most relevant for purposes of its analysis, for the reasons explained below. The Commission anticipates that these criteria would provide an appropriate way to group swaps with economic similarities while reducing unnecessary complexity for market participants in determining whether their swaps are classified within a particular swap category.

#### a. Interest Rate Asset Class

Current § 43.6(b)(1) sets forth the IRS categories. The current IRS categories are based on a unique combination of three currency groups and nine tenor ranges, for a total of 27 categories. The three currency groups are super-major currencies,<sup>150</sup> major currencies,<sup>151</sup> and non-major currencies.<sup>152</sup> The tenor ranges are: Zero to 46 days; 47 to 107 days; 108 to 198 days; 199 to 381 days; 382 to 746 days; 747 to 1,842 days; 1,843 to 3,668 days; 3,669 to 10,973 days; or 10,974 days and above.<sup>153</sup>

At the time the categories were adopted, the Commission recognized that using individual currencies would have correlated better with the underlying curves.<sup>154</sup> However, the Commission was concerned that using individual currencies would have resulted in nearly 200 swap categories, and the Commission had wanted to reduce the number to avoid unnecessary complexity.<sup>155</sup> The Commission was also concerned that more categories would not substantially increase the explanation of variations in notional amounts, and that some categories would contain too few observations.<sup>156</sup>

In reviewing the 2018–2019 STAPD, the Commission found that 15 currencies made up 96% of the total population of IRS trades. These 15 currencies are the currencies of

Australia, Brazil, Canada, Chile, Czech Republic, the European Union, Great Britain, India, Japan, Mexico, New Zealand, South Africa, South Korea, Sweden, or the United States.

In light of the foregoing, for IRSs, the Commission proposes to establish separate swap categories for each combination of the 15 different currencies above<sup>157</sup> and the nine tenor ranges,<sup>158</sup> for a total of 135 swap categories. The nine tenor ranges would remain the same as the current nine tenor ranges in §§ 43.6(b)(1)(ii)(A)–(I). The proposed changes to the currencies would result in adding the currencies of Brazil, Chile, the Czech Republic, India and Mexico, and removing the currencies of Switzerland and Norway from current § 43.6(b)(1)(i)(A). The Commission believes the new swap categories will allow the Commission to establish AMBSs that better address the needs of these various swap products.

The Commission does not believe that the number of trades in currencies outside of the top 15 currencies in proposed § 43.6(b)(1)(i)(A) is high enough to compute a reliable and robust AMBS. Therefore, the Commission is also proposing to create a 136th swap category, in § 43.6(b)(1)(ii), for IRSs that the Commission has preliminarily determined are relatively illiquid. This “other” category would include IRS transactions in currencies other than those of the 15 countries specified in proposed § 43.6(b)(1)(i)(A)(I)–(XV) and the nine tenors specified in § 43.6(b)(i)(B). The Commission is proposing to group these low liquidity swaps together and set their block size to zero, which would make each transaction in this swap category eligible for delayed dissemination.<sup>159</sup>

#### b. Credit Asset Class

Current § 43.6(b)(2) sets forth the credit swap categories. The current credit swap categories in § 43.6(b)(2) are based on combinations of three conventional spread levels and six tenor ranges, for a total of 18 swap categories. The current spread levels are: (1) CDSs with spread values under 175 bps; (2) CDSs with spread values between 175 and 350 bps; and (3) CDSs with spread values above 350 bps.<sup>160</sup> The current tenor ranges are: (1) 0–746 days; (2) 747–1,476 days; (3) 1,477–2,207 days; (4) 2,208–3,120 days; (5) 3,121–4,581 days; and (6) 4,581 days and above.<sup>161</sup>

<sup>157</sup> See proposed § 43.6(b)(1)(i)(A)(I)–(XV).

<sup>158</sup> See proposed § 43.6(b)(1)(i)(B)(I)–(IX).

<sup>159</sup> See proposed § 43.6(e)(4), discussed below in section II.F.3.

<sup>160</sup> § 43.6(b)(2)(i).

<sup>161</sup> § 43.6(b)(2)(ii).

<sup>148</sup> See Block Trade Rule at 32873. For the Block Trade Rule, the Commission relied on transaction-level data for credit swaps and IRSs from Over-the-Counter Derivatives Supervisors Group, IRS data from MarktSERV, and credit data from The Warehouse Trust Company.

<sup>149</sup> As discussed below in section II.F.1.c., the Commission is not proposing to amend the equity asset class in current § 43.6(b)(3).

<sup>150</sup> The term “Super-major currencies” is defined in § 43.2 as the currencies of the European Monetary Union (*i.e.*, the euro), Japan (*i.e.*, the yen), the United Kingdom (*i.e.*, the pound sterling), and the United States (*i.e.*, the U.S. dollar).

<sup>151</sup> The term “Major currencies” is defined in § 43.2 as the currencies, and the cross-rates between the currencies, of Australia (*i.e.*, the Australian dollar), Canada (*i.e.*, the Canadian dollar), Denmark (*i.e.*, the Danish krone), New Zealand (*i.e.*, the Kiwi dollar), Norway (*i.e.*, the Norwegian krone), South Africa (*i.e.*, the South African rand), South Korea (*i.e.*, the South Korean won), Sweden (*i.e.*, the Swedish krona), and Switzerland (*i.e.*, the Swiss franc).

<sup>152</sup> The term “Non-major currencies” is defined in § 43.2 as all other currencies that are not super-major currencies or major currencies.

<sup>153</sup> The Commission is not proposing to amend the interest rate tenor ranges.

<sup>154</sup> Block Trade Rule at 32880.

<sup>155</sup> *Id.*

<sup>156</sup> See *id.*

In the Block Trade Rule, the Commission noted that it believed the tenor and conventional spread categories sufficiently captured the variation in notional size that is necessary for setting AMBS.<sup>162</sup> In particular, the Commission believed the proposed approach provided an appropriate way to group swaps with economic similarities while reducing unnecessary complexity for market participants in determining whether a particular swap was classified within a particular swap category.<sup>163</sup>

At the time, the Commission noted that the tenor buckets generally resulted in separate categorization for on-the-run and off-the-run indexes for swaps in its CDS data set, but declined to use these designations for grouping CDSs into categories because: (i) The underlying components of swaps with differing versions or series based on the same method or index are broadly similar, if not the same, and indicate economic substitutability across versions or series; (ii) differences in the average notional amount across differing versions or series were explained by differences in tenor; and (iii) using versions or series as the criterion for CDS categories could result in an unnecessary level of complexity.<sup>164</sup>

However, in analyzing 2018–2019 swap data from SDRs, the Commission now believes that CDS spreads may not be a consistent measure on which to base swap categories. Specifically, the Commission is concerned that products with similar spreads are not necessarily economically similar because all market participants may not calculate the same spread for a given product. In addition, a product's spread range can change, making it difficult for parties to be certain that they are eligible for block treatment.

Instead, the Commission has observed that most market participants trade specific credit products within specific tenor ranges. Based on its review of the swap data from SDRs, the Commission believes the most-traded CDS products are: (i) The CDXHY; (ii) iTraxx Europe, Crossover, and Senior Financials indexes; (iii) CDXIG; (iv) CDXEmergingMarkets; and (v) CMBX.<sup>165</sup> For each CDS product except

for CMBX, the Commission has observed that the four to six year tenors, or 1,477 to 2,207 days, make up about 90% of all CDS trades.

In light of the foregoing, the Commission is proposing to replace the current spreads and tenor ranges in §§ 43.6(b)(2)(i) and (ii) with the seven product types above and four to six year tenor ranges in setting the parameters of the various credit swap categories. The Commission is proposing to set the new credit asset class categories in § 43.6(b)(2) as: (i) Based on the CDXHY product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (ii) based on the iTraxx Europe product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (iii) based on the iTraxx Crossover product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (iv) based on the iTraxx Senior Financials product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (v) based on the CDXIG product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (vi) based on the CDXEmergingMarkets product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; and (vii) based on the CMBX product type.

The Commission does not believe the trade count outside of the products and/or tenor ranges proposed in § 43.6(b)(2)(i)–(vii) is high enough to compute a robust and reliable AMBS. Therefore, the Commission is proposing to add a swap category in § 43.6(b)(2)(viii) for credit swaps that trade at relatively low liquidity and set the block size for these illiquid credit swaps at zero, which would make each transaction in this swap category eligible for delayed dissemination.<sup>166</sup>

#### c. Equity Asset Class

Current § 43.6(b)(3) specifies that there shall be one swap category consisting of all swaps in the equity asset class. Unlike the other four asset class categories, the equity asset class contains no subcategories. The Commission adopted this approach in the Block Trade Rule based on: (i) The existence of a highly liquid underlying cash market for equities; (ii) the absence of time delays for reporting block trades in the underlying equity cash market;

Emerging Markets Index (CDX.EM) is composed of 15 sovereign reference entities that trade in the CDS market. The Market CMBX index is a synthetic tradable index referencing a basket of 25 commercial mortgage-backed securities. Markit iTraxx indices are a family of European, Asian and Emerging Market tradable CDS indices.

<sup>166</sup> See proposed § 43.6(e)(4), discussed below in section IIF.3.

(iii) the small relative size of the equity index swaps market relative to futures, options, and cash equity index markets; and (iv) the Commission's goal of protecting the price discovery function of the underlying equity cash market and futures market.<sup>167</sup>

The Commission has not learned of anything since the Block Trade Rule that would suggest there is not a highly liquid underlying cash market for equities and that the equity index swaps market is not still small relative to the futures, options, and cash equity index markets. Based on the foregoing, the Commission is not proposing to amend the equity asset class in § 43.6(b)(3).

#### d. Foreign Exchange Asset Class

Current § 43.6(b)(4) sets forth the FX swap categories. The current FX swap categories are grouped by: (i) The unique currency combinations of one super-major currency<sup>168</sup> paired with another super major currency, a major currency,<sup>169</sup> or a currency of Brazil, China, Czech Republic, Hungary, Israel, Mexico, Poland, Russia, and Turkey; or (ii) unique currency combinations not included in § 43.6(b)(4)(i).<sup>170</sup>

In establishing the FX swap categories in § 43.6(b)(4)(i), the Commission believed that the categories would cover the most liquid currency combinations while minimizing complexity by using a small number of swap categories.<sup>171</sup> To establish the FX swap categories, the Commission primarily relied on the Survey of North American FX Volume in October 2012 conducted by the Foreign Exchange Committee.<sup>172</sup> The survey suggested that the categories in § 43.6(b)(4)(i) would cover more than 86% of the notional value of total monthly volume of FX swaps that are priced or facilitated by traders in North America.<sup>173</sup>

<sup>167</sup> See Block Trade Rule at 32884.

<sup>168</sup> The term "Super-major currencies" is defined in § 43.2 as the currencies of the European Monetary Union (*i.e.*, the euro), Japan (*i.e.*, the yen), the United Kingdom (*i.e.*, the pound sterling), and the United States (*i.e.*, the U.S. dollar).

<sup>169</sup> The term "Major currencies" is defined in § 43.2 as the currencies, and the cross-rates between the currencies, of Australia (*i.e.*, the Australian dollar), Canada (*i.e.*, the Canadian dollar), Denmark (*i.e.*, the Danish krone), New Zealand (*i.e.*, the Kiwi dollar), Norway (*i.e.*, the Norwegian krone), South Africa (*i.e.*, the South African rand), South Korea (*i.e.*, the South Korean won), Sweden (*i.e.*, the Swedish krona), and Switzerland (*i.e.*, the Swiss franc).

<sup>170</sup> See § 43.6(b)(4).

<sup>171</sup> See Block Trade Rule at 32885.

<sup>172</sup> The Foreign Exchange Committee is an industry group that provides guidance and leadership to the FX market that includes representatives of major financial institutions engaged in foreign currency trading in the United States and is sponsored by the Federal Reserve Bank of New York.

<sup>173</sup> See Block Trade Rule at 32885.

<sup>162</sup> See Block Trade Rule at 32883.

<sup>163</sup> See *id.*

<sup>164</sup> See *id.*

<sup>165</sup> The Markit CDX family of indices is the standard North American CDS family of indices, with the primary corporate indices being the CDX North American Investment Grade (consisting of 125 investment grade corporate reference entities) (CDX.NA.IG) and the CDX North American High Yield (consisting of 100 high yield corporate reference entities) (CDX.NA.HY). The Markit CDX

In reviewing the 2018–2019 swap data from SDRs, the Commission observed that almost 94% of the over 7 million FX swaps included USD as one currency in each swap's currency pair. Of these swaps, the top-20 currencies paired with USD were currencies from Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan.

In light of the foregoing, the Commission proposes to replace the swap categories in § 43.6(b)(4) for FX swaps with new swap categories by currency pair. The Commission believes new swap categories would allow the Commission to generate AMBSs that address the needs of market participants trading these various swap products. Proposed § 43.6(b)(4)(i) would be comprised of FX swaps with one currency of the currency pair being USD, paired with another currency from one of the following: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan.

The Commission proposes to create a new category for FX swaps where neither currency in the currency pair is USD in proposed § 43.6(b)(4)(ii). Proposed § 43.6(b)(4)(ii) would be comprised of swaps with currencies from Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan. As discussed further below in the discussion about amendments to the process to determine AMBS in section II.F.1.d., the Commission is proposing that parties to these FX swaps could elect to receive block treatment if the notional amount of either currency in the currency exchange is greater than the minimum block size for a FX swap between the respective currencies, in the same amount, and USD described in § 43.6(b)(4)(i).

The Commission does not believe there is sufficient trade count in FX swaps outside of the currency pairs proposed in § 43.6(b)(4)(i)–(ii) to compute a reliable and robust AMBS. Therefore, the Commission is proposing to add a swap category in § 43.6(b)(4)(iii) for FX swaps that trade at relatively low liquidity, and set the block size for these illiquid FX swaps at zero, which would make each

transaction in this swap category eligible for delayed dissemination.<sup>174</sup>

#### e. Other Commodity Asset Class

Current § 43.6(b)(5) sets forth the other commodity swap categories. The current other commodity swap categories are grouped by either (1) the relevant contract referenced in appendix B of part 43<sup>175</sup> with respect to swaps that are economically related to a contract in appendix B, or (2) the following futures-related swaps with respect to swaps that are not economically related to contracts in appendix B: CME Cheese; CBOT Distillers' Dried Grain; CBOT Dow Jones-UBS Commodity Index; CBOT Ethanol; CME Frost Index; CME Goldman Sachs Commodity Index (GSCI), (GSCI Excess Return Index); NYMEX Gulf Coast Sour Crude Oil; CME Hurricane Index; CME Rainfall Index; CME Snowfall Index; CME Temperature Index; or CME U.S. Dollar Cash Settled Crude Palm Oil.<sup>176</sup> Swaps that are not covered in either § 43.6(b)(5)(i) or § 43.6(b)(5)(ii) are categorized according to the relevant product type referenced in appendix D of part 43.<sup>177</sup>

The swap categories in § 43.6(b)(5)(i) differ from those in § 43.6(b)(5)(ii) in that the former may be economically related to futures or swaps that *are not* subject to the block trade rules of a DCM, whereas the latter are economically related to futures contracts that are subject to the block trade rules of a DCM.<sup>178</sup> Despite that difference, the Commission established the §§ 43.6(b)(5)(i)–(ii) swap categories and related initial block sizes to correspond with those set by DCMs for

<sup>174</sup> See proposed § 43.6(e)(4), discussed below in section II.F.3.

<sup>175</sup> Appendix B to part 43 lists 42 swap categories based on such contracts.

<sup>176</sup> See § 43.6(b)(5)(i)–(ii). The 18 swap categories in § 43.6(b)(5)(ii) are based on futures contracts to which swaps in these categories are economically related.

<sup>177</sup> See § 43.6(b)(5)(iii). Appendix D establishes “other” commodity groups and individual other commodities within these groups. These categories are for swaps that are not economically related to any of the contracts listed in appendix B or any of the contracts listed in § 43.6(b)(5)(ii). If there is an individual other commodity listed, the Commission would deem it a separate swap category, and thereafter set an AMBS for each such swap category. If a swap unrelated to a specific other commodity listed in the other commodity group in appendix D, the Commission would categorize such swap as falling under the relevant other swap category. See Block Trade Rule at 32888. As discussed below in this section, the Commission is proposing to redesignate appendix D as appendix A, and replace it with updated swap categories for the other commodity asset class.

<sup>178</sup> See *id.* at 32887.

economically related futures contracts.<sup>179</sup>

The Commission noted in the Block Trade Rule that it was relying on DCMs' knowledge of, and experience with, liquidity in related futures markets until additional data became available.<sup>180</sup> In addition, the Commission noted that it was not using additional criteria to create more granular swap categories in the other commodity asset class until swap data became available.<sup>181</sup>

The Commission proposes to establish swap categories for the other commodity swaps asset class based on the list of underliers in current appendix D to part 43. The Commission proposes to modify the list of underliers in current appendix D and to redesignate the appendix as appendix A as a result of the proposed removal of current appendices A through C. For swaps that have a physical commodity underlier listed in proposed appendix A to part 43, proposed § 43.6(b)(5)(i) would group swaps in the other commodity asset class by the relevant physical commodity underlier. The proposed list of underliers in appendix A would be based on broad commodity categories the Commission has identified from its review of the swap data from SDRs, rather than references to specific futures contracts.

For other commodity swaps outside of those based on the underliers in proposed appendix A, the Commission does not believe trade count is high enough to compute a robust and reliable AMBS. Therefore, the Commission is proposing to add a swap category in § 43.6(b)(5)(ii) for relatively illiquid other commodity swaps and set the block size for these swaps at zero.<sup>182</sup>

#### 2. § 43.6(c)—Methodologies To Determine Appropriate Minimum Block Sizes and Cap Sizes

The Commission adopted §§ 43.6(c)–(f) and (h) to establish a phased-in approach for determining AMBSs, with an initial period and a post-initial period for determining AMBSs and cap sizes for each swap category.<sup>183</sup> Regulation 43.6(c) sets forth the methodologies for the Commission to determine AMBSs and cap sizes using the PRSTs in the swap categories

<sup>179</sup> See *id.* at 32888.

<sup>180</sup> See *id.*

<sup>181</sup> See *id.*

<sup>182</sup> See proposed § 43.6(e)(4), discussed below in section II.F.3.

<sup>183</sup> Block Trade Rule at 32918. Appendix F to part 43 currently contains a schedule of AMBSs effective during the initial period. Regulations 43.6(e) and (f) set forth the initial AMBSs and the post-initial process to determine AMBSs, while § 43.6(c) contained the methodologies for the Commission to do so with the swap categories set forth in § 43.6(b).

established pursuant to § 43.6(b). Current § 43.6(c) sets forth three alternative, notional-based statistical calculations: a 50-percent notional amount calculation; a 67-percent notional amount calculation; and a 75-percent notional amount calculation.<sup>184</sup> Each methodology is intended to ensure that within a swap category, the stated percentage of the sum of the notional amounts of all swap transactions in that category are disseminated on a real-time basis.

In general, the instructions for each of the 50-percent, 67-percent, and 75-percent levels to calculate AMBSs and cap sizes require the Commission to select all PRSTs within a swap category using one year's worth of data, converting them to the same currency and using a trimmed data set, determine the sum of the notional amounts of swaps in the trimmed data set, multiply the sum of the notional amounts by 50, 67, or 75 percent, rank the results from least to greatest, calculate the cumulative sum of the observations until it is equal to or greater than the 50, 67, or 75-percent notional amount, select and round the notional amount, and set the AMBS equal to that amount.<sup>185</sup>

For the initial period, the Commission applied the 50-percent notional amount calculation in § 43.6(c)(1) to determine the AMBS.<sup>186</sup> For AMBS in the post-initial period, the Commission was to adopt the 67-percent notional amount calculation in current § 43.6(c)(2).<sup>187</sup>

The Commission set the initial cap sizes as the greater of the interim cap sizes (the period of time before the initial period) in all five asset classes set forth in the 2012 RTR Final Rule and the AMBS for the respective swap category calculated pursuant to the 50-percent notional amount calculation.<sup>188</sup> The Commission was to use the 75-percent notional amount calculation in current § 43.6(c)(3) to determine the appropriate post-initial cap sizes for all swap categories.<sup>189</sup> However, the

Commission has not calculated the block sizes or cap sizes for the post-initial period.

The Commission is proposing several changes to the AMBS and cap size methodologies in § 43.6(c). First, the Commission is proposing to remove the 50-percent notional amount calculation in § 43.6(c)(1) because the 50-percent notional amount calculation was only intended to be used for calculating the AMBS for the interest rate and credit swap categories in the initial period,<sup>190</sup> and the initial period has now passed. Based on the proposed removal of § 43.6(c)(1), the Commission is proposing to re-designate §§ 43.6(c)(2) and (3) as §§ 43.6(c)(1) and (2), respectively.

The Commission is also proposing minor amendments to the calculations in current §§ 43.6(c)(2)–(3) (the 67-percent and 75-percent notional amount calculations, respectively). The Commission is proposing to update certain steps of the statistical calculations set forth in current §§ 43.6(c)(2)(i)–(ix), proposed to be re-designated as § 43.6(c)(1)(i)–(ix). Current § 43.6(c)(2)(i) requires the Commission to select all PRSTs within a specific swap category using a one-year window of data. As re-designated, proposed § 43.6(c)(1)(i) would require the Commission to select all reliable SDR data for at least a one-year period for each relevant swap category. The Commission believes this revision will simplify the language and clarify that the Commission will be using SDR data in its calculations.

Current § 43.6(c)(2)(ii) requires the Commission to convert to the same currency or units and use a trimmed data set but does not specify what is being converted. As redesignated, proposed § 43.6(c)(1)(ii) would clarify that the Commission will convert the notional amount to the same currency or units and use a trimmed data set. The Commission considers this to be a non-substantive amendment to improve the readability of step (ii) in the methodology.

As mentioned above in the discussion of the proposed amendments to the definition of “trimmed data set,” the Commission is also proposing to change the number of standard deviations used for excluding outliers in the data set.

revise the process to determine cap size in § 43.4(g), which the Commission proposes to re-designate from § 43.4(h), but proposes to continue to use the 75-percent notional amount calculation for cap sizes.

<sup>190</sup> § 43.6(e)(1). The Commission applied the 50-percent notional amount calculation methodology in § 43.6(c)(1) and published the related AMBS in appendix F to part 43.

The current definition of “trimmed data set” has the Commission remove extraordinarily large notional transactions by transforming the data into a logarithm with a base of 10, computing the mean, and excluding transactions that are beyond four standard deviations above the mean.

As explained in the Block Trade Rule, trimming the data set is necessary to avoid the skewing of these measures, which could lead to the establishment of inappropriately high minimum block sizes.<sup>191</sup> However, in applying these methodologies to propose updates to the block and cap sizes, Commission staff found that excluding commodity transactions beyond four standard deviations above the mean led to the inclusion of more extraordinarily large notional transactions that staff worried would skew results. With commodity swaps in particular, the Commission is concerned that the wide variation in how reporting counterparties report notional amounts leads to more outliers that should not be included in the trimmed data set.

Commission staff found a similar issue with four standard deviations for the other asset classes, but to a lesser extent than commodities, that the Commission preliminarily believes could be addressed by moving from four standard deviations to three. In each case, the Commission invites comment on staff's approach and findings with respect to the methodologies and accounting for outliers. Until then, the Commission is proposing updating the definition of “trimmed data set” to mean a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of 10, computing the mean, and excluding transactions that are beyond two standard deviations above the mean for the other commodity asset class and three standard deviations above the mean for all other asset classes.

In the Block Trade Rule proposal, the Commission provided the following example to explain the rounding instructions in § 43.6(c)(2)(viii): “if the observed notional amount is \$1,250,000, the amount should be increased to \$1,300,000. This adjustment is made to assure that at least 67 percent of the total notional amount of transactions in a trimmed data set are publicly disseminated in real time.”<sup>192</sup>

Current § 43.6(c)(2)(viii) directs the Commission to round the notional amount of the observation discussed in § 43.6(c)(2)(vii) “to” two significant

<sup>191</sup> See Block Trade Rule at 32895.

<sup>192</sup> Block Trade Rule at 15480 n.192.

<sup>184</sup> See §§ 43.6(c)(1), (2), and (3), respectively.

<sup>185</sup> See generally §§ 43.6(c)(1)–(3). Once the AMBS is set, the Commission sets the related cap size pursuant to § 43.6(h). For the post-initial period, current § 43.6(h) requires the Commission to use reliable data collected by SDRs based on: (i) A one-year window of STAPD corresponding to each relevant swap category recalculated no less than once each calendar year; and (ii) the 75-percent notional amount calculation described in § 43.6(c)(3) applied to the STAPD described in § 43.6(h)(2)(i). The Commission's proposed amendments to the process to determine cap size are discussed above in section II.D.4.

<sup>186</sup> See § 43.6(e).

<sup>187</sup> See § 43.6(f)(2).

<sup>188</sup> See § 43.4(h)(1).

<sup>189</sup> See § 43.4(h)(2)(ii). As discussed above in section II.D.3., the Commission is proposing to

digits,<sup>193</sup> or if the notional amount is already significant “to” two digits, increase the notional amount to the next highest rounding point of two significant digits. The Commission is proposing to revise § 43.6(c)(1)(viii) to specify that the Commission has to round the notional amount of the observation “up to” two significant digits, or if it is already significant “to only” two digits, increase the notional amount to the next highest rounding point of two significant digits. The Commission believes changing “to” to “up to” and “to only,” respectively, in § 43.6(c)(2)(vii) would clarify the Commission’s intent consistent with the above example.

Finally, the Commission is proposing to replace the individual instructions for the 75-percent notional amount calculation contained in current § 43.6(c)(3) with a cross-reference in proposed § 43.6(c)(2) to the procedures set out in proposed § 43.6(c)(1). Since the steps for the calculations are the same, the Commission believes simply cross-referencing in proposed § 43.6(c)(2) the procedures in proposed § 43.6(c)(1) will help ensure that market participants do not believe the calculation procedures are different.

### 3. § 43.6(e)—Process To Determine Appropriate Minimum Block Sizes

The Commission is proposing several amendments to the § 43.6 processes for determining AMBS. Current §§ 43.6(e) and (f) set forth the processes for the Commission to set the AMBS in the initial and post-initial periods by applying the methodologies in § 43.6(c) and using the PRSTs within the swap categories established pursuant to § 43.6(b).

For the initial period, § 43.6(e) established that the AMBS for PRSTs in the IRS category, credit swap category, FX swap category in § 43.6(b)(4)(i), and the other commodity category in § 43.6(b)(5)(i) or (ii) was the AMBS in appendix F to part 43.<sup>194</sup> Swaps in the FX swap category in § 43.6(b)(4)(ii), and other commodity swap category in § 43.6(b)(5)(iii), were eligible to be

treated as block trades or LNOFSs, as applicable.<sup>195</sup>

Regulation 43.6(e)(3) provided an exception from treatment as block trades or LNOFs (as applicable) for PRSTs in the other commodity swap category in § 43.6(b)(5)(i) that were economically related to a futures contract in appendix B of part 43, if such futures contract is not subject to a DCM’s block trading rules.

For the post-initial period, § 43.6(f) directed the Commission to establish, after an SDR collected at least one year of reliable data for a particular asset class, the post-initial AMBS, by swap categories.<sup>196</sup> For the swap categories listed in § 43.6(e)(1), the Commission was to apply the 67-percent notional amount calculation.<sup>197</sup> Swaps in the FX category in § 43.6(b)(4)(ii) were eligible for block trade or LNOF treatment, as applicable.<sup>198</sup>

Regulation 43.6(f)(4) directed the Commission to publish the post-initial AMBSs on its website and stated that the AMBSs would be effective on the first day of the second month following the date of publication.<sup>199</sup> However, the Commission has not published any post-initial AMBSs.

Since the initial period has passed, the Commission is proposing to remove the regulations for the initial AMBS in current § 43.6(e) and appendix F, which, as described above, specifies the initial AMBSs for PRSTs in the swap categories specified in current § 43.6(e)(1). To avoid retaining § 43.6(e) in its regulations with no text other than “Reserved,” the Commission is proposing to re-designate § 43.6(f) as § 43.6(e) and rename it “Process to determine appropriate minimum block sizes.”

In new § 43.6(e), the Commission would be required to apply the 67-percent notional amount calculation to calculate new AMBS, as current § 43.6(f) specified for the post-initial period. Proposed § 43.6(e)(1) would state that the Commission shall establish AMBS, by swap categories, as described in § 43.6(e)(2)–(5). Proposed § 43.6(e)(2) would state that the Commission shall determine the AMBS for the swap categories described in §§ 43.6(b)(1)(i), (b)(2)(i)–(vii), (b)(4)(i), and (b)(5)(i) by applying the 67-percent notional amount methodology in proposed § 43.6(c)(1).

<sup>195</sup> See § 43.6(e)(2).

<sup>196</sup> See § 43.6(f)(1). Regulation 43.6(f)(1) also specified that the Commission had to update those AMBSs no less than once each calendar year thereafter.

<sup>197</sup> See § 43.6(f)(2).

<sup>198</sup> See § 43.6(f)(3).

<sup>199</sup> § 43.6(f)(5).

Proposed § 43.6(e)(3) would set forth a method for determining which block sizes are applicable to FX swaps. Proposed § 43.6(e)(3) would specify that the parties to a FX swap described in § 43.6(b)(4)(ii) may elect to receive block treatment if the notional amount of either currency would receive block treatment if the currency were paired with USD. In other words, for each currency underlying the FX swap, the counterparties would determine whether the notional amount of either currency would be above the block threshold if paired with USD, as described in § 43.6(b)(4)(i). If either notional amount paired with USD was greater than the block threshold, the swap described in § 43.6(b)(4)(ii) would qualify for block treatment.

As discussed above in section II.F.1., the Commission is proposing to set the block size of all swaps in the swap categories described in §§ 43.6(b)(1)(ii), (b)(2)(viii), (b)(4)(iii), and (b)(5)(ii) at zero and make all such swaps eligible to be treated as block trades in proposed § 43.6(e)(4). Finally, the Commission is proposing to remove current appendix F and specify in proposed § 43.6(e)(5) that the Commission would publish the AMBSs determined pursuant to § 43.6(e)(1) on its website at <https://www.cftc.gov>.

### 4. § 43.6(f)—Required Notification

The Commission is proposing to re-designate current § 43.6(g) as § 43.6(f) to reflect the consolidation of §§ 43.6(e) and (f) discussed above in section II.F.3. and avoid designating § 43.6(f) as reserved in the Code of Federal Regulations. Current § 43.6(g) sets forth the requirements for parties to notify their execution venue (*i.e.*, SEF or DCM) of the parties’ block trade or LNOF elections.

The Commission is proposing to revise the content of current § 43.6(g)(1)(i) (redesignated as § 43.6(f)(1)(i)) to clarify that parties to a PRST with a notional at or above the AMBS can elect to have the PRST treated as a block trade. As background, current § 43.6(g)(1)(i) requires the parties to a PRST that has a notional amount at or above the AMBS to notify the relevant SEF or DCM, as applicable, pursuant to the rules of such SEF or DCM, of their election to have the PRST treated as a block trade. As background, current § 43.6(g)(1)(i) requires the parties to a PRST that has a notional amount at or above the AMBS to notify the relevant SEF or DCM, as applicable, pursuant to the rules of such SEF or DCM, of its election to have the PRST treated as a block trade. The Commission intended for § 43.6(g)(1)(i)

<sup>193</sup> By significant digits, the Commission means the number of digits in a figure that express the precision of a measurement instead of its magnitude. In a measurement, commonly the in-between or embedded zeros are included but leading and trailing zeros are ignored. Non-zero digits, and leading zeros to the right of a decimal point, are always significant.

<sup>194</sup> See § 43.6(e)(1). The Commission applied the 50-percent notional amount calculation to the credit and interest rate swap categories in appendix F. As discussed further below in this section, the Commission is proposing to remove appendix F and publish the new AMBS for PRSTs on the Commission’s website, <https://www.cftc.gov>.



to establish that the parties to a PRST with a notional amount at or above the AMBS would be required to notify the SEF or DCM of their election to have their qualifying PRST treated as a block trade.<sup>200</sup> However, the Commission is concerned that the current phrasing of the regulation suggests parties must elect to have a qualifying PRST treated as a block trade, instead of providing parties with the discretion to choose.

As a result, to remove any ambiguity, proposed § 43.6(f)(1)(i) would state that if the parties make such an election, the reporting counterparty must notify the SEF or DCM.

Current § 43.6(g)(1)(ii) requires the execution venue (*i.e.*, SEF or DCM) to notify the SDR of such a block trade election when transmitting STAPD to the SDR in accordance with § 43.3(b)(1). The Commission is retaining the substance of current § 43.6(g)(1)(ii) in re-designated § 43.6(f)(1)(ii), but removing the specific reference to § 43.3(b)(1) and streamlining the language to state that the SEF or DCM, as applicable, shall notify the SDR of such a block trade election when reporting the STAPD to such SDR in accordance with part 43.

The Commission is proposing to add new § 43.6(f)(1)(iii) to clarify that SEFs and DCMs may not disclose block trades prior to the expiration of the applicable dissemination delay. The Commission has previously explained that the dissemination delays in part 43 are intended to protect end users and liquidity providers from the expected price impact of the disclosure of block trades.<sup>201</sup> The Commission believes that it is current practice for SEFs and DCMs to wait until the expiration of the applicable dissemination delay before disclosing block trades. However, the Commission believes market participants would benefit from having this requirement codified to avoid ambiguity. As a result, proposed § 43.6(f)(1)(iii) would state that SEFs or DCMs shall not disclose STAPD relating to block trades subject to the block trade election prior to the expiration of the applicable delay set forth in § 43.5(c).

Current § 43.6(g)(2) states that reporting parties who execute an off-facility swap that has a notional amount at or above the AMBS shall notify the applicable registered SDR that such swap transaction qualifies as an LNOF concurrently with the transmission of STAPD in accordance with part 43. The Commission is proposing to revise § 43.6(g)(2), which would be re-designated as § 43.6(f)(2). The proposed amendments to § 43.6(g)(2) are similar

to the proposed amendments to § 43.6(f)(1)(i). Specifically, the Commission is proposing to clarify that parties to a PRST that is an off-facility swap with a notional at or above the AMBS can elect to have the PRST treated as a block trade. Revised § 43.6(f)(2) would state that if the parties make such an election, the reporting counterparty must notify the SDR.

##### 5. § 43.6(g)—Special Provisions Relating to Appropriate Minimum Block Sizes and Cap Sizes

The Commission is proposing to re-designate current § 43.6(h) as § 43.6(g) in response to the consolidation of §§ 43.6(e) and (f) and to avoid designating § 43.6(f) as reserved in the Code of Federal Regulations, as discussed above in section II.F.3.<sup>202</sup> The Commission also proposes to remove current § 43.6(h)(5), which contains a provision for determining the appropriate currency classification for currencies that succeed super-major currencies. Regulation 43.6(h)(5) would no longer be necessary due to the proposed modifications in § 43.6(b) changing the swap categories to individual currencies rather than currency groups like super-major currencies.

As a result of the proposed removal of § 43.6(h)(5), the Commission proposes to re-designate the current § 43.6(h)(6) aggregation provision as § 43.6(g)(5) rather than § 43.6(g)(6) and to make certain substantive changes to re-designated § 43.6(g)(5).

Current § 43.6(h)(6) generally prohibits the aggregation of orders for different accounts to satisfy minimum block trade size or cap size requirements but contains an exception for orders on SEFs and DCMs by certain commodity trading advisors (“CTAs”), investment advisers, and foreign persons performing a similar role or function. The Commission believed such a prohibition was necessary to ensure the integrity of block trade principles and preserve the basis for the anonymity associated with establishing cap sizes.<sup>203</sup>

While the aggregation prohibition in current § 43.6(h)(6) is intended to incentivize trading on SEFs and DCMs, the Commission recognizes this incentive does not exist for swaps that are not listed or offered for trading on

<sup>202</sup> The Commission is proposing a related conforming change in § 43.6(a). Currently, that paragraph cross-references § 43.6(h). The Commission proposes to update that provision so it cross-references § 43.6(g) to reflect the re-designation.

<sup>203</sup> See Block Trade Rule at 32904.

SEFs and DCMs.<sup>204</sup> The Commission is therefore proposing to amend the aggregation prohibition to provide for swaps listed or offered for trading on SEFs and DCMs.

Current § 43.6(h)(6)(ii) conditions the exception from the aggregation prohibition on a CTA, investment adviser, or foreign person having more than \$25 million in assets under management. In adopting this condition, the Commission explained that the \$25 million threshold would help ensure that persons allowed to aggregate orders were appropriately sophisticated, while at the same time not excluding an unreasonable number of CTAs, investment advisers, and similar foreign persons.<sup>205</sup>

However, since the Block Trade Rule was adopted, the Commission has come to believe that the \$25 million threshold may be excluding more participants from taking advantage of the exception than DMO staff initially expected. Therefore, the Commission is proposing to remove the \$25 million threshold in current § 43.6(h)(6)(ii) and, therefore, to not incorporate that into proposed § 43.6(g)(5) as a condition, even though it was a condition of the relief in NAL 13–48.

Finally, the Commission is proposing several non-substantive changes throughout proposed § 43.6(g)(5). These changes include rephrasing the introductory text for clarity, updating cross-references, and specifying in proposed §§ 43.6(g)(5)(ii) and (iii) that the aggregated transaction is reported as a block trade, and the aggregated orders are executed as one swap transaction, respectively.

##### 6. § 43.6(h)—Eligible Block Trade Parties

The Commission is proposing to re-designate § 43.6(i) as § 43.6(h) in response to the consolidation of §§ 43.6(e) and (f) to avoid designating § 43.6(f) as reserved in the Code of Federal Regulations, as discussed above in section II.F.3. In addition, to conform to the proposed revisions to § 43.6(h)—specifically the removal of the \$25

<sup>204</sup> In 2013, DMO granted indefinite no-action relief extending the exception to swaps that are not listed or offered for trading on a SEF or a DCM. See No-Action Relief For Certain Commodity Trading Advisors and Investment Advisors From the Prohibition of Aggregation Under Regulation 43.6(h)(6) for Large Notional Off-Facility Swaps, CFTC Staff No-Action Letter No. 13–48 (Amended), (Aug. 6, 2013), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/13-48.pdf> (“NAL 13–48”). The Commission is proposing to incorporate this no-action relief, along with its related conditions (with one exception discussed below), into proposed § 43.6(g)(5).

<sup>205</sup> Block Trade Rule at 32905.

<sup>200</sup> See Block Trade Rule at 32904.

<sup>201</sup> See Block Trade Rule at 32870 n.46.

million assets under management threshold in current § 43.6(h)(6)(ii)—the Commission is proposing to remove the \$25 million threshold in current § 43.6(i)(1)(iii) (*i.e.*, § 43.6(h)(1)(iii), as re-designated). The Commission is also proposing several non-substantive ministerial changes, such as correcting cross-references and capitalization.

#### Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 43.6. In addition, the Commission requests specific comment on the following:

(18) Would the proposed new other commodity categories be useful to SDRs and counterparties? Please explain why or why not.

(19) Are there other categories the Commission should add or remove for other commodities? Please explain any recommendations to add or remove a category.

(20) The Commission is proposing minor updates to the methodologies for calculating AMBS and cap sizes. Should the Commission consider other changes to the methodologies? Please provide examples and data, where possible.

#### G. § 43.7—Delegation of Authority

The Commission is proposing several changes to § 43.7, which is a rule governing Commission delegation of certain authority to the DMO Director or such other employee or employees as the DMO Director may designate from time to time (“DMO staff”). The Commission is proposing to add a new paragraph (a)(1) that would delegate to DMO the authority to publish the technical specifications providing the form and manner for reporting and publicly disseminating the STAPD elements in appendix C as described in §§ 43.3(d)(1) and 43.4(a). If it chooses to, the Commission may, pursuant to § 43.7(c), which the Commission is not proposing to amend, exercise any authority delegated pursuant to proposed § 43.7(a)(1) (or any other authority delegated pursuant to § 43.7(a)) rather than permit DMO staff to exercise such authority.

Because there currently is a § 43.7(a)(1) (delegation of authority to determine whether swaps fall within specific swap categories as described in § 43.6(b)), the Commission is proposing to renumber existing § 43.7(a)(1) as § 43.7(a)(3).

The Commission is further proposing to renumber existing § 43.7(a)(2) (authority to determine and publish post-initial, AMBSs as described in § 43.6(f)) as § 43.7(a)(4) and to replace the reference to § 43.6(f) (the rule

pursuant to which post-initial, AMBSs are determined) with a reference to § 43.6(e) to conform to the Commission’s proposed movement of the cap size determination process itself from § 43.6(f) to § 43.6(e). The proposed changes to post-initial AMBSs are discussed above in section II.F.3.

Additionally, the Commission is proposing to renumber existing § 43.7(a)(3) (authority to determine post-initial cap sizes as described in § 43.4(h)) as § 43.7(a)(2). Related to this, the Commission is proposing to delete the term “post-initial,” given that the Commission already determined initial cap sizes, and is proposing to replace the reference to § 43.4(h) (the rule pursuant to which post-initial cap sizes are determined) with a reference to § 43.4(g) to conform to the Commission’s proposed movement of the cap size determination process itself from § 43.4(h) to proposed § 43.4(g). The proposed changes to post-initial cap sizes are discussed above in section II.D.4.

#### Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 43.7. The Commission also requests specific comment on the following:

(21) Do the Commission’s proposed amendments to the current § 43.6(h) aggregation prohibition create any problems for market participants?

(22) Should the Commission retain the \$25 million assets under management eligibility requirement? Please explain in detail why the Commission should or should not retain the eligibility requirement.

### III. Swap Transaction and Pricing Data Reported to and Publicly Disseminated by SDRs

#### A. General

The Commission is proposing to remove the list of STAPD elements in appendix A to part 43 and revise the list to update it<sup>206</sup> to further standardize the STAPD being reported to, and publicly disseminated by, SDRs. The STAPD elements are currently found in appendix A, which states that, among other things, SDRs must publicly disseminate the information in appendix A in a “consistent form and manner” for swaps within the same asset class.

Appendix A includes a description of each field, in most cases phrased in

terms of “an indication” of the data that must be reported and disseminated and an example illustrating how the field could be populated. For example, the description of the “Asset class” field in table A1 of appendix A calls for an indication of one of the broad categories as described in § 43.2(e), and the example provided states IR (*e.g.*, interest rate asset class).

In adopting appendix A to part 43, the Commission believed consistency could be achieved in the data, but intentionally avoided prescriptive requirements in favor of flexibility in reporting the various types of swaps.<sup>207</sup> The Commission recognizes that over the years each SDR has further standardized the STAPD reported and disseminated. However, SDRs have implemented the field list in appendix A in different ways, causing publicly disseminated messages to appear differently depending on the SDR. As such, the Commission now believes a significant effort must be made to standardize STAPD across SDRs, as part of a larger effort to standardize swap data both across U.S. SDRs and across jurisdictions, as described below.

As part of the Roadmap review, DMO announced its intention to propose a detailed technical specification for data fields.<sup>208</sup> DMO received many comments on data fields in response to the Roadmap. In general, commenters stated that the Commission should ensure that all required fields are set forth in the appendices to parts 43 and 45.<sup>209</sup> The same commenters suggested that the differences between the data fields in parts 43 and 45 should be reconciled.<sup>210</sup> Additionally, commenters stated that data fields should be standardized<sup>211</sup> and only those fields that are specified in part 43 should be disseminated by the SDR.<sup>212</sup> One commenter also suggested that the Commission clarify what a reporting counterparty is obligated to report when data fields do not apply or are not available at the time of reporting.<sup>213</sup>

In response, the Commission reviewed the data fields in appendix A

<sup>207</sup> See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1224.

<sup>208</sup> Roadmap at 9.

<sup>209</sup> Letter from CME at 3; Joint SDR Letter at 2–3.

<sup>210</sup> Joint SDR Letter at 2–3.

<sup>211</sup> Letter from the Commercial Energy Working Group (“CEWG”) (Aug. 21, 2017) at 3; Joint ISDA–SIFMA Letter at 5–6 (noting that data fields should be harmonized globally to the extent possible.); Letter from LCH at 2 (noting that clarification of the CFTC’s required minimum standards for submission of data will be helpful following the next phase of the international setting process.); Letter from NGA at 1; Joint SDR Letter at 2–3.

<sup>212</sup> Letter from CEWG at 3.

<sup>213</sup> Joint ISDA–SIFMA Letter at 6.

<sup>206</sup> As discussed in section II.E.3., the Commission is proposing to delete appendix C in connection with changes to the block delays. In its place, the Commission is proposing to update the list of STAPD elements in current appendix A and move them to appendix C.

to update the current list and provide further specifications on reporting and public dissemination. As an initial matter, the Commission notes that this assessment was part of a larger review of the parts 43 and 45 data the Commission requires to be reported to, and publicly disseminated by, SDRs. In the course of determining which data elements to propose in parts 43 and 45, the Commission reviewed the STAPD data fields in appendix A and the swap data elements in appendix 1 to part 45 to determine if any currently required data elements should be eliminated and if any additional data elements should be added. As part of this process, the Commission also reviewed the part 45 swap data elements to determine whether any differences could be reconciled.<sup>214</sup> With this NPRM, and the 2020 Part 45 NPRM proposed at the same time, the Commission is proposing that the STAPD elements to be publicly disseminated would be a subset of the part 45 swap data elements required to be reported in appendix 1 to part 45. After determining the set of swap data and STAPD elements, the Commission reviewed the CDE Technical Guidance to determine which data elements the Commission could adopt according to the CDE Technical Guidance.<sup>215</sup>

After completing this assessment, the Commission is proposing to list the STAPD elements required to be publicly disseminated by SDRs pursuant to part 43 in appendix C. In a separate NPRM, the Commission is proposing to list the swap data elements required to be reported to SDRs pursuant to part 45 in appendix 1 to part 45. The STAPD

<sup>214</sup> The Commission had intended that the data elements in appendix A to part 43 would be harmonized with the data elements required to be reported to an SDR for regulatory purposes pursuant to part 45. See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1226 (noting that it is important that the data fields for both the real-time and regulatory reporting requirements work together). However, the Commission did not require linking the two sets of data elements.

<sup>215</sup> The Commission has also reviewed the data elements and technical standards to determine where the Commission can adopt the standards established in the CDE Technical Guidance. See Committee on Payments and Market Infrastructures (“CPMI”) and the International Organization of Securities Commissions (“IOSCO”), Technical Guidance, Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI) (Apr. 2018) (“CDE Technical Guidance”). The CDE Technical Guidance, and the Commission’s role in its development, are discussed in the 2020 Part 45 NPRM. From there, the Commission set out to establish definitions, formats, standards, allowable values, and conditions. The CDE Technical Guidance also establishes technical standards for how to report the data elements for jurisdictions to adopt. DMO is publishing draft technical standards, along with validation conditions, when this NPRM is released, so market participants can comment on both the NPRM and technical standards at the same time.

elements in appendix C would be a harmonized subset of the swap data elements in appendix 1 to part 45.

As appendix C would contain the list of STAPD elements required to be publicly disseminated by SDRs, the Commission notes that SDRs would need additional swap data elements reported along with these STAPD elements. These swap data elements include identifying information like the reporting counterparty, unique swap identifier (“USI”) or UTI, and the submitter. However, DMO will note these swap data elements separately in the technical specifications published on <https://www.cftc.gov> to simplify the list of publicly disseminated STAPD elements in appendix C.

At the same time as the Commission is proposing to update the STAPD elements in appendix C, DMO is publishing draft technical specifications for reporting the swap data elements in appendix 1 to part 45 to SDRs and for reporting and publicly disseminating the STAPD elements in appendix C to part 43. DMO is publishing the draft technical standards on <https://www.cftc.gov> when this release is published so commenters can comment on both the NPRM and the technical standards and validation conditions. DMO will then publish the technical specifications in the **Federal Register** pursuant to the delegation of authority proposed in § 43.7(a)(1).

A discussion of the STAPD elements in appendix C required to be publicly disseminated by SDRs according to the technical standards follows below. In general, SDRs are already publicly disseminating most of this information. As the Commission is proposing that the part 43 STAPD would be a subset of the swap data elements, most of these data elements are discussed in more depth in the 2020 Part 45 NPRM.

### *B. Swap Transaction and Pricing Data Elements*

As a preliminary matter, the Commission notes that the STAPD elements in appendix C do not include STAPD elements specific to swap product terms. The Commission is currently heavily involved in separate international efforts to introduce UPIs.<sup>216</sup> The Commission preliminarily expects UPIs will be available within the next two years.<sup>217</sup> Until the

<sup>216</sup> See FSB, Governance arrangements for the UPI: Conclusions, implementation plan and next steps to establish the International Governance Body (Oct. 9, 2019), available at <https://www.fsb.org/2019/10/governance-arrangements-for-the-upi/>.

<sup>217</sup> See *id.* The FSB recommends that jurisdictions undertake necessary actions to

Commission designates a UPI pursuant to § 45.7, the Commission is proposing SDRs continue to accept, and reporting counterparties continue to report, the product-related data elements unique to each SDR. The Commission believes this temporary solution would have SDRs change their systems only once when UPI becomes available, instead of twice if the Commission proposes standardized product data elements in this release before UPIs are available. Once the Commission designates the UPI, the Commission would also work with SDRs on the humanly-readable short names for products that SDRs would publicly disseminate.

In addition, the Commission notes that it has endeavored to propose adopting the CDE Technical Guidance data elements as closely as possible. Where the Commission proposes adopting a CDE Technical Guidance data element, the Commission has proposed adopting the terms used in the CDE Technical Guidance. This means that some terms may be different for certain concepts. For instance, “derivatives clearing organization” is the Commission’s term for registered entities that clear swap transactions, but the CDE Technical Guidance uses the term central counterparty.

To help clarify, DMO has proposed footnotes in the technical standards to explain these differences in at least four terms as well as provide examples and jurisdiction-specific requirements. However, the Commission has not included these footnotes in appendix C. In addition, the definitions from CDE Technical Guidance data elements included in appendix C sometimes include references to allowable values in the CDE Technical Guidance, which may not be included in appendix C but can be found in DMO’s technical standards.

Finally, the CDE Technical Guidance did not harmonize many fields that would be particularly relevant for commodity and equity swap asset classes (e.g., unit of measurement for commodity swaps). CPMI and IOSCO have set out governance arrangements for CDE data elements (“CDE Governance Arrangements”).<sup>218</sup> The CDE Governance Arrangements address both implementation and maintenance of CDE, together with their oversight. One area of the CDE Governance Arrangements includes updating the CDE Technical Guidance, including the

implement the UPI Technical Guidance and that these take effect no later than the third quarter of 2022.

<sup>218</sup> <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD642.pdf>.

harmonization of certain data elements and allowable values that were not included in the CDE Technical Guidance (e.g., data elements related to events, and allowable values for the following data elements: Price unit of measure and Quantity unit of measure).

The Commission invites comment on any of the swap data elements proposed in appendix C. The Commission briefly discusses the STAPD elements below by category to simplify the topics for comment. To the extent any comment involves data elements adopted according to the CDE Technical Guidance, however, the Commission anticipates raising issues according to the CDE Governance Arrangements procedures to help ensure that authorities follow the established processes for doing so. In addition, the Commission anticipates updating its rules to adopt any new or updated CDE Technical Guidance.

#### 1. Category: Clearing

The Commission is proposing to require SDRs to publicly disseminate one field related to clearing: Cleared (1). This data element is currently being publicly disseminated by SDRs according to the field in current appendix A “Cleared or uncleared.” The Commission requests specific comment on the following related to clearing data elements for public dissemination:

(23) Should the Commission publicly disseminate any additional data elements related to clearing, including the DCO where the swap is intended to be cleared? Please provide comment on any challenges market participants would face in reporting this information for PRSTs.

#### 2. Category: Custom Baskets

The Commission is proposing to require SDRs to publicly disseminate a custom basket indicator.<sup>219</sup> The Commission preliminarily believes this data element would help market participants identify that a disseminated price is associated with a custom basket. The Commission is proposing this data element for swaps that are based on a basket of underlying assets. The Commission would like to preliminarily clarify that this data element is not a field to indicate an otherwise exotic swap.

#### 3. Category: Events

The Commission is proposing to require SDRs to publicly disseminate

<sup>219</sup> This data element is Custom basket indicator (23) in appendix C.

four data elements related to events.<sup>220</sup> Reporting counterparties currently report this information to SDRs, but the Commission is proposing to further standardize how this information is reported across SDRs. The current event fields in appendix A include cancellation and correction. The Commission preliminarily believes more specific event information would help market participants understand why certain swap changes to PRSTs are being publicly disseminated.

#### 4. Category: Notional Amounts and Quantities

The Commission is proposing to require SDRs to publicly disseminate eleven data elements related to notional amounts and quantities.<sup>221</sup> SDRs are currently publicly disseminating information related to notional amounts, but the Commission is proposing to further standardize how this information is reported across SDRs. The notional fields in current appendix A include notional currency and rounded notional. SDRs would continue to cap and round the notional amounts as required by § 43.4.

#### 5. Category: Packages

The Commission is proposing to require SDRs to publicly disseminate four data elements related to package transactions.<sup>222</sup> The Commission requests specific comment on the following related to clearing data elements for package transactions:

(24) The 2019 Part 45 NPRM requests specific comment on whether the Commission should adopt additional data elements related to package transactions according to the CDE Technical Guidance.<sup>223</sup> Should the Commission also require SDRs to publicly disseminate the additional data elements related to package transactions? Do any of the Commission’s proposed package

<sup>220</sup> In appendix C, these data elements are: Action type (24); Event type (25); Event identifier (26); and Event timestamp (27).

<sup>221</sup> In appendix C, these data elements are: Notional amount (28); Notional currency (29); Call amount (31); Call currency (32); Put amount (33); Put currency (34); Notional quantity (35); Quantity frequency (36); Quantity frequency multiplier (37); Quantity unit of measure (38); and Total notional quantity (39).

<sup>222</sup> In appendix C, these data elements are: Package identifier (40); Package transaction price (41); Package transaction price currency (42); and Package transaction price notation (43).

<sup>223</sup> In the CDE Technical Guidance, the additional package data elements are: Package transaction spread (2.93); Package transaction spread currency (2.94); and Package transaction spread notation (2.95).

transaction data elements create implementation challenges for SDRs?

#### 6. Category: Payments

The Commission is proposing to require SDRs to publicly disseminate eight data elements related to payments.<sup>224</sup> SDRs are currently publicly disseminating information related to payments, but the Commission is proposing to further standardize how this information is reported across SDRs. The payment fields in current appendix A include payment frequency and reset frequency, and day count convention.

#### 7. Category: Prices

The Commission is proposing to require reporting counterparties to report seventeen data elements related to swap prices for SDRs to publicly disseminate.<sup>225</sup> SDRs are currently publicly disseminating information related to prices, but the Commission is proposing to further standardize how this information is reported across SDRs. The payment fields in current appendix A include payment price, price notation, and additional price notation.

In the price category, the Commission is also proposing Post-priced swap indicator (59), in connection with the proposed rules permitting a delay for reporting PPS discussed above in section II.C.2.

#### 8. Category: Product

The Commission is proposing to require SDRs to publicly disseminate two data elements relating to products, and has included a placeholder data element for the UPI.<sup>226</sup> As discussed above, the Commission preliminarily believes that SDRs should continue publicly disseminating any product fields they are currently publicly disseminating until the Commission designates a UPI according to § 45.7. Current appendix A includes a similar placeholder field for UPI.

<sup>224</sup> In appendix C, these data elements are: Day count convention (44); Floating rate reset frequency period (46); Floating rate reset frequency period multiplier (47); Other payment type (48); Other payment amount (49); Other payment currency (50); Payment frequency period (54); and Payment frequency period multiplier (55).

<sup>225</sup> In appendix C, these data elements are: Exchange rate (56); Exchange rate basis (57); Fixed rate (58); Post-priced swap indicator (59); Price (60); Price currency (61); Price notation (62); Price unit of measure (63); Spread (64); Spread currency (65); Spread notation (66); Strike price (67); Strike price currency/currency pair (68); Strike price notation (69); Option premium amount (70); Option premium currency (71); and First exercise date (73).

<sup>226</sup> In appendix C, these data elements are: Index factor (76); Embedded option type (77); and Unique product identifier (78).

#### 9. Category: Settlement

The Commission is proposing to require SDRs to publicly disseminate one field related to settlement: Settlement currency (80). Current appendix A contains a field for settlement currency.

#### 10. Category: Transaction-Related

The Commission is proposing to require SDRs to publicly disseminate seven transaction-related fields.<sup>227</sup> The transaction-related fields in current appendix A include execution timestamp, indication of other price affecting term, block trade indicator, execution venue, and start and end date. The Commission is proposing one new indicator, Prime brokerage transaction indicator, in connection with the proposed rules for reporting mirror swaps discussed above in section II.C.4.

In connection with the data element for Execution timestamp (86), the Commission reminds reporting counterparties that execution timestamp is the date and time that the swap was executed, *not* the date and time that the swap was recorded in a computer system (*e.g.*, a trade capture system) or transmitted to an SDR. The Commission is concerned that some market participants incorrectly report an execution timestamp that indicates when a swap executed orally was recorded in market participants' computer systems, regardless of whether any time has passed since swap execution. Similarly, some market participants incorrectly report an execution timestamp that indicates when a swap executed electronically was transmitted to an SDR, regardless of whether any time has passed between execution and transmission. Reporting of incorrect execution timestamps in instances such as these violates the reporting requirements of part 43.

#### Request for Comment

The Commission requests comment on all aspects of the proposed STAPD elements in appendix C and DMO's proposed technical standards and validation conditions. The Commission also requests specific comment on the following:

(25) In the 2012 RTR Final Rule, the Commission stated that public dissemination was not "presently required" for among other types, swaps generated by portfolio compression exercises that would not provide price

<sup>227</sup> In appendix C, these data elements are: Non-standardized term indicator (82); Block trade election indicator (83); Effective date (84); Expiration date (85); Execution timestamp (86); Platform identifier (88); and Prime brokerage transaction indicator (90).

discovery benefits to the public. Since 2012, market participants have engaged in more complex activities, with some similarities to compression exercises, which are generally referred to as "risk reduction services." The Commission understands that parties that facilitate risk reduction services, including SEFs, have reported under part 43 any new swaps that are created as the result of their risk-reduction services. Should the Commission require swaps resulting from risk reduction services be indicated using a unique identifier or flag on the real-time public tape to indicate the price may not reflect current market prices?

#### IV. Compliance Date

Market participants raised questions about the compliance schedules for the Commission's proposed reporting rule amendments in response to the Roadmap solicitations for public comment. Commenters raised various concerns about the compliance schedule. For instance, the SDRs requested that system updates that would result from any rule changes happen all at once.<sup>228</sup> Other suggested phasing in any SDR obligations before requiring reporting counterparty changes.<sup>229</sup> Multiple market participants requested that all rulemakings take place simultaneously to inform one another,<sup>230</sup> and that DMO wait for CPMI-IOSCO to publish the CDE fields before undertaking the rulemakings.<sup>231</sup>

One commenter noted the dependencies between different actors in changing systems and suggested that compliance dates take that into account.<sup>232</sup> Commenters cautioned against artificial deadlines,<sup>233</sup> requested avoiding compliance dates at the end of the year during holidays and code freezes,<sup>234</sup> and requested that the Commission consider deadlines for changes in foreign jurisdictions when setting compliance dates.<sup>235</sup>

The Commission understands that market participants will need a sufficient implementation period to accommodate the changes proposed in the three NPRMs. The Commission therefore expects that the compliance date for the rules that the Commission

<sup>228</sup> Joint SDR Letter at 12.

<sup>229</sup> Letter from Chatham Financial (Aug. 21, 2017) at 5–6; Joint NRECA–APPA Letter at 3.

<sup>230</sup> Joint SDR Letter at 1; Letter from GFXD of the GFMA at 5; Joint ISDA–SIFMA Letter at 2–3; Letter from LCH at 2.

<sup>231</sup> Joint ISDA–SIFMA Letter at 2–3.

<sup>232</sup> Joint SDR Letter at 12.

<sup>233</sup> Letter from Chatham at 5.

<sup>234</sup> Joint SDR Letter at 12.

<sup>235</sup> *Id.*

adopts as a result of each of the Roadmap NPRMs would be at least one year from the date that the last one of such final rulemakings is published in the **Federal Register**.

#### Request for Comment

The Commission requests comment on all aspects of a one year compliance date.

#### V. Related Matters

##### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.<sup>236</sup> The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.<sup>237</sup> The amendments to part 43 proposed herein would have a direct effect on the operations of DCMs, DCOs, MSPs, prime brokers,<sup>238</sup> reporting counterparties, SDs, SDRs, and SEFs. The Commission has previously certified that DCMs,<sup>239</sup> DCOs,<sup>240</sup> MSPs,<sup>241</sup> SDs,<sup>242</sup> SDRs,<sup>243</sup> and SEFs<sup>244</sup> are not small entities for purpose of the RFA.

Various proposed amendments to part 43 would have a direct impact on all reporting counterparties. These reporting counterparties may include SDs, MSPs, DCOs, and non-SD/MSP/DCO counterparties. Regarding whether non-SD/MSP/DCO reporting counterparties are small entities for RFA purposes, the Commission notes that section 2(e) of the CEA prohibits a person from entering into a swap unless the person is an eligible contract participant ("ECP"), except for swaps executed on or pursuant to the rules of

<sup>236</sup> See 5 U.S.C. 601 *et seq.*

<sup>237</sup> See Policy Statement and Establishment of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) ("1982 RFA Release").

<sup>238</sup> The Commission understands that all prime brokers currently acting as such in connection with swaps are SDs. Consequently, the RFA analysis applicable to SDs applies equally to prime brokers.

<sup>239</sup> See 1982 RFA Release.

<sup>240</sup> The Commission has previously certified that DCOs are not small entities for purposes of the RFA. See DCO General Provisions and Core Principles, 76 FR 69334, 69428 (Nov. 8, 2011).

<sup>241</sup> See SD and MSP Recordkeeping, Reporting, and Duties Rules, 77 FR 20128, 20194 (Apr. 3, 2012) (basing determination in part on minimum capital requirements).

<sup>242</sup> See *id.*

<sup>243</sup> See Swap Data Repositories, 75 FR 80898, 80926 (Dec. 23, 2010) (basing determination in part on the central role of SDRs in swaps reporting regime, and on the financial resource obligations imposed on SDRs).

<sup>244</sup> See Core Principles and Other Requirements for SEFs, 78 FR 33476, 33548 (June 4, 2013).

a DCM.<sup>245</sup> The Commission has previously certified that ECPs are not small entities for purposes of the RFA.<sup>246</sup>

The Commission has analyzed swap data reported to each SDR<sup>247</sup> across all five asset classes to determine the number and identities of non-SD/MSP/DCOs that are reporting counterparties to swaps under the Commission's jurisdiction. A recent Commission staff review of swap data, including swaps executed on or pursuant to the rules of a DCM, identified nearly 1,600 non-SD/MSP/DCO reporting counterparties. Based on its review of publicly available data, the Commission believes that the overwhelming majority of these non-SD/MSP/DCO reporting counterparties are either ECPs or do not meet the definition of "small entity" established in the RFA. Accordingly, the Commission does not believe the proposed rule would affect a substantial number of small entities.

Based on the above analysis, the Commission does not believe that this proposal will have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

### B. Paperwork Reduction Act

The PRA of 1995<sup>248</sup> imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. This proposed rulemaking would result in a collection of information within the

meaning of the PRA, as discussed below. The proposed rulemaking contains a collection of information for which the Commission has previously received a control number from the Office of Management and Budget ("OMB"): OMB Control Number 3038-0070 (relating to real-time STAPD).

The Commission is proposing to amend information collection 3038-0070 to accommodate newly proposed and revised information collection requirements for swap market participants and SDRs that require approval from OMB under the PRA. The amendments described herein are expected to modify the existing annual burden for complying with certain requirements of part 43.

The Commission therefore is submitting this proposal to the OMB for its review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the FOIA and 17 CFR 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers."<sup>249</sup> The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.<sup>250</sup>

#### 1. STAPD Reports to SDRs

The Commission is proposing to amend § 43.3, which requires SEFs, DCMs, and reporting counterparties to report data to SDRs when entering into new swaps, or making certain changes to swaps, for SDRs to publicly disseminate. Existing § 43.3 requires reporting counterparties to send swap reports to SDRs as soon as technologically practicable after execution. The Commission is proposing to amend § 43.3(a)(4) to allow reporting counterparties more time to report PPS to SDRs. Currently, some entities report PPS using a placeholder price, and then send a swap report later amending the price. Those entities would experience a reduction in the number of swap reports they are required to send pursuant to § 43.3 under the proposal. The Commission estimates 50 SD/MSP reporting counterparties would reduce the

number of PPS reports they report to SDRs by 100 reports per respondent annually, or 5,000 reports in the aggregate for an aggregate cost burden reduction of \$24,197.

The Commission is also proposing to amend § 43.3 to establish new requirements for reporting prime brokerage swaps in § 43.3(a)(6). The proposed rules would establish that "mirror swaps" would not need to be publicly disseminated by SDRs. Reporting counterparties would continue to report mirror swaps to SDRs pursuant to part 45, but the amendment to § 43.3 would reduce the number of reports SDRs would be required to publicly disseminate according to § 43.4. The amendment to the requirement for SDRs in § 43.4 is discussed in the next section below.

The Commission is also proposing to create a new requirement in § 43.3(a)(5) for DCOs to report STAPD for clearing swaps that are PRSTs. The proposed change would increase the burden for no more than 14 DCOs that would need to report PRSTs, but would not affect the burden for the majority of 1,732 reporting counterparties required to report data ASATP after execution. As a result, the Commission is not proposing to amend the estimate for § 43.3 based on this change.

Existing § 43.3(h) requires timestamping by multiple entities. Existing § 43.4(h)(1) requires registered entities, SDs, and MSPs to timestamp real-time swap reports with the time they receive the data from counterparties, as applicable, and the time at which they transmit the report to an SDR. Registered entities, SDs, and MSPs then send these timestamps to the SDR. Existing § 43.3(h)(2) requires SDRs to timestamp the swap reports they receive from SEFs, DCMs, and reporting parties, and then timestamp the report with the time they publicly disseminate it. SDRs then place these timestamps on the reports they publicly disseminate. Existing § 43.3(h)(3) requires SDs and MSPs have to timestamp all off-facility swaps they report to SDRs. SDs and MSPs then report these timestamps to SDRs.<sup>251</sup>

Removing § 43.3(h)(1) would reduce the amount of time SDs, MSPs, and registered entities spend reporting swap reports to SDRs, but would not amend the number of reports they send. Removing § 43.3(h)(2) would reduce the

<sup>251</sup> Current § 43.3(h)(4) requires all entities have recordkeeping requirements with respect to these timestamps. The Commission is proposing to eliminate the recordkeeping requirements in § 43.3(h)(4). This would result in the removal of the recordkeeping burden from collection 3038-0070, which is currently 5,854 hours in the aggregate.

<sup>245</sup> See 7 U.S.C. 2(e).

<sup>246</sup> See *Opting Out of Segregation*, 66 FR 20740, 20743 (Apr. 25, 2001). The Commission also notes that this determination was based on the definition of ECP as provided in the Commodity Futures Modernization Act of 2000. The Dodd-Frank Act amended the definition of ECP by modifying the threshold for individuals to qualify as ECPs, changing an individual who has total assets in an amount in excess of to an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of. Therefore, the threshold for ECP status is currently more restrictive than it was when the Commission certified that ECPs are not small entities for RFA purposes, meaning that there are likely fewer entities that could qualify as ECPs today than could qualify when the Commission first made the determination.

<sup>247</sup> The sample data sets varied across SDRs and asset classes based on relative trade volumes. The sample represents data available to the Commission for swaps executed over a period of one month. These sample data sets captured 2,551,907 FX swaps, 603,864 equity swaps, 357,851 other commodity swaps, 276,052 interest rate swaps, and 98,145 credit swaps.

<sup>248</sup> See 44 U.S.C. 3501.

<sup>249</sup> 7 U.S.C. 12(a)(1).

<sup>250</sup> 5 U.S.C. 552a.

amount of time SDRs spend publicly disseminating swap reports, but would not amend the number of reports they send. Removing § 43.3(h)(3) would reduce the amount of time SDRs and MSPs spend reporting off-facility swaps to SDRs, but would not reduce the amount of reports they send. Finally, removing § 43.3(h)(4) would remove the recordkeeping burden for these entities. As shown in Appendix A, this would remove the current recordkeeping burden of 5,854 hours from the collection.

## 2. STAPD Reports Disseminated to the Public by SDRs

As discussed above, existing § 43.3 requires reporting counterparties to send swap reports to SDRs as soon as technologically practicable after execution. The Commission is proposing to amend § 43.3 to establish new requirements for reporting prime brokerage swaps in § 43.3(a)(6). The proposed rules would establish that “mirror swaps” would not need to be publicly disseminated by SDRs. Reporting counterparties would continue to report mirror swaps to SDRs pursuant to part 45, but the amendment to § 43.3 would reduce the number of reports SDRs would be required to publicly disseminate according to § 43.4. The Commission estimates that the amendments would reduce the number of mirror swaps SDRs would need to publicly disseminate by 100 reports per each SDR, or 300 reports in the aggregate, which would reduce the cost burden by \$1,451 in the aggregate.

The estimated updated reporting burden total for real-time public reporting would be as follows:

Estimated number of respondents: 1,732.

Estimated number of reports per respondent: 20,747.

Average number of hours per report: .07.

Estimated gross annual reporting burden: 1,206,508.

## Request for Comment

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. The Commission will consider public comments on this proposed collection of information in:

1. Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

2. evaluating the accuracy of the estimated burden of the proposed

collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

3. enhancing the quality, utility, and clarity of the information proposed to be collected; and

4. reducing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.*, permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418-5160 or from <http://RegInfo.gov>. Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395-6566 (fax); or
- [OIRASubmissions@omb.eop.gov](mailto:OIRASubmissions@omb.eop.gov) (email).

Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this Release in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this Release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

## C. Cost-Benefit Considerations

### 1. Statutory and Regulatory Background

Section 15(a)<sup>252</sup> of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market

participants and the public; (2) efficiency, competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

In this release, the Commission is proposing both substantive and non-substantive revisions and additions to existing regulations in part 43. Together, these proposed revisions and additions are intended to improve real-time public reporting for reporting counterparties, SEFs, DCMs, SDRs, and market participants that use real-time public data. The non-substantive amendments discussed above in this release do not have cost-benefit impact and are not discussed in this section.

Many of the proposed rule changes will likely affect a wide variety of proprietary reporting systems developed by SDRs and reporting entities. In many cases, SDRs and other industry participants are in the best position to estimate computer programming costs of changing the reporting requirements. Hence, while the Commission can provide broad ranges of estimates of the programming costs associated with the proposed rule changes, the Commission looks forward to receiving comments that will help refine those numbers. Regarding changes which require technical updates to reporting systems, where significant, CFTC staff estimated the hourly wages market participants will likely pay software developers to implement each change to be between \$47 and \$100 per hour.<sup>253</sup> Relevant amendments below will list a low-to-high range of potential cost as determined by the number of developer hours estimated by technical subject

<sup>253</sup> Hourly wage rates came from the Software Developers and Programmers category of the May 2018 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm). The 25th percentile was used for the low range and the 90th percentile was used for the upper range (\$36.07 and \$76.78, respectively). Each number was multiplied by an adjustment factor of 1.3 for overhead and benefits (rounded to the nearest whole dollar) which is in line with adjustment factors the CFTC has used for similar purposes in other final rules adopted under the Dodd-Frank Act. *See, e.g.*, 77 FR at 2173 (using an adjustment factor of 1.3 for overhead and other benefits). These estimates are intended to capture and reflect U.S. developer hourly rates market participants are likely to pay when complying with the proposed changes. We recognize that individual entities may, based on their circumstances, incur costs substantially greater or less than the estimated averages and encourage commenters to share relevant cost information if it differs from the numbers reported here.

matter experts (“SMEs”) in the Commission’s Office of Data and Technology.

Quantifying other costs and benefits, such as those resulting from changes in price transparency from a rule change, are inherently harder to measure. Such effects will be discussed qualitatively when quantitative measures are difficult to obtain. In addition, quantification of effects relative to current market practice may not be fully representative of future activity if participants adjust their trading behavior in response to rule updates. The Commission therefore specifically requests comment on the costs associated with this proposed rulemaking to help the Commission quantify such costs in the final rulemaking.

The Commission notes that the discussion in this section is based on the understanding that swap markets often extend across geographical regions. Many swap transactions involving U.S. firms occur across international borders; some Commission registrants are even headquartered outside of the United States, with the most active participants often conducting operations both within and outside the United States. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits refers to the proposed rules’ effects on all swaps activity, whether by virtue of the activity’s physical location in the United States or by virtue of the activity’s connection with or effect on U.S. commerce under CEA section 2(i).<sup>254</sup>

## 2. Considerations of the Costs and Benefits of the Commission’s Action

### a. § 43.3—Method and Timing for Real-Time Public Reporting<sup>255</sup>

#### i. § 43.3(a)(4)—Post-Priced Swaps

The Commission is proposing § 43.3(a)(4) to establish requirements for reporting PPSs, which the Commission proposes to define as off-facility swaps for which the price has not been

determined at the time of execution. The Commission understands that PPSs can arise in a variety of settings. One possibility is for the price of the swap to be tied to a reference price that is not yet determined at the time of the trade; examples of this could include the daily settlement price of a stock index or crude oil futures or a benchmark such as the Argus WTI Midland price assessment.<sup>256</sup> In this case, the PPS would only have a defined price once the reference price is determined. A second possibility is for the price of a PPS to be determined only after the dealing counterparty is able to hedge its exposure to the PPS. In this case, the price of the PPS would only be fixed after the SD has completed its hedge.

The Commission is not able to clearly identify which swaps would be classified as PPSs under the new rules.<sup>257</sup> This makes an accurate estimate of how many individual swaps or counterparties the proposed rule change would impact difficult to obtain. Under the updated list of STAPD elements in appendix C, reporting parties would be required to report that a swap is a PPS to allow the Commission and the public to get a clearer view of PPS activity.<sup>258</sup>

As discussed above in section II.C.2., proposed § 43.3(a)(4)(i) would permit reporting counterparties to delay reporting that are identified as PPSs to SDRs until the earlier of: (i) The price being determined; and (ii) 11:59:59 p.m. eastern time on the execution date. For Variable Terms Swaps for which the

price is known at execution but some other term is left for future determination (e.g., quantity), reporting parties remain obligated to report the swap ASATP after execution, even absent the as-of-yet undetermined terms.

**Baseline:** The current rule requires reporting parties to report all swaps ASATP after execution; this baseline does not contain an exception for Variable Terms Swaps, a category of swaps which includes PPSs. However, based on discussions with market participants, many PPSs and other Variable Terms Swaps are not currently reported until all terms have been determined and those that are reported are difficult to identify. The Commission believes that may be due in some part to market participants’ lack of awareness that the ASATP standard applies to all Variable Terms Swaps, or interprets execution in a different way than the Commission.

**Benefits:** This rule would establish a bright-line standard for when a PPS and other Variable Terms Swaps needs to be reported for public dissemination, in lieu of the reporting variation that, as described above, appears to be current practice. By explicitly describing reporting obligations for PPSs, as well as the other Variable Terms Swaps, the rule would create consistency in reporting, reduce uncertainty about obligations, and create a more level playing field for reporting entities. This would make the real-time public data more informative to traders.

Another benefit of allowing delayed reporting of PPSs is that it would permit parties to hedge the positions they acquire in a more cost-effective way. For example, if a client asks an SD to take the long side of a large swap, the SD may be able to hedge that position with less price impact if other traders are unaware of the SD’s hedging need. This ability to hedge while mitigating price impact can often translate to better pricing for the client. Thus, the Commission anticipates proposed § 43.3(a)(4) would decrease SDs’ hedging costs, especially for large or non-standardized trades, improve customer pricing, and increase those clients’ willingness to take positions.

**Costs:** Delayed reporting of PPSs may reduce the amount of information available to market participants as a whole and, in that sense, frustrate the objective of price transparency. In particular, other market participants would have a less-precise estimate of intraday trading volume in real-time, which can introduce an information asymmetry. Another cost is that proposed § 43.3(a)(4) might encourage

<sup>256</sup> This is similar to “trade at settlement” trades in futures markets which trade at prices that represent the settlement price or a spread to the settlement price (e.g., a TAS plus one tick); once the settlement price is defined, the trade is then marked with the corresponding trade price. The Commission believes that this type of post-priced swap is especially common for equity swaps, where traders often need to match the settlement price of a given index.

<sup>257</sup> There are a few alternatives to identify the set of swaps that would be impacted by proposed § 43.3(a)(4). First, it might be possible to identify PPSs using part 43 data by searching the data to determine how many swaps are reported with a missing price with a reporting time close to execution time. However, the Commission understands that not all reporting parties report their PPSs close in time to the execution of the PPS; instead, these counterparties wait until a price is determined. A second option might be to assume swaps with a price but a large difference between reporting time and execution time are PPSs; however, this methodology might include swaps with other non-price varying terms such as quantity. Finally, a more involved check would combine parts 43 and 45 data to check for differences in the reported price. Since all of these options are potentially over- or under-inclusive, the Commission is not attempting to identify for this discussion which swaps in the current data would be classified as PPSs.

<sup>258</sup> The proposed STAPD element for “post-priced swap indicator” is discussed above in section III.

<sup>254</sup> See 7 U.S.C. 2(i). CEA section 2(i) limits the applicability of the CEA provisions enacted by the Dodd-Frank Act, and Commission regulations promulgated under those provisions, to activities within the U.S., unless the activities have a direct and significant connection with activities in, or effect on, commerce of the U.S.; or contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA enacted by the Dodd-Frank Act. Application of section 2(i)(1) to the existing part 43 regulations with respect to SDs/MSPs and non-SD/MSP counterparties is discussed in the Commission’s Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

<sup>255</sup> The proposed amendments to §§ 43.1 and 43.2 do not have any cost-benefit impact.



traders to trade more PPSs, and fewer swaps for which the price is known at execution,<sup>259</sup> further reducing transparency as fewer trades are reported ASATP after execution.

The Commission is proposing regulation § 43.3(a)(4) to specify the requirements for how PPSs are to be reported. Notwithstanding the potential incremental costs identified above, the Commission preliminarily believes this change is warranted in light of the anticipated benefits.

#### Request for Comment

The Commission requests comment on its consideration of the costs and benefits of proposed § 43.3(a)(4), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

(26) Are there additional costs or benefits that the Commission should consider? If so, please identify and, where quantifiable, provide data or other information to assist the Commission in quantifying them.

(27) Are there alternatives that would generate greater benefits and/or lower costs?

(28) What percentage of PPSs have their prices determined by midnight on the date of execution (by asset class and overall)? What percentage of Variable Terms Swaps have their prices determined by midnight on the date of execution (by asset class and overall)? Do market participants have trouble reporting, and do SDRs have difficulty disseminating, PPS trades, because the placeholder terms of the swaps (including, but not limited to, placeholder values such as zero or blank fields) are inconsistent with SDRs' allowable values?

(29) Do market participants have an estimate for the number of swaps that may shift to PPS if the Commission grants PPS a reporting delay?

#### ii. § 43.3(a)(5)—Clearing Swaps

The Commission is proposing § 43.3(a)(5) to add DCOs to the reporting counterparty hierarchy for clearing swaps that are publicly reportable. DCOs are not typically the entities that are required to report information under part 43, since swaps associated with the clearing process (*e.g.*, novations) have

<sup>259</sup> For instance, because proposed § 43.3(a)(4) permits delaying reporting, it could create an incentive for an SDs' PPS counterparties to seek to enter into swaps that they know will take some time for the SD to hedge (*e.g.*, swaps in larger size than they ordinarily would seek to execute) so that such counterparties can receive the benefit of the delayed reporting permitted by proposed § 43.3(a)(4).

already been reported in some form; for example, SEFs, DCMs, and reporting counterparties report the original, market-facing swap to SDRs for public dissemination and then send that swap to the DCO for clearing. This is inconsistent with the part 45 reporting hierarchy that the Commission is concerned introduces some confusion. Proposed § 43.3(a)(5) describes the limited, specific cases when a DCO would be required to submit a swap for public dissemination (*e.g.*, when executing swaps to hedge the risk resulting from a default of a clearing member). While the number of such cases is small, the reporting responsibility in those cases is left unspecified under current rules.

*Baseline:* The rules currently do not expressly require DCOs to submit any swap records to an SDR for public dissemination.

*Benefits:* Proposed § 43.3(a)(5) will require DCOs to report swaps for public dissemination if the DCO is a counterparty to the initial swap, and the swap falls within the definition of a PRST. In cases where these swaps are not currently being reported under part 43, perhaps due to ambiguity over the reporting hierarchy, this rule change is likely to increase market transparency. Related, more clearly defining the reporting responsibilities for DCOs would improve reporting consistency and reporting validation.

*Costs:* The Commission expects that proposed § 43.3(a)(5) would impose minor additional costs on DCOs because DCOs would now be the reporting party for a certain category of PRSTs. As a preliminary matter, the Commission believes that the proposed amendment will affect a small number of swaps. Further, while the Commission currently lacks information to estimate the direct cost incurred here by the DCOs, it expects the incremental per-swap reporting cost to be very small because DCOs have already incurred most of the fixed set-up costs of reporting. In addition, two DCOs report to affiliated SDRs, which should mitigate the cost of reporting PRSTs. For DCOs that are not affiliated with SDRs, the cost may be higher.

The Commission is proposing § 43.3(a)(5) to add DCOs to the required reporting hierarchy for clearing swaps. Notwithstanding the anticipated incremental costs identified above, the Commission preliminarily believes this change is warranted in light of the anticipated benefits.

#### Request for Comment

The Commission requests comment on its consideration of the costs and

benefits of proposed § 43.3(a)(5), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

(30) Are there additional costs or benefits that the Commission should consider? If so, please identify and, where quantifiable, provide data or other information to assist the Commission in quantifying them.

(31) Are there alternatives that would generate greater benefits and/or lower costs?

(32) Are there additional situations in which a DCO would be the reporting counterparty to a PRST that the Commission has not considered? Please specify any scenarios, along with the frequency with which they occur. Would these scenarios result in additional costs for DCOs if the Commission were to require DCOs to be the reporting counterparties?

(33) What are the costs of requiring DCOs to report clearing swaps that are PRSTs? Please specify all expected one-time and ongoing compliance costs. What are the reporting costs faced by the parties that are reporting these trades under the current regulations?

#### iii. § 43.3(a)(6)—Mirror Swaps

The Commission is proposing § 43.3(a)(6) to establish requirements for reporting a certain subset of prime brokerage swaps. These prime brokerage swaps result from an agency agreement between a prime broker and a customer, pursuant to which a prime broker agrees to serve as a swap counterparty to the customer on terms negotiated by the customer with third parties, often referred to as executing brokers (or executing dealers). This arrangement is possible, provided that the terms of the swap fall within acceptable parameters set forth in the agency agreement.

To illustrate proposed § 43.3(a)(6) and consider its costs and benefits, the Commission will focus on what it understands to be the simplest type of prime brokerage swap.<sup>260</sup> In that structure, once the customer negotiates with an executing broker the terms of a

<sup>260</sup> The Commission understands that there are many different prime brokerage swap transaction structures. However, the Commission has limited the discussion in this Cost-Benefit Considerations section to one representative type because it is impractical to consider the costs and benefits of each structure in a set of an unlimited number of transaction structures. The cost-benefit considerations discussion may therefore fail to account for some costs associated with all covered prime-brokerage transactions. The Commission requests comment below on the costs the Commission may need to account for as a result of prime brokerage swap transaction structures other than the one considered for this analysis.

swap that fits within the parameters set forth in the agency agreement (the “pricing event”), two swaps are created: a swap between the executing broker and the prime broker (the “trigger swap”) and a swap with offsetting economic terms between the prime broker and the customer (the “mirror swap”).<sup>261</sup>

Because the prime broker is a counterparty to both a trigger swap and a mirror swap, it has two offsetting exposures that should leave it market risk neutral. The prime broker does, however, take on counterparty credit risk from both the client and the executing broker.

The current part 43 rules and, in particular, the definition in § 43.2 of PRST, do not expressly address mirror swaps or trigger swaps. As a result, the Commission is concerned that this reporting is inconsistent today. In particular, the Commission is concerned that mirror swaps are currently under-reported because market participants—acting on the belief that reporting mirror swap terms duplicative of those already reported for the corresponding trigger swap would distort price discovery,<sup>262</sup> and informed by CFTC Letter No. 12–53, discussed above in section ILC.4,<sup>263</sup>—inconsistently report them. Because there is no indicator for which swaps represent trigger or mirror swaps in the public reporting requirements, the Commission cannot identify how common these swaps may be. More generally, potential current non-reporting of mirror swaps makes it difficult to quantify how many swap trades and open positions result from prime brokerage activity.<sup>264</sup> These current issues introduce difficulties in using part 43 information for real-time analysis or longer historical studies of swaps market activity.

Pursuant to proposed § 43.3(a)(6)(i), an SDR would not need to publicly disseminate a mirror swap, but the swap would still be reported to an SDR pursuant to part 45; in contrast, the trigger swap would both publicly

disseminated by an SDR pursuant to part 43 and reported to an SDR pursuant to part 45. This would result in different reporting regimes for mirror swaps than for other swaps used to hedge exposure.

**Baseline:** The current rules do not specifically address mirror swaps or prime brokerage transactions. Pursuant to the current regulations, real-time public reporting is required for both trigger swaps and mirror swaps. To the extent some reporting counterparties are not in compliance, cost and benefits relative to the status quo may be different than when measured against the regulatory baseline. This different cost/benefit profile is considered as well.

**Benefits:** Proposed § 43.3(a)(6) would help market participants by explicitly providing that mirror swaps are not publicly reportable, provided that the related trigger swaps are reported pursuant to parts 43 and 45. The changes would reduce the current burden on regulatory-compliant prime brokers and other parties to report mirror swaps, an incremental benefit that market participants who currently do not report these swaps would not realize.

The Commission preliminarily believes that proposed § 43.3(a)(6) also would benefit market participants who monitor the public tape (likely some of the most active participants) by preventing duplicative mirror swaps that reflect the same economic terms as trigger swaps.<sup>265</sup> Inclusion of such duplicative records can create a false impression of market volume at a particular price.

**Costs:** The Commission recognizes that, in the plain vanilla, trigger swap-mirror swap structure described above, the prime broker establishes two open positions: one between it and the executing broker and one with offsetting economic terms facing the client. This subjects the prime broker to counterparty risk from both counterparties but not to market risk.<sup>266</sup> By omitting mirror swaps from the

public tape, the proposed rule change would increase the number of swaps that affect the credit risk position of market participants but are not required to be publicly reported pursuant to part 43, thus frustrating the objective of price transparency.<sup>267</sup>

While the Commission’s analysis has focused on plain vanilla mirror swaps in this section, it notes that some mirror swaps do not contain the same economic terms as the trigger swap. There may be mirror swaps in which there are multiple trades that comprise the mirror side for a single trigger swap. In these cases, the public will not learn about the multiple mirror swaps which have an aggregate notional amount that is equal to the trigger swap. This, as with other examples, has the potential to reduce the level of transparency for a specific subset of trade activity, though the trade activity is in part duplicative of other swaps visible to the market.

Furthermore, eliminating reporting for mirror swaps could incentivize the use of more complex mirror swaps to avoid public reporting, increasing the possibility of more complicated, risky swaps being created. The Commission expects such risk to be minimal, however, given that all swaps associated with prime brokerage transactions will still be reported to SDRs pursuant to part 45.

The Commission is proposing § 43.3(a)(6) to establish requirements for reporting prime brokerage swaps. Notwithstanding the anticipated incremental costs, the Commission preliminarily believes this change is warranted in light of the anticipated benefits.

#### Request for Comment

The Commission requests comment on its consideration of the costs and benefits of proposed § 43.3(a)(6), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

(34) Are there additional costs or benefits that the Commission should

<sup>261</sup> This mirror swap includes an adjustment resulting from the prime brokerage servicing fees.

<sup>262</sup> This would be the case if all the primary economic terms are the same for, for instance, a trigger swap and a single mirror swap. By reporting both the mirror and the trigger swap, market participants may assume that the volume of price-forming trade activity is higher than it actually is.

<sup>263</sup> As discussed above in section ILC.4., CFTC Letter No. 12–53 provided no-action relief for reporting counterparties from the obligation to report mirror swaps to SDRs.

<sup>264</sup> The STAPD elements in appendix C would include a new data element “Prime brokerage transaction identifier” and would require the reporting party to include the USI or UTI of the trigger swap in the “prior USI” or “prior UTI” fields of each mirror swap.

<sup>265</sup> In the case of partial reverse give-ups, the mirror swaps may reflect different notional amounts than the trigger swaps. However, as discussed above, the Commission is limiting the discussion in this section to the plain vanilla, trigger swap-mirror swap structure illustrated above, which does not involve partial reverse give-ups.

<sup>266</sup> Although the execution of the trigger swap results in a change in the market risk position between the prime broker and the executing broker, and the execution of the mirror swap results in a change in the market risk position between the prime broker and its customer, the prime broker does not have any net market exposure (because its market position is flat). However, because the market risk position between the prime broker and each of its counterparties changed, the trigger swap and mirror swap both are currently PRSTs.

<sup>267</sup> For additional information regarding swaps that affect the credit risk position of market participants but are not required to be publicly reported, see: Paragraph (2) of the definition of a PRST in § 43.2 gives two examples of executed swaps that do not fall within the definition of a publicly reportable swap: (i) Internal swaps between 100% subsidiaries of the same parent entity; and (ii) swaps resulting from portfolio compression exercises. Paragraph (3) of the definition of a PRST in § 43.2 states that those examples represent swaps that are not at arm’s length and thus are not [PRSTs], notwithstanding that they do result in a corresponding change in the market risk position between two parties.

consider? If so, please identify and, where quantifiable, provide data or other information to assist the Commission in quantifying them.

(35) Are there alternatives that would generate greater benefits and/or lower costs?

(36) Can the double-reporting concerns be addressed by the alternative of adding an additional reporting field to indicate if a swap is a trigger or a mirror? If so, what are costs and benefits of this alternative approach relative to what is being proposed?

(37) How common are mirror swaps? What percentage are “plain vanilla” as characterized above as compared to more complex scenarios? What would the cost-benefit differences be between plain vanilla and non-plain vanilla mirror swaps?

iv. § 43.3(c)—Availability of Swap Transaction and Pricing Data to the Public

Current § 43.3(d)(1) and (2) (which would be relocated to § 43.3(c)(1) and (2)) specify the format in which SDRs must make STAPD available to the public; in addition, current rules require that the disseminated data must be made “freely available and readily accessible” to the public. Substantively, the Commission is proposing to amend these requirements by specifying that SDRs shall make such data available for at least one year after dissemination, and provide instructions on how to download, save, and search the data. While current § 43.3(d) is silent on how long SDRs must maintain and provide the public access to swap data and does not require SDRs to provide instructions on how to download, save, and search the data, for baseline purposes of this cost-benefit consideration the Commission, as noted above in section II.C.7., understands a one-year time frame is current practice for at least a majority of SDRs. To the extent the baseline might be less than one year by an SDR, proposed § 43.3(c)(1) would increase the transparency of swap data to the public. Finally, in practice, the cost of the change is expected to be negligible, because SDRs are already making the public reports available for more than one year.

The Commission requests comment on its consideration of the costs and benefits of proposed § 43.3(c). Please provide data, statistics, or other supporting information for positions asserted.

v. § 43.3(d)—Data Reported to SDRs

The Commission is proposing § 43.3(d), which would require reporting counterparties, SEFs, and DCMS, when

reporting STAPD to an SDR, to: (i) Use the technical standards as instructed by the Commission; (ii) satisfy SDR validation procedures; and (iii) use the facilities, methods, or data standards provided or required by the SDR.

The standardization of STAPD reported to and publicly disseminated by SDRs has improved over recent years at each SDR. However, the Commission believes market participants would now benefit from having publicly disseminated STAPD standardized across SDRs. To do so, the Commission is proposing to further specify the STAPD elements to be reported to and publicly disseminated at SDRs. While SDRs are already accepting and publicly disseminating most of the information in appendix C, the Commission believes standardization could be improved by updated, more specific definitions.

The Commission proposed SDR data validation requirements in the 2019 part 49 NPRM. Proposed § 43.3(d) would require reporting entities to satisfy the SDR data validation procedures. Since proposed § 43.3(d)(2) is closely related to proposed § 43.3(f), discussed below, the Commission views its discussion of the cost and benefits of § 43.3(f) equally applicable here and incorporates it by reference.

*Baseline:* Currently, appendix A to part 43, entitled “Data Fields for Public Dissemination,” describes the set of data fields that reporting counterparties are required to complete and provides guidance for such completion. For each data field, there is a corresponding description, example, and, where applicable, an enumerated list of allowable values. Currently, SDRs are not required to apply any data validation procedures on the reports sent to them. In addition, the Commission understands that at least some SDRs have flexible application programming interfaces (“APIs”) that allow reporting counterparties to report data for part 43 purposes in many ways, making standardization difficult, especially across SDRs.<sup>268</sup>

*Benefits:* The Commission expects both reporting entities and SDRs to benefit from further specified data elements and technical standards in how STAPD needs to be reported. These standards should, over time, make reporting easier and more accurate, which may reduce the time between when a trade is executed and when that trade is publicly reported. Standards may also allow reporting entities who currently report to multiple SDRs

(traditionally the more active participants) to use similar reporting systems for all relevant SDRs. This would likely lower reporting costs, compared to the current environment in which SDRs have non-standardized requirements. Requiring all SDRs to have the same standards would also make it less costly for all participants to respond to changing market conditions (which might require new specifications), since the same changes would apply for all interactions between reporting entities and SDRs.

Most significantly, market participants are likely to benefit from the increased standardization of information, because of the added assurance that information publicly reported by one SDR is fully consistent with swap information published by another. This increased consistency will afford market participants a more easily-accessible, accurate view of activity across all Commission regulated swap markets. The Commission expects the general public would also benefit when the information is combined across SDRs to produce reports related to general swaps market activity.

Along with the expected benefits that will arise from the standardization and uniformity of existing information reported in real-time, the Commission expects additional benefits related to the new STAPD elements proposed in appendix C. For example, there is a new data element allowing users to identify PPSs or if the swap transaction is considered a bespoke swap. This additional information will allow for additional options in processing and studying the market information.

*Costs:* The Commission expects that reporting entities and SDRs would incur some initial costs to incorporate any new technical standards into their reporting infrastructure (e.g., programming costs). This NPRM is proposed in parallel with the part 45 NPRM and relates to a subset of the information collected under part 45. This means the proposed changes to parts 43 and 45 would largely require technological changes that could merge two different data streams into one. For example, SDRs will have to make adjustments to their extraction, transformation, and loading (ETL) process in order to accept feeds that comply with new technical standards and validation conditions.

Because many of the changes SDRs would make to comply with part 43 will likely also allow it to comply with part 45, the Commission anticipates significantly lower aggregate costs relative to the costs for parts 43 and 45 separately. For this reason, the costs

<sup>268</sup> The Commission believes use of these flexible APIs has been encouraged by the current lack of specificity for reporting data elements.

described below may most accurately represent the full technological cost of satisfying the requirements for both proposed rules.

Based on conversations with CFTC staff experienced in designing data reporting, ingestion, and validation systems, Commission staff estimates the cost per SDR to be in a range of \$141,000 to \$500,000.<sup>269</sup> This staff cost estimate is based on a number of assumptions and covers the set of tasks required for the SDR to design, test, and implement a data system based on the proposed list of swap data elements in appendix C and the guidebook.<sup>270</sup> These numbers assume that each SDR will spend approximately 3,000–5,000 hours to establish ETL into a relational database on such a data stream.<sup>271</sup>

For reporting entities, the Commission estimates the cost per reporting entity to be in a range of \$23,500 to \$72,500.<sup>272</sup> This cost estimate is based on a number of assumptions and covers a number of tasks required by the reporting entities to design, test, and implement an updated data system based on the proposed swap data elements, technical

<sup>269</sup> To generate the included estimates, a bottom-up estimation method was used based on internal CFTC expertise. In brief, and as seen in the estimates, the Commission anticipates that the task for the SDR's will be significantly more complex than it is for reporters. On several occasions, the CFTC has developed an ETL data stream similar to the anticipated parts 43 and 45 data streams. These data sets consist of 100–200 fields, similar to the number of fields in proposed appendix 1. This past Commission experience has been used to derive the included estimates.

<sup>270</sup> These assumptions include: (1) At a minimum, the SDRs will be required to establish a data extraction transformation and loading (ETL) process. This implies that either the SDR is using a sophisticated ETL tool, or will be implementing a data staging process from which the transformation can be implemented. (2) It is assumed that the SDR would require the implementation of a new database or other data storage vehicle from which their business processes can be executed. (3) While the proposed record structure is straight forward, the implementation of a database representing the different asset classes may be complex. (4) It is assumed that the SDR would need to implement a data validation regime typical of data sets of this size and magnitude. (5) It is reasonable to expect that the cost to operate the stream would be lower due to the standardization of incoming data, and the opportunity to automatically validate the data may make it less labor intensive.

<sup>271</sup> The lower estimate of \$141,000 represents 3,000 working hours at the \$47 rate. The higher estimate of \$500,000 represents 5,000 working hours at the \$100 rate.

<sup>272</sup> To generate the included estimates, a bottom-up estimation method was used based on internal CFTC expertise. On several occasions, the CFTC has created data sets that are transmitted to outside organizations. These data sets consist of 100–200 fields, similar to the number of fields in the proposed appendix 1. This past experience has been used to derive the included estimates.

standards, and validation conditions.<sup>273</sup> These tasks include defining requirements, developing an extraction query, developing of an interim extraction format (e.g., CSV), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing. Staff estimates that it would take a reporting entity 200 to 325 hours to implement the extraction. Including validations and formatting conversions would add another 300 to 400 hours, resulting in an estimated total of 500 to 725 hours per reporting entity.<sup>274</sup>

The Commission is proposing § 43.3(d) to address how data is reported to SDRs. Notwithstanding the anticipated incremental costs, the Commission preliminarily believes this change is warranted in light of the anticipated benefits.

#### Request for Comment

The Commission requests comment on its consideration of the costs and benefits of proposed § 43.3(d), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

(38) Are there additional costs or benefits that the Commission should consider? If so, please identify and, where quantifiable, provide data or other information to assist the Commission in quantifying them.

(39) Are there alternatives that would generate greater benefits and/or lower costs?

#### vi. § 43.3(f)—Data Validation Acceptance Message

The Commission is proposing § 43.3(f) to establish requirements for SDRs to

<sup>273</sup> These assumptions include: (1) The data that will be provided to the SDRs from this group of reporters largely exists in their environment. The back end data is currently available; (2) the data transmission connection from the firms that provide the data to the SDR currently exists. The assumption for the purposes of this estimate is that reporting firms do not need to set up infrastructure components such as FTP servers, routers, switches, or other hardware; it is already in place; (3) implementing the requirement does not cause reporting firms to create back end systems to collect their data in preparation for submission. It is assumed that firms that submit this information have the data available on a query-able environment today. (4) reporting firms are provided with clear direction and guidance regarding form and manner of submission. A lack of clear guidance will significantly increase costs for each reporter; and (5) there is no cost to disable reporting streams that will be made for obsolete by the proposed change in part 43.

<sup>274</sup> The lower estimate of \$23,500 represents 500 working hours at the \$47 rate. The higher estimate of \$72,500 represent 725 working hours at the \$100 rate.

validate real-time public data and send SEFs, DCMs, and reporting counterparties data validation acceptance or rejection messages.

The proposed validation requirements are designed to ensure collected information is accurate. The data validation process would require close communication between the reporting entity and the SDR and would cover data reported pursuant to both parts 43 and 45. To date, the Commission has not required the use of validations by the SDR and therefore has not provided any guidance on either the content or format of the messages associated with these validations.

While this change would require SDRs and reporting entities to update their systems, the Commission expects that, for the majority of swaps, validations would greatly increase the standardization of reporting requirements, so reporting entities could ensure that the updated systems would consistently pass the validation tests.

*Baseline:* SDRs are not required to validate data sent by reporting entities, a condition that exposes the public data tape to distortions through the inclusion of inaccurate or missing data. While there are no current requirements to validate data, we can observe activity that is related to market participants cancelling and correcting publicly disseminated trade information.<sup>275</sup> Based on observing a non-trivial share of records linked to this cancel and correct action, along with conversations with SDRs regarding their experience with reporting errors, the Commission expects this proposed rule change to help ensure accurate data is reported for public dissemination.

*Benefits:* The Commission expects that the proposed changes to § 43.3(f) will result in benefits through improved quality of data sent to the SDR and disseminated to the public. Improved quality of real-time data helps market participants in their trading decisions. It also enables better market oversight by self-regulatory organizations. Finally, more accurate and complete data helps researchers learn about swaps markets, which in turn can inform future regulatory decisions.<sup>276</sup>

<sup>275</sup> For example, based on a three week study in January 2020, CFTC staff found 11% of IRS records linked to a "Cancel" action type and 8% of records linked to a "Correct" action type. For CDS, staff found 7% and 6% of records linked to a "Cancel" and "Correct" action type, respectively. These percentages are much larger for commodity swaps and also appear to have a higher share related to uncleared swaps.

<sup>276</sup> The Commission is aware of at least two publicly-available studies that discuss problems with the current part 43 data. The first study found

Furthermore, the Commission expects benefits to result from improved communication between SDRs and reporting entities due to this data validation requirement. Finally, since the Commission is also proposing similar data validation requirements for part 45 swap data, along with the currently proposed changes to part 49, the Commission expects reporting parties will benefit from having harmonized regulatory requirements.

**Costs:** The Commission expects that the proposed rule change would create costs for SEFs, DCMs, and reporting counterparties, as well as SDRs, as they would be required to manage validation messages related to STAPD meant to be released for public consumption ASAP following execution. The Commission expects these costs to be limited to the initial development of automated systems to deal with acceptance or rejection messages.

Costs may differ between SDRs and reporting parties. With respect to SDRs, the Commission expects the costs of this rule change to be higher for SDRs with a larger share of uncleared swaps. These swaps tend to be less standardized and therefore have a higher degree of reporting complexity. The Commission also expects costs to increase with the number of distinct reporting entities as the SDR will be required to set up lines of communication with each entity. For SEFs, DCMs, and reporting counterparties, the Commission expects costs to be higher for reporting parties not able or willing to build automated systems, as they would need to manually determine why a rejection message exists and then manually resubmit the corrected information. However, the Commission expects that these costs, for both the SDR and reporting entities, would be mitigated by the introduction of technical standards, as standardized reporting by all reporting entities should reduce the frequency of errors in reporting.

The Commission is proposing § 43.3(f) to establish requirements for SDRs to validate real-time public data. Notwithstanding the anticipated incremental costs, the Commission

that about 10% of CDS traded in their data set had missing or zero prices. Y.C. Loon, and Z. (Ken) Zhong, "Does Dodd-Frank affect OTC transaction costs and liquidity? Evidence from real-time trade reports," *Journal of Financial Economics* (2016), available at <http://dx.doi.org/10.1016/j.jfineco.2016.01.01>. The second study reported a number of fields that were routinely null or missing, making it difficult to analyze swap market volumes. See Financial Stability Report, Office of Financial Research (Dec. 15, 2015) at 84–85, available at [https://financialresearch.gov/financial-stability-reports/files/OFR\\_2015-Financial-Stability-Report\\_12-15-2015.pdf](https://financialresearch.gov/financial-stability-reports/files/OFR_2015-Financial-Stability-Report_12-15-2015.pdf).

preliminarily believes this change is warranted in light of the anticipated benefits.

#### Request for Comment

The Commission requests comment on its consideration of the costs and benefits of proposed § 43.3(f), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

(40) Are there additional costs or benefits that the Commission should consider? If so, please identify and, where quantifiable, provide data or other information to assist the Commission in quantifying them.

(41) Are there alternatives that would generate greater benefits and/or lower costs?

(42) What would the costs be (both initial and on-going) for establishing and maintaining automated validation systems? What percentage of reporting entities would establish and maintain automated systems to manage validations? Please provide information on the basis for those estimates.

b. § 43.4—Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time

i. § 43.4(f)—Process To Determine Appropriate Rounded Notional or Principal Amounts

The Commission is proposing to revise § 43.4(f) to amend the rules for rounding actual notional or principal amounts of a swap before disseminating such swap data. Amended § 43.4(f)(8) would require SDRs to round such that the revealed amount is more precise. For example, trades with notional principal amount less than 100 billion but equal to or greater than one billion, we currently require rounding to nearest billion, and the new requirement is for rounding to the nearest 100 million. Similarly, amended § 43.4(f)(9) would require SDRs to round to the nearest 10 billion (the current requirement is to the nearest 50 billion) notional for principal amounts greater than 100 billion before disseminating such swap data.

The reason the Commission requires SDRs to disseminate rounded notional or principal amounts of swaps is to conceal the exact notional of swap transactions to preserve the anonymity of specific large trades. Such concealment may be beneficial, since disseminating the exact notional of a swap could allow the public to discern the identity of the parties. For example, a very specific notional amount may be attributable to a specific counterparty,

as may a very large trade, given that large trades are rare for most instruments.

**Baseline:** For both changes, the baseline is the current rule regarding appropriate rounding (e.g., to the nearest \$1 billion if the swap is between \$1 billion and \$100 billion). Under this baseline, notional amounts falling between \$1 billion and \$100 billion will be transformed into 100 different notional amounts. This reflects a rather imprecise grid of observed trade sizes.

**Benefits:** The main benefit of the rule changes is a more precise depiction of actual trade amounts. Precision would improve price discovery, giving market participants a better picture of the relationship between pricing and size for large trades that have occurred.

**Costs:** The main cost of this rule change is a reduction in the degree of anonymity of specific trades, which may make it more likely that the public can identify the counterparties to specific swaps. The proposed rounding changes may also make it more difficult for traders to hedge positions they acquire in large trades, because the publicly disseminated data would more accurately reveal trade size.

The Commission is proposing § 43.4(f) to amend the rules for rounding actual notional or principal amounts of a swap. Notwithstanding the anticipated incremental costs, the Commission preliminarily believes this change is warranted in light of the anticipated benefits following from increased transparency and the minimal increase in cost to market participant.

#### Request for Comment

The Commission requests comment on its consideration of the costs and benefits of proposed § 43.4(f), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

(43) Are there additional costs or benefits that the Commission should consider? If so, please identify and, where quantifiable, provide data or other information to assist the Commission in quantifying them.

(44) Are there alternatives that would generate greater benefits and/or lower costs?

(45) Would benefits be greater or costs reduced if the ranges covered by rounding and the round-off amounts were currency-specific (i.e., different for different currencies) and/or commodity-specific? If so, please explain and provide supporting data or other information.

(46) What are the costs and benefits to alternative mechanisms to choose the currency-specific rounding amounts? For example, should all amounts be in USD equivalents, and then apply the same rounding as USD?

ii. § 43.4(g)—Process To Determine Cap Sizes

The Commission is proposing to amend § 43.4(g) to change the process for determining cap sizes. Proposed § 43.4(g)(2) would link the cap determination to a subset of newly defined swap categories in proposed § 43.6 and establish the use of the 75-percent calculation described in proposed § 43.6(c)(2). Proposed §§ 43.4(g)(3)–(8) would define new cap sizes for any swap not falling into a swap category defined in proposed § 43.4(g)(2). Proposed §§ 43.4(g)(9)–(10) would focus on how the Commission would publish any cap size revision and determine when it becomes effective.

Cap sizes effectively results in a permanent truncation of notional values released to the public and are meant to apply to the largest trades within a defined swap category. This truncation necessarily results in a less transparent market, but is meant to protect sensitive information and mitigate the potential negative impact of real-time public reporting on market liquidity.<sup>277</sup> The adjustment to how cap sizes are determined is paired in this rule with changes to the methodology of determining block sizes. Both block and cap rules lead to certain information about swap activity being held back from public dissemination. In the case of caps, information on the actual notional size of an extremely large trade is permanently replaced with the cap value in the public tape. In the case of blocks, information on the terms of a large swap is temporarily delayed from dissemination.<sup>278</sup>

Due to their permanence, caps could have a more significant effect on information dissemination compared to blocks, which allow for only a delay in reporting. Current § 43.4(h) defines current cap sizes by asset class and delineates them in USD notional amounts. For example, there currently are three fixed cap sizes for IRSs in § 43.4(h)(1)(i) based on tenor: Caps of 250 million USD for swaps with a tenor of zero to two years; 100 million USD for swaps with a tenor of two to ten years; and 75 million USD for swaps

with a tenor greater than ten years. The remaining asset classes currently have a single fixed cap size: 100 Million USD for CDSs; 250 million USD for equity swaps and foreign exchange; and 25 million USD for other commodity swaps.<sup>279</sup>

As discussed, the Commission is proposing new swap categories and the use of a higher percentage to calculate AMBSs.<sup>280</sup> The proposed process to determine cap sizes would use the proposed new swap categories and a similar method as is currently used to define AMBSs, but with a 75-percent notional amount calculation instead of a 67-percent notional amount calculation. Therefore, the proposed rule change better aligns the block and cap determination since they would now be based on the same set of underlying trades. However, use of the 75-percent notional amount calculation method instead of the 67-percent notional amount calculation method would ensure caps would always be a smaller subset of trades.

The Commission reviewed the current cap sizes and found significant differences in the percentage of trades that are eligible for cap treatment, both within and across the main asset classes. This reflects the fact that within asset classes, the vast majority of swaps have the same cap size across all trade tenor groups.

Determining the effect of the change in cap determination methodology requires some assumptions. For example, an assumption that the determination change does not affect the distribution of trade sizes is critical to quantifying that effect. Under the assumption that the distribution of trade sizes is invariant to defined limits, the Commission calculated some rough estimates of the effect of the limit changes, based on trading from late 2019.<sup>281</sup>

Overall, the Commission finds the effect to be a modest decrease in the number of trades eligible for cap treatment. Nearly 90% of trades were smaller than minimum cap size under the old methodology, and will remain so under the new methodology. Commission staff found approximately 2% of trades were larger than minimum

cap size under the old methodology, and would be larger than minimum cap (and hence minimum block) size under the new methodology. Roughly 7% are cap eligible under the current methodology, but will no longer be under the new methodology. A little more than 1% of trades were larger than minimum cap size under the old methodology, and will be larger than minimum block (but not cap) size under the new methodology.

The Commission expects somewhat larger effects in the index CDS class. For example, for CDS indices based on investment grade indexes, 22% of trades are eligible for cap treatment under the current methodology, while under the new cap determination methodology this would be reduced to 3% of trades.

*Baseline:* Current practice, based on the initial cap sizes defined in § 43.4(h)(1), forms the baseline for this cost and benefits discussion.<sup>282</sup> As discussed above, the current cap size regime is over-inclusive, diminishing market transparency.

*Benefits:* The Commission expects a number of benefits to arise from the proposed rule change given the improved alignment with the AMBS and the movement toward a cap size that is based on market activity. Similar to the benefits noted in the block level discussion below, the movement toward better defined swap categories would ensure cap sizes are determined from a set of similar swaps. Proposed changes to the cap size method would better reflect the underlying market and are expected to benefit market transparency, as there would exist a clear separation between the block and cap size. This is most apparent in the interest rate asset class. The proposed rule change would ensure that cap eligibility would be reserved for only the trades with the largest notional amounts.

*Costs:* The Commission expects that the proposed rule change would impose costs on SDRs, as they would be required to adjust their systems to determine when trades within each new swap category would meet the requirements for cap treatment. The Commission expects such costs to be minimal given the SDRs already have systems established to identify when swaps are eligible for block and/or cap treatment.

Both the costs and benefits of increasing or decreasing cap sizes result from the increased or decreased, respectively, anonymity they afford. To

<sup>277</sup> See Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866, 32907.

<sup>278</sup> Of course, in the case when a swap satisfies both the cap and the block threshold, both are true.

<sup>279</sup> See §§ 43.5(h)(1)(ii)–(v).

<sup>280</sup> See the discussion about proposed changes to § 43.6 below in section V.B.4. for a more complete discussion along with the cost/benefit consideration of new swap categories.

<sup>281</sup> A sample of 20 weeks was selected from 8/2/2019 to 12/27/2019 for CDS and IRS markets. This is based on information collected to create the CFTC's Weekly Swaps Report. While the information is based on part 45 data, the vast majority of the trades selected are reportable swaps under part 43.

<sup>282</sup> Since the Commission has not to date established post-initial cap sizes pursuant to §§ 43.4(h)(2) and 43.6(f)(1), it is using the initial cap sizes as the baseline.

the extent that the revised cap sizes reduce anonymity for an asset class, those effects are mitigated by delays in reporting. Of particular relevance is that all trades with capped notional would be block eligible. Hence, the time delay in § 43.5 would reduce both the positive and negative effects of the changes in anonymity associated with changes in cap sizes.

The Commission is proposing § 43.4(g) to change the process for determining cap sizes. Notwithstanding the anticipated incremental costs, the Commission preliminarily believes this change is warranted in light of the anticipated benefits.

#### Request for Comment

The Commission requests comment on its consideration of the costs and benefits of proposed § 43.4(g), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

(47) Are there additional costs or benefits that the Commission should consider? If so, please identify and, where quantifiable, provide data or other information to assist the Commission in quantifying them.

(48) Are there alternatives that would generate greater benefits and/or lower costs?

(49) Would benefits be greater or costs reduced if the 75-percent notional amount calculation method was replaced with an alternative method to identifying the cap threshold? Should there be a different method applied to caps and blocks since they are designed to accomplish different objectives? If so, please explain and provide supporting data or other information.

(50) For the other commodity swap category (for which swaps are often measured in physical units), swaps have a block size equal to zero, and there is a fixed cap size denominated in USD notional. For such swaps, what are the costs to SDRs to convert the notional amount into USD to determine whether the trade meets the cap threshold?

#### c. § 43.5—Time Delays for Public Dissemination of Swap Transaction and Pricing Data

The Commission is proposing § 43.5(c) to increase the delay for the public dissemination of block trades to 48 hours for all block transactions. This time delay would be a significant change from the current rules, which set the length of the delay based on transaction and counterparty

characteristics.<sup>283</sup> For example, one part of the current rule defines the length of delay conditional on whether the swap is executed on a SEF. Another conditions the length of delay on whether the swap is subject to the mandatory clearing requirement. Finally, the current rule allows for additional time if neither counterparty is a SD/MSP.

*Baseline:* Under the current § 43.5, multiple time delays are in effect. As discussed in section II.E. above, these time delays range from 15 minutes for block trades executed on a SEF to 24 business hours for LNOF's swaps not subject to mandatory clearing and where both sides of the trade are not SDs/MSPs.

*Benefits:* The Commission anticipates the primary effect of proposed § 43.5(c) would be to provide additional time to intermediaries to hedge the exposure resulting from accommodating large trades. One benefit of the additional hedging time provided to intermediaries is the potential for lower price volatility than if the trade information were released in real time.<sup>284</sup> The lower hedging costs may benefit end-users wishing to make large trades, to the extent reduced hedging costs are passed to them. To the extent that price volatility unrelated to the fundamental supply and demand of the instrument is mitigated, price discovery might be enhanced by a delay. On the other hand, if a trade is fundamentally informative, a delay in publication would allow some participants to trade at off-market prices during the period of the delay, which is a potential cost to the change.

*Costs:* Proposed § 43.5(c) would extend the delay for reporting swap transactions with notional amounts above the minimum block size. Therefore, the Commission anticipates costs associated with a reduction in the market transparency for a specific set of swaps. The Commission expects that these costs would be reduced by the additional rule changes to the swap categories and AMBSs. For example, the Commission expects fewer trades to get block status as a result of proposed rule changes in § 43.8, leading to improved transparency for trades between the old and new threshold sizes. This mitigation is discussed at length in the preamble.

<sup>283</sup> See 17 CFR 43.5.

<sup>284</sup> There is substantial literature (see, e.g., Hendrik Bessembinder and Kumar Vankarman (2010) "Bid-Ask Spread" *Encyclopedia of Quantitative Finance* for a discussion) on the temporary impact of large traders. The time delay could allow the intermediary to "spread out the trade" to avoid price volatility induced by such large trades.

The Commission is proposing § 43.5(c) to increase the delay for public dissemination of block trade information. Notwithstanding the anticipated incremental costs, the Commission preliminarily believes this change is warranted in light of the anticipated benefits.

#### Request for Comment

The Commission requests comment on its consideration of the costs and benefits of proposed § 43.5(c), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

(51) Are there additional costs or benefits that the Commission should consider? If so, please identify and, where quantifiable, provide data or other information to assist the Commission in quantifying them.

(52) Are there alternatives that would generate greater benefits and/or lower costs?

(53) Should the Commission expect the distribution of costs and/or benefits to significantly vary across swap categories? If so, please provide specific examples and a discussion of the differences.

(54) What is the hedging cost savings from delaying the revelation of large trades? Could similar savings be realized in any swap category if the delay was less than 48 hours?

(55) What factors make it more or less likely that intermediaries will pass hedging cost savings resulting from delaying the revelation of large trades to their clients?

(56) What costs (e.g., reduced liquidity, bad pricing, wide spreads) are being incurred under the status quo regime? Please provide detailed information regarding the basis of those estimates.

#### d. § 43.6—Block Trades

The Commission is proposing a number of revisions to § 43.6. The most economically significant revisions of these relate to block trades; revising the set of swap categories in § 43.6(b) and amending to the process for determining the AMBS in § 43.6(e). The remaining changes proposed in § 43.6 are not substantive and are clarifying changes, so the Commission has not described the costs and benefits of such proposed changes.<sup>285</sup>

<sup>285</sup> For example, § 43.6(c) discusses the proposed method for determining the AMBS, but the only change from the current rule text is related to the new definition for a "trimmed data set." The Commission does not believe that this change warrants a discussion of the costs and benefits.

In general, changes in minimum block sizes, cap sizes, and reporting delays have broadly similar effects. Lower minimum block and cap sizes and longer reporting delays reduce transparency, and may increase liquidity.<sup>286</sup> In this sense, the costs and benefits of the changes described below would depend on the direction of the change (e.g., a higher minimum block would increase transparency and may reduce liquidity).

As detailed below, the revisions would lead to changes that would result in assigned block sizes that better reflect trading patterns in individual swap categories. Specifically, the categories of swaps used in the minimum block size determination have been revised to better ensure that each category is more homogenous in terms of typical trade sizes. For example, under the current rule, rate swaps are placed into three groups based on currency (super-major, major, and non-major), and each group is divided into nine subgroups based on tenor (with the shortest tenor bucket representing swaps of less than 46 days and the longest tenor bucket representing swaps of greater than 30 years).

The proposed rule, in contrast, would define 15 currency-specific groups, each with the same nine tenor subgroups. This more granular bucketing allows for more targeted block levels; for instance, this allows block levels for the most active USD IRS products to differ from levels for the still active, but slightly less common JPY or GBP IRS products, where trade sizes are lower. All currencies not within the list of 15 would have a block size of zero—essentially allowing this small subset of IRS to receive full block treatment.<sup>287</sup>

For CDSs, the new swap categories would no longer be based on observed spreads with multiple tenor groups, but would be based on well-defined products (e.g., CDXIG, CMBX, iTraxx) for a single tenor range between four to six years (designed to pick up the most actively traded five year on-the-run CDS product). All other CDS products which do not fall into these defined product groups, or defined product tenor, would have a new block size of zero.

<sup>286</sup> For example, trading a block allows for a temporary suspension of information made publicly available. This can prevent traders from “front-running” a swap dealer attempt to hedge a large exposure it acquired by trading with a customer. By lowering the SD’s cost of hedging, the delay in reporting can result in greater SD willingness to offer liquidity to customers.

<sup>287</sup> The background to the proposal to set the block size of certain subsets of swaps in the IRS, CDS, foreign exchange, and other commodity asset classes is discussed in sections II.F.1.a, b, d, and e, respectively, above.

Swap categories in the FX asset class would include a list of 22 currencies exchanged for USD along with the set of 180 swap categories comprised of each unique combination of exchanges of these 22 currencies.<sup>288</sup> This represents a significant difference from the current set of 84 swap categories comprised of 22 currencies exchanged for one of the super-major currencies (EUR, GBP, JPY, or USD).<sup>289</sup> Finally, there is a significant change to swap categories related to “Other Commodity” as the new proposed categories represent the underlying commodity instead of references to specific futures contracts and exchanges.

Revised § 43.6(e) contains amendments to the process for determining the AMBS for each new swap category defined in § 43.6(c). For each swap category, the 67-percent notional amount calculation based on one year of transactions would be performed for a subset of swap categories. The minimum size for a subset of swaps in the FX asset class that have no reference to USD would be based on a method to identify the AMBS based on two swap categories, with each side paired with USD. Finally, a subset of swap categories would have a block size of zero.

The swap category changes combined with the new 67-percent notional amount calculation would significantly change the number of trades eligible for block status; we discuss the costs and benefits to these changes below. The Commission reviewed the current block sizes and found significant differences in the percentage of trades that are eligible for block treatment, both within and across the main asset classes. This reflects the fact that within asset classes, the vast majority of swaps have the same block size across all trade tenor groups.

One further implication of the proposed amendments to the process for determining the AMBS in § 43.6(e) relates to trading rules for made available for trading (“MAT”) instruments. The Commission requires that instruments that have been MAT be traded on SEFs or DCMs using specific trading protocols (i.e., order book or request for quote), unless the trade is greater than the AMBS for such instruments.<sup>290</sup> Hence, changes in the AMBS impact whether individual trades

<sup>288</sup> In this last set, the AMBS is based on the AMBS of the associated currencies exchanged for the USD.

<sup>289</sup> While there are 84 current swap categories for FX, 40 of these have a block size of zero.

<sup>290</sup> There are some exceptions to the mandatory trading on SEFs for MAT instruments, such as trades that involve non-U.S. persons.

must be executed on SEFs or DCMs, or whether they can be executed bilaterally.<sup>291</sup> The Commission considered the costs and benefits of requiring mandatory DCM/SEF trading for certain instruments in the 2018 SEF NPRM, and adopts and incorporates that previous consideration in this release by reference.<sup>292</sup> Here, the Commission simply notes that changes in the AMBS may affect whether certain swaps have to be executed on a SEF or DCM, as noted above.

The proposed amendments to § 43.6(e) would result in a block size of zero for many of the swaps not in the most liquid swap categories. This would result in 100% of many types of swaps (e.g., off-the-run CDSs and certain major and non-major currencies in the IRS and FX asset classes) being eligible for block treatment.

*Baseline:* The baseline for proposed § 43.6(e) is the current text §§ 43.6(e) and (f) and the current process for determining if a trade is eligible for block treatment. As discussed in section II.F.2, the Commission has not established post-initial AMBSs. As a result, the baseline is the AMBSs for current swap categories calculated using the 50-percent notional amount calculation method according to current § 43.6(e). The Commission believes that too many swaps are currently receiving block treatment and the swap categories can be improved.

*Benefits:* The motivation for special rules for “large” trades is that large trades often require intermediaries to take large positions (at least temporarily). Importantly, the costs to the intermediaries to subsequently hedge the trade are reduced by allowing the intermediaries some period to hedge, prior to the initial trade becoming public knowledge. A trade is large in this sense when it is substantial relative to typical trade size and daily volume in that instrument. For this reason, policy toward block size determination should take an instrument’s market characteristics into account.

The Commission expects that the change in swap categories would define block sizes with respect to categories that are more granular than the current swap categories, which would then better reflect current trading patterns for each type of swap. For example, USD

<sup>291</sup> The definition of “block trade” is discussed above in section II.B.2.

<sup>292</sup> See 83 FR 61946, 62140 Swap Execution Facilities and Trade Execution Requirement. As noted there, the benefits of requiring SEF trading include greater transparency and enhanced oversight. The costs include reduced flexibility for traders.



IRs currently represent most of the actual trades in the IRS Super-Major category, so that the current AMBS for JPY IRS swaps (also in the Super-Major category) is based largely on USD trades. The new rules would allow for an AMBS that better reflects the size distribution of JPY rate swaps, and in this case would allow for a smaller block threshold for these swaps relative to the more active USD category. The move from spread-based to product-based swap categories for CDSs is expected to achieve something similar, in that the liquidity (and thus trade distribution) is often much more homogenous within a product group rather than within a spread category. This change would also provide the additional benefit of foreclosing the possibility that an individual product may not change block thresholds as market spreads adjust over time.

The Commission expects that the proposed 67-percent notional amount calculations would enhance transparency in the market by decreasing the number of trades eligible for block treatment and therefore result in delayed reporting. The increased percentile (from 50 to 67) would result in a smaller set of swaps eligible for block treatment and therefore would increase real-time market reporting, leading to increased accuracy in the real-time tape. However, because the average size of block trades would generally increase under the proposed rules, the Commission proposes to pair this change with an extension to the reporting delay (in some cases from 15 minutes to 48 hours). The Commission believes this longer delay is more appropriate given the larger notional size; because the primary reason for the delay is to ensure that the dealing counterparty is able to hedge out the risk taken in the trade, a larger average trade size would imply a greater needed time for trade hedging.

*Costs:* The Commission anticipates costs associated with this rule change as market participants respond to the new swap categories and increased percentile calculation. For example, focusing on USD interest rate swaps, the proposed rule change would, by increasing the block threshold, decrease the set of swaps eligible for block status. If end-users continue to trade swaps within this notional range, dealers may find it more difficult to hedge their exposure because ASATP reporting would be required. If dealers face increased difficulties to hedge client demands, then the dealers will increase the costs to the clients or, potentially, stop trading in this notional range which can contribute to a decrease in

liquidity. As discussed above, this in turn may increase price volatility, and potentially increase the bid-ask spread facing end-users.

The Commission expects these costs to vary by asset class and the activity level of the reporting entity, though the more granular bucketing of block categories is aimed to ensure that cost variations across asset classes are mitigated. Costs may also differ by reporting entity depending on the type of cost. For instance, the Commission expects SDs and end-users specializing in a single swap category to face smaller operational costs relative to dealers who operate across multiple swap categories, given they would only have to adjust their operational systems (where necessary) for specific swap categories. However, if transaction/hedging costs are affected by the changes in the block threshold, hedging may be easier (and thus costs lower) for dealers active in a number of markets, who therefore have a wider set of potential hedging instruments. Finally, depending on how trade prices are determined, the costs attributed to the dealer above may actually be passed on to the end-user/client in the form of increased spreads.

The Commission is proposing § 43.6(e) to adjust the process for determining the AMBS. Notwithstanding the anticipated incremental costs, the Commission preliminarily believes this change is warranted in light of the anticipated benefits.

#### Request for Comment

The Commission requests comment on its consideration of the costs and benefits of proposed § 43.6(e), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

(57) Are there additional costs or benefits that the Commission should consider? If so, please identify and, where quantifiable, provide data or other information to assist the Commission in quantifying them.

(58) Are there alternatives that would generate greater benefits and/or lower costs?

(59) What is the increased cost due to earlier revelation of trades that will no longer be subject to block treatment?

(60) From an economic perspective, are there additional swap categories that should be considered that would significantly change the cost and benefits?

(61) Would benefits increase or costs decrease if the sample used to calculate AMBS excluded some parts of the year

that might have uncharacteristic trading patterns (e.g., if the sample of CDS trades excluded dates when CDS indexes roll (which happens twice a year for the major indexes))? Are there any similar events for other asset classes? Please provide detailed information regarding the estimated impact on resulting benefits and costs.

(62) Would benefits increase or costs decrease if the Commission adopted a flexible method to evaluate AMBS and adjust accordingly to reflect changes in trading patterns? Please provide information regarding the basis of those estimates.

#### 3. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of the proposed amendments to part 43 with respect to the following factors: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of markets; price discovery; sound risk management practices; and other public interest considerations.

As discussed above, the proposed amendments to part 43 include changes that reflect what the Commission has learned about the technical aspects of reporting, as well as changes that permit longer delays or more opacity in reporting under some circumstances. The Commission expects that this, along with the data validation requirements in proposed § 43.3(f), would increase the reliability of part 43 data.

A discussion of these proposed amendments in light of section 15(a) factors reflecting all of the proposed changes is set out immediately below.

##### a. Protection of Market Participants and the Public

The Commission preliminarily believes that reporting requirements designed to enhance transparency empower market participants by informing them, in real-time, about the price of a broad set of swap products. This real-time information helps protect these participants from transacting at prices significantly different than the prevailing market. In addition, the Commission preliminarily believes that enhanced transparency allows for better monitoring of the quantity, and size, of market transactions leading to improved protection of market participants and the public. As discussed above, some of the changes increase transparency, such as general increases in block sizes and improvements in reported data, while other changes reduce transparency, such as delayed block reporting. However, the changes proposed herein which potentially reduce transparency may

reduce hedging costs for large trades, protecting those participants who tend to execute uniquely large swaps.

**b. Efficiency, Competitiveness, and Financial Integrity of Markets**

Real-time reporting of transactions affects the efficiency of markets by quickly providing new information to all market participants in a standardized manner. This real-time information, which is publicly accessible, allows prices to rapidly and efficiently adjust to the prevailing trading conditions. To the extent that these proposed rules reduce the cost of information gathering and processing, market efficiency should be improved. Increasing the threshold size of block trades may have an ambiguous effect on market efficiency. It may improve market efficiency by countering potential front-running may lead to larger bid/ask spreads. However, it may harm market efficiency in that market participants will learn about some trades later because of this proposed rule. In the aggregate, the Commission preliminarily believes the proposed rule will weigh in favor of market efficiency.

Improvements to real-time reporting may also enhance competition as parties may learn about the prices and venues where potential counterparties are executing their transactions. As such, swaps markets may become more competitive since parties will have access to the prices that most participants are transacting at and will be able to use this information during their negotiations.

The rule changes, through their effects on transparency, can affect the financial integrity of markets because market participants can verify that they are transacting at or near prevailing market prices. In addition to transparency, the proposed changes to part 43 might affect financial integrity in other ways. In particular, the Commission preliminarily believes that more accurate STAPD would lead to greater understanding of liquidity and market depth for market participants executing swap transactions. Amendments that result in improved part 43 STAPD being made available to the public would expand the ability of market participants to monitor real-time activity by other participants and to respond appropriately.

**c. Price Discovery**

Section 2(a)(13) of the CEA requires that STAPD be made publicly available. The CEA and the Commission's existing regulations in part 43 implementing CEA section 2(a)(13) also require STAPD to be made available to the

public in real-time. As with the swap data reported for use by regulators pursuant to section 4r of the CEA and the Commission's part 45 regulations implementing CEA section 4r, the Commission believes that inaccurate and incomplete STAPD hinders the use of the STAPD, which harms transparency and price discovery. At least two publicly available studies discuss past problems with the current part 43 data. The Commission preliminarily expects that market participants would be better able to analyze STAPD as a result of the proposed amendments, because the proposed amendments would make STAPD more accurate and complete. The Commission expects price discovery to be improved with proposed changes to clearing swaps and avoiding duplicative reporting of mirror swaps.

On the other hand, some aspects of the proposed rules may dampen price discovery relative to the status quo baseline. Specifically, if proposed § 43.4(a)(4) encouraged more PPSs, then the proposal may also reduce price discovery because fewer trades would have prices that are known at the time of execution.<sup>293</sup> Further, longer block trade real-time reporting delays pursuant to proposed § 43.5(c) could harm price discovery because the public would lengthen the time before which block trade prices are publicly available than is currently the case; this would be counter-balanced by the fact that longer delays could promote the execution of swaps that counterparties otherwise would not execute under the current shorter real-time reporting delays.

The Commission does not know exactly how market participants will adapt and evolve due to the proposed rule changes. However, the Commission preliminarily believes that the proposed rule will improve price discovery in aggregate.

**d. Sound Risk Management Practices**

The Commission preliminarily expects that allowing reporting parties a greater ability to delay reporting would, in some circumstances, enable more effective hedging. In particular, SDs may have greater ability to manage the risk they take on when accommodating customer trades. This in turn may allow such customers access to better terms for hedging their risk, especially if they want to hedge a large amount of risk.

<sup>293</sup> On the other hand, as noted above, removing mirror swaps from the public data could remove redundancy thereby promoting the accuracy of the data.

**e. Other Public Interest Considerations**

More accurate part 43 data would be helpful to researchers who might use it to improve the public's understanding of how swap markets function with respect to market participants, other financial markets, and the overall economy. Further, better and more accurate data would likely improve the Commission's regulatory oversight and enforcement capabilities. The Commission requests comment on all aspects of the analysis of these five factors. In addition, the Commission requests specific comment on the following:

(63) Are there other effects on these five factors that are likely to result from the proposed rule changes? Please provide quantification if possible, along with information regarding the basis of that quantification.

**D. Antitrust Considerations**

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 objectives of the CEA, in issuing any order or adopting any Commission rule or regulation.

The Commission does not anticipate that the proposed amendments to part 43 would result in anti-competitive behavior. However, the Commission encourages comments from the public on any aspect of the proposal that may have the potential to be inconsistent with the anti-trust laws or anti-competitive in nature.

**List of Subjects in 17 CFR Part 43**

Real-time public swap reporting.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 43 as set forth below:

**PART 43—REAL-TIME PUBLIC REPORTING**

- 1. The authority citation for part 43 continues to read as follows:

**Authority:** 7 U.S.C. 2(a), 12a(5), and 24a, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010), unless otherwise noted.

- 2. Amend § 43.1 by removing paragraphs (b) and (d), redesignating paragraph (c) as (b), and revising newly redesignated paragraph (b).

The revision reads as follows:

**§ 43.1 Purpose, scope, and rules of construction.**

\* \* \* \* \*

(b) *Rules of construction.* The examples in this part are not exclusive. Compliance with a particular example or application of a sample clause, to the extent applicable, shall constitute compliance with the particular portion of the rule to which the example relates.

■ 3. Revise § 43.2 to read as follows:

#### § 43.2 Definitions.

(a) *Definitions.* As used in this part:

*Appropriate minimum block size* means the minimum notional or principal amount for a category of swaps that qualifies a swap within such category as a block trade.

*As soon as technologically practicable* means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.

*Asset class* means a broad category of commodities including, without limitation, any “excluded commodity” as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

*Block trade* means:

(1) With respect to an off-facility swap, a publicly reportable swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and

(2) With respect to a swap that is not an off-facility swap, a publicly reportable swap that:

(i) Involves a swap that is listed on a swap execution facility or designated contract market;

(ii) Is executed on the trading system or platform, that is not an order book as defined in § 37.3(a)(3) of this chapter, of a swap execution facility or occurs away from a swap execution facility’s or designated contract market’s trading system or platform and is executed pursuant to the swap execution facility’s or designated contract market’s rules and procedures;

(iii) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and

(iv) Is reported subject to the rules and procedures of the swap execution facility or designated contract market and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5.

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

*Economically related* means a direct or indirect reference to the same

commodity at the same delivery location or locations, or with the same or a substantially similar cash market price series.

*Embedded option* means any right, but not an obligation, provided to one party of a swap by the other party to the swap that provides the party holding the option with the ability to change any one or more of the economic terms of the swap.

*Execution* means an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms under applicable law.

*Execution date* means the date, determined by reference to eastern time, on which swap execution has occurred.

*Mirror swap* means a swap:

(1) To which a prime broker is a counterparty or both counterparties are prime brokers;

(2) That is executed contemporaneously with a corresponding trigger swap;

(3) That has identical terms and pricing as the contemporaneously executed trigger swap (except that a mirror swap, but not the corresponding trigger swap, may include any associated prime brokerage service fees agreed to by the parties and except as provided in the final sentence of this “mirror swap” definition);

(4) With respect to which the sole price forming event is the occurrence of the contemporaneously executed trigger swap; and

(5) The execution of which is contingent on, or is triggered by, the execution of the contemporaneously executed trigger swap. The notional amount of a mirror swap may differ from the notional amount of the corresponding trigger swap, including, but not limited to, in the case of a mirror swap that is part of a partial reverse give-up; *provided, however*, that in such cases,

(i) The aggregate notional amount of all such mirror swaps to which the prime broker that is a counterparty to the trigger swap is also a counterparty shall be equal to the notional amount of the corresponding trigger swap and

(ii) The market risk and contractual cash flows of all such mirror swaps to which a prime broker that is not a counterparty to the corresponding trigger swap is a party will offset each other (and the aggregate notional amount of all such mirror swaps on one side of the market and with cash flows in one direction shall be equal to the aggregate notional amount of all such mirror swaps on the other side of the market and with cash flows in the opposite direction), resulting in such

prime broker having a flat market risk position.

*Novation* means the process by which a party to a swap legally transfers all or part of its rights, liabilities, duties, and obligations under the swap to a new legal party other than the counterparty to the swap under applicable law.

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

*Other commodity* means any commodity that is not categorized in the interest rate, credit, foreign exchange, equity, or other asset classes as may be determined by the Commission.

*Physical commodity swap* means a swap in the other commodity asset class that is based on a tangible commodity.

*Post-priced swap* means an off-facility swap for which the price has not been determined at the time of execution.

*Pricing event* means the completion of the negotiation of the material economic terms and pricing of a trigger swap.

*Prime broker* means, with respect to a mirror swap and its related trigger swap, a swap dealer acting in the capacity of a prime broker with respect to such swaps.

*Prime brokerage agency arrangement* means an arrangement pursuant to which a prime broker authorizes one of its clients, acting as agent for such prime broker, to cause the execution of a trigger swap.

*Prime brokerage agent* means a client of a prime broker who causes the execution of a trigger swap acting pursuant to a prime brokerage agency arrangement.

*Public dissemination and publicly disseminate* means to make freely available and readily accessible to the public swap transaction and pricing data in a non-discriminatory manner, through the internet or other electronic data feed that is widely published. Such public dissemination shall be made in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved, and analyzed.

*Publicly reportable swap transaction* means:

(1) Unless otherwise provided in this part—

(i) Any executed swap that is an arm’s-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or

(ii) Any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of

a swap that changes the pricing of the swap.

(2) Examples of executed swaps that do not fall within the definition of publicly reportable swap may include:

(i) Internal swaps between one-hundred percent owned subsidiaries of the same parent entity; and

(ii) Portfolio compression exercises.

(3) These examples represent swaps that are not at arm's length and thus are not publicly reportable swap transactions, notwithstanding that they do result in a corresponding change in the market risk position between two parties.

*Reference price* means a floating price series (including derivatives contract prices and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of a swap contract.

*Reporting counterparty* means the party to a swap with the duty to report a publicly reportable swap transaction in accordance with this part and section 2(a)(13)(F) of the Act.

*Swap execution facility* means a trading system or platform that is a swap execution facility as defined in CEA section 1a(50) and in § 1.3 of this chapter and that is registered with the Commission pursuant to CEA section 5h and part 37 of this chapter.

*Swap transaction and pricing data* means all data elements for a swap in appendix C of this part required to be reported or publicly disseminated pursuant to this part.

*Swaps with composite reference prices* means swaps based on reference prices that are composed of more than one reference price from more than one swap category.

*Trigger swap* means a swap:

(1) That is executed pursuant to one or more prime brokerage agency arrangements;

(2) To which a prime broker is a counterparty or both counterparties are prime brokers;

(3) That serves as the contingency for, or triggers, the execution of one or more corresponding mirror swaps; and

(4) That is a publicly reportable swap transaction that is required to be reported to a swap data repository pursuant to this part and part 45 of this chapter.

*Trimmed data set* means a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of 10, computing the mean, and excluding transactions that are beyond two standard deviations above the mean for the other commodity asset class and three standard deviations

above the mean for all other asset classes.

(b) *Other defined terms.* Terms not defined in this part have the meanings assigned to the terms in § 1.3 of this chapter.

■ 4. Amend § 43.3 by revising paragraphs (a) through (d), removing paragraph (h), redesignating paragraph (i) as paragraph (g), and revising paragraph (f) and newly redesignated paragraph (g).

The revisions read as follows:

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

(a) *Responsibilities of parties to a swap to report swap transaction and pricing data in real-time—(1) In general.*

A reporting counterparty, swap execution facility, or designated contract market, as determined by this section, shall report any publicly reportable swap transaction to a swap data repository as soon as technologically practicable after execution, subject to paragraphs (a)(2) through (6) of this section. Such reporting shall be done in the manner set forth in paragraph (d) of this section.

(2) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall report swap transaction and pricing data to a swap data repository as soon as technologically practicable after execution.

(3) *Off-facility swaps.* Except as otherwise provided in paragraphs (a)(4) through (6) of this section, a reporting counterparty shall report all publicly reportable swap transactions that are off-facility swaps to a swap data repository for the appropriate asset class in accordance with the rules set forth in this part as soon as technologically practicable after execution. Unless otherwise agreed to by the parties prior to execution, the following shall be the reporting counterparty for a publicly reportable swap transaction that is an off-facility swap:

(i) If only one party is a swap dealer or major swap participant, then the swap dealer or major swap participant shall be the reporting counterparty;

(ii) If one party is a swap dealer and the other party is a major swap participant, then the swap dealer shall be the reporting counterparty;

(iii) If both parties are swap dealers, then prior to execution of a publicly reportable swap transaction that is an off-facility swap, the swap dealers shall

designate which party shall be the reporting counterparty;

(iv) If both parties are major swap participants, then prior to execution of a publicly reportable swap transaction that is an off-facility swap, the major swap participants shall designate which party shall be the reporting counterparty; and

(v) If neither party is a swap dealer or a major swap participant, then prior to execution of a publicly reportable swap transaction that is an off-facility swap, the parties shall designate which party shall be the reporting counterparty.

(4) *Post-priced swaps—(i) Post-priced swaps reporting delays.* The reporting counterparty may delay reporting a post-priced swap to a swap data repository until the earlier of the price being determined and 11:59:59 p.m. eastern time on the execution date. If the price of a publicly reportable swap transaction that is a post-priced swap is not determined by 11:59:59 p.m. eastern time on the execution date, the reporting counterparty shall report to a swap data repository by 11:59:59 p.m. eastern time on the execution date all swap transaction and pricing data for such post-priced swap other than the price and any other then-undetermined swap transaction and pricing data and shall report each such item of previously undetermined swap transaction and pricing data as soon as technologically practicable after such item is determined.

(ii) *Other economic terms.* The post-priced swap reporting delay set forth in paragraph (a)(4)(i) of this section does not apply to publicly reportable swap transactions with respect to which the price is known at execution but one or more other economic or other terms are not yet known at the time of execution.

(5) *Clearing swaps.* Notwithstanding the provisions of paragraphs (a)(1) through (3) of this section, if a clearing swap, as defined in § 45.1(a) of this chapter, is a publicly reportable swap transaction, the derivatives clearing organization that is a party to such swap shall be the reporting counterparty and shall fulfill all reporting counterparty obligations for such swap as soon as technologically practicable after execution.

(6) *Mirror swaps.* (i) A mirror swap is not a publicly reportable swap transaction. Execution of a trigger swap, for purposes of determining when execution occurs under paragraphs (a)(1) through (3) of this section, shall be deemed to occur at the time of the pricing event for such trigger swap.

(ii) If, with respect to a given set of swaps, it is unclear which are mirror swaps and which is the related trigger

swap (including, but not limited to, situations where there is more than one prime broker counterparty within such set of swaps and situations where the pricing event for each set of swaps occurs between prime brokerage agents of a common prime broker), the prime brokers shall determine which swap is the trigger swap and which are mirror swaps. With respect to a trigger swap to which a prime broker is a party, the counterparty that falls within the highest level of the reporting counterparty determination hierarchy set forth in paragraph (a)(3) of this section is the reporting counterparty; if both counterparties fall within the same level of that hierarchy, they shall determine who is the reporting counterparty for such trigger swap pursuant to paragraph (a)(3)(iii), (iv), or (v) of this section, as applicable. Notwithstanding the foregoing, if the counterparty to a trigger swap that is not a prime broker is a swap dealer, then that counterparty shall be the reporting counterparty for the trigger swap.

(iii) If, with respect to a given set of swaps, it is clear which are mirror swaps and which is the related trigger swap, the reporting counterparty for the trigger swap shall be determined pursuant to paragraph (a)(3) of this section.

(iv) Trigger swaps described in paragraphs (a)(6)(ii) and (iii) of this section shall be reported pursuant to the requirements set out in paragraphs (a)(2) or (3) of this section, as applicable, except that the provisions of paragraph (a)(6)(ii) of this section, rather than the provisions of paragraph (a)(3) of this section, shall govern the determination of the reporting counterparty for purposes of the trigger swaps described in paragraph (a)(6)(ii) of this section.

(7) *Third-party facilitation of data reporting.* Any person required by this part to report swap transaction and pricing data, while remaining fully responsible for reporting as required by this part, may contract with a third-party service provider to facilitate reporting.

(b) *Public dissemination of swap transaction and pricing data by swap data repositories in real-time—(1) In general.* A swap data repository shall publicly disseminate swap transaction and pricing data as soon as technologically practicable after such data is received from a swap execution facility, designated contract market, or reporting counterparty, unless such swap transaction and pricing data is subject to a time delay described in § 43.5, in which case the swap transaction and pricing data shall be

publicly disseminated in the manner described in § 43.5.

(2) *Compliance with 17 CFR part 49.* Any swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall comply with part 49 of this chapter.

(3) *Prohibitions on disclosure of data.* (i) If there is a swap data repository for an asset class, a swap execution facility or designated contract market shall not disclose swap transaction and pricing data relating to publicly reportable swap transactions in such asset class, prior to the public dissemination of such data by a swap data repository unless:

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

(B) Such disclosure is only made to market participants on such swap execution facility or designated contract market;

(C) Market participants are provided advance notice of such disclosure; and

(D) Any such disclosure by the swap execution facility or designated contract market is non-discriminatory.

(ii) If there is a swap data repository for an asset class, a swap dealer or major swap participant shall not disclose swap transaction and pricing data relating to publicly reportable swap transactions in such asset class, prior to the public dissemination of such data by a swap data repository unless:

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

(B) Such disclosure is only made to the customer base of such swap dealer or major swap participant, including parties who maintain accounts with or have been swap counterparties with such swap dealer or major swap participant;

(C) Swap counterparties are provided advance notice of such disclosure; and

(D) Any such disclosure by the swap dealer or major swap participant is non-discriminatory.

(4) *Acceptance and public dissemination of all swaps in an asset class.* Any swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for swaps in its selected asset class shall accept and publicly disseminate swap transaction and pricing data in real-time for all publicly reportable swap transactions within such asset class, unless otherwise prescribed by the Commission.

(5) *Annual independent review.* Any swap data repository that accepts and publicly disseminates swap transaction

and pricing data in real-time shall perform, on an annual basis, an independent review in accordance with established audit procedures and standards of the swap data repository's operations, security, and other system controls for the purpose of ensuring compliance with the requirements in this part.

(c) *Availability of swap transaction and pricing data to the public.* (1) Swap data repositories shall make swap transaction and pricing data available on their websites for a period of time that is at least one year after the initial public dissemination of such data and shall make instructions freely available on their websites on how to download, save, and search such data.

(2) Swap transaction and pricing data that is publicly disseminated pursuant to this part shall be made available free of charge.

(d) *Data reported to swap data repositories.* (1) In reporting swap transaction and pricing data to a swap data repository, each reporting counterparty, swap execution facility, or designated contract market shall report the swap transaction and pricing data elements in appendix C of this part in the form and manner provided in the technical specifications published by the Commission pursuant to § 43.7.

(2) In reporting swap transaction and pricing data to a swap data repository, each reporting counterparty, swap execution facility, or designated contract market making such report shall satisfy the data validation procedures of the swap data repository.

(3) In reporting swap transaction and pricing data to a swap data repository, each reporting counterparty, swap execution facility, or designated contract market shall use the facilities, methods, or data standards provided or required by the swap data repository to which the entity or reporting counterparty reports the data.

\* \* \* \* \*

(f) *Data Validation Acceptance Message.* (1) A swap data repository shall validate each swap transaction and pricing data report submitted to the swap data repository and notify the reporting counterparty, swap execution facility, or designated contract market submitting the report whether the report satisfied the data validation procedures of the swap data repository as soon as technologically practicable after accepting the swap transaction and pricing data report. A swap data repository may satisfy the requirements of this paragraph by transmitting data validation acceptance messages as required by § 49.10 of this chapter.

(2) If a swap transaction and pricing data report submitted to a swap data repository does not satisfy the data validation procedures of the swap data repository, the reporting counterparty, swap execution facility, or designated contract market required to submit the report has not satisfied its obligation to report swap transaction and pricing data in the manner provided by paragraph (d) of this section. The reporting counterparty, swap execution facility, or designated contract market has not satisfied its obligation until it submits the swap transaction and pricing data report in the manner provided by paragraph (d) of this section, which includes the requirement to satisfy the data validation procedures of the swap data repository.

(g) *Fees.* Any fee or charge assessed on a reporting counterparty, swap execution facility, or designated contract market by a swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for the collection of such data shall be equitable and non-discriminatory. If such swap data repository allows a fee discount based on the volume of data reported to it for public dissemination, then such discount shall be made available to all reporting counterparties, swap execution facilities, and designated contract markets in an equitable and non-discriminatory manner.

■ 5. Revise § 43.4 to read as follows:

**§ 43.4 Swap transaction and pricing data to be publicly disseminated in real-time.**

(a) *Public dissemination of data fields.* Any swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate the information for the swap transaction and pricing data elements in appendix C of this part in the form and manner provided in the technical specifications published by the Commission pursuant to § 43.7.

(b) *Additional swap information.* A swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time may require reporting counterparties, swap execution facilities, and designated contract markets to report to such swap data repository information necessary to compare the swap transaction and pricing data that was publicly disseminated in real-time to the data reported to a swap data repository pursuant to section 2(a)(13)(G) of the Act or to confirm that parties to a swap have reported in a timely manner pursuant to § 43.3. Such additional

information shall not be publicly disseminated by the swap data repository.

(c) *Anonymity of the parties to a publicly reportable swap transaction—*

(1) *In general.* Swap transaction and pricing data that is publicly disseminated in real-time shall not disclose the identities of the parties to the swap or otherwise facilitate the identification of a party to a swap. A swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall not publicly disseminate such data in a manner that discloses or otherwise facilitates the identification of a party to a swap.

(2) *Actual product description reported to swap data repository.* Reporting counterparties, swap execution facilities, and designated contract markets shall provide a swap data repository with swap transaction and pricing data that includes an actual description of the underlying asset(s). This requirement is separate from the requirement that a reporting counterparty, swap execution facility, or designated contract market shall report swap data to a swap data repository pursuant to section 2(a)(13)(G) of the Act and the Commission's regulations.

(3) *Public dissemination of the actual description of underlying asset(s).* Notwithstanding the anonymity protection for certain swaps in the other commodity asset class in paragraph (c)(4) of this section, a swap data repository shall publicly disseminate the actual underlying asset(s) of all publicly reportable swap transactions in the interest rate, credit, equity, and foreign exchange asset classes.

(4) *Public dissemination of the underlying asset(s) for certain swaps in the other commodity asset class.* A swap data repository shall publicly disseminate swap transaction and pricing data for publicly reportable swap transactions in the other commodity asset class by limiting the geographic detail of the underlying asset(s). The identification of any specific delivery point or pricing point associated with the underlying asset of such other commodity swap shall be publicly disseminated pursuant to appendix B of this part.

(d) *Reporting of notional or principal amounts to a swap data repository—*(1) *Off-facility swaps.* The reporting counterparty shall report the actual notional or principal amount of any publicly reportable swap transaction that is an off-facility swap to a swap data repository that accepts and publicly disseminates such data pursuant to this part.

(2) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* (i) A swap execution facility or designated contract market shall report the actual notional or principal amount for all swaps executed on or pursuant to the rules of such swap execution facility or designated contract market to a swap data repository that accepts and publicly disseminates such data pursuant to this part.

(ii) The actual notional or principal amount for any block trade executed on or pursuant to the rules of a designated contract market shall be reported to the designated contract market pursuant to the rules of the designated contract market.

(e) *Public dissemination of notional or principal amounts.* The notional or principal amount of a publicly reportable swap transaction shall be publicly disseminated by a swap data repository subject to rounding as set forth in paragraph (f) of this section, and the cap size as set forth in paragraph (g) of this section.

(f) *Process to determine appropriate rounded notional or principal amounts.*

(1) If the notional or principal amount is less than one thousand, round to nearest five, but in no case shall a publicly disseminated notional or principal amount be less than five;

(2) If the notional or principal amount is less than 10 thousand but equal to or greater than one thousand, round to nearest one hundred;

(3) If the notional or principal amount is less than 100 thousand but equal to or greater than 10 thousand, round to nearest one thousand;

(4) If the notional or principal amount is less than one million but equal to or greater than 100 thousand, round to nearest 10 thousand;

(5) If the notional or principal amount is less than 100 million but equal to or greater than one million, round to the nearest one million;

(6) If the notional or principal amount is less than 500 million but equal to or greater than 100 million, round to the nearest 10 million;

(7) If the notional or principal amount is less than one billion but equal to or greater than 500 million, round to the nearest 50 million;

(8) If the notional or principal amount is less than one billion but equal to or greater than one billion, round to the nearest 100 million;

(9) If the notional or principal amount is equal to or greater than 100 billion, round to the nearest 10 billion.

(g) *Process to determine cap sizes.* (1) The Commission shall establish, by swap categories, the cap sizes as

described in paragraphs (g)(2) through (8) of this section.

(2) The Commission shall determine the cap sizes for the swap categories described in § 43.6(b)(1)(i), (b)(2)(i) through (vii), (b)(4)(i), and (b)(5)(i) by utilizing reliable data, as determined by the Commission, from at least a one-year window of swap data corresponding to each relevant swap category, and by applying the methodology described in § 43.6(c)(2).

(3) The Commission shall determine the cap size for a swap category in the foreign exchange asset class described in § 43.6(b)(4)(ii) as the lower of the notional amount of either currency's cap size for the swap category described in § 43.6(b)(4)(i).

(4) All swaps or instruments in the swap category described in § 43.6(b)(1)(ii) shall have a cap size of USD 100 million.

(5) All swaps or instruments in the swap category described in § 43.6(b)(2)(viii) shall have a cap size of USD 400 million.

(6) All swaps or instruments in the swap category described in § 43.6(b)(3) shall have a cap size of USD 250 million.

(7) All swaps or instruments in the swap category described in § 43.6(b)(4)(iii) shall have a cap size of USD 150 million.

(8) All swaps or instruments in the swap category described in § 43.6(b)(5)(ii) shall have a cap size of USD 100 million.

(9) Commission publication of cap sizes: The Commission shall publish any cap sizes determined pursuant to paragraph (g) of this section from time to time on its website at <https://www.cftc.gov>.

(10) Compliance date of cap sizes: Any cap sizes adopted by the Commission in a final rule amending this part shall require compliance as of the effective date of any such amendments to this part. Thereafter, unless otherwise indicated on the Commission's website, any revised cap size published by the Commission shall require compliance as of the first day of the second month following the date of publication of the revised cap size.

■ 6. Revise § 43.5 to read as follows:

**§ 43.5 Time delays for public dissemination of swap transaction and pricing data.**

(a) *In general.* The time delay for the real-time public dissemination of a block trade begins upon execution, as defined in § 43.2(a). It is the responsibility of the swap data repository that accepts and publicly disseminates swap transaction and

pricing data in real-time to ensure that the swap transaction and pricing data for block trades is publicly disseminated pursuant to this part upon the expiration of the appropriate time delay described in paragraph (c) of this section.

(b) *Public dissemination of publicly reportable swap transactions subject to a time delay.* A swap data repository shall publicly disseminate swap transaction and pricing data that is subject to a time delay precisely upon the expiration of the time delay period described in paragraph (c) of this section.

(c) *Time delay.* If a swap data repository receives notice of a block trade election under § 43.6(f)(1)(ii) or (f)(2), the block trade that is the subject of such notice shall receive a time delay in the public dissemination of swap transaction and pricing data equal to 48 hours after execution of such publicly reportable swap transaction.

■ 7. Revise § 43.6 to read as follows:

**§ 43.6 Block trades.**

(a) *Commission determination.* The Commission shall establish the appropriate minimum block size for publicly reportable swap transactions based on the swap categories set forth in paragraph (b) of this section in accordance with the provisions set forth in paragraph (c), (d), (e), or (g) of this section, as applicable, at such times the Commission determines necessary.

(b) *Swap categories.* Swap categories shall be established for all swaps, by asset class, in the following manner:

(1) *Interest rate asset class.* Swaps in the interest rate asset class shall be grouped into swap categories as follows:

(i) Based on a unique combination of:

(A) A currency of one of the following countries or union:

- (1) Australia,
- (2) Brazil,
- (3) Canada,
- (4) Chile,
- (5) Czech Republic,
- (6) The European Union,
- (7) Great Britain,
- (8) India,
- (9) Japan,
- (10) Mexico,
- (11) New Zealand,
- (12) South Africa,
- (13) South Korea,
- (14) Sweden, or
- (15) The United States; and

(B) One of the following tenors:

- (1) Zero to 46 days;
- (2) Greater than 46 to 107 days;
- (3) Greater than 107 to 198 days;
- (4) Greater than 198 to 381 days;
- (5) Greater than 381 to 746 days;
- (6) Greater than 746 to 1,842 days;

(7) Greater than 1,842 to 3,668 days;  
 (8) Greater than 3,668 to 10,973 days;  
 or  
 (9) Greater than 10,973 days and above.

(ii) Other interest rate swaps not covered in the paragraph (b)(1)(i) of this section.

(2) *Credit asset class.* Swaps in the credit asset class shall be grouped into swap categories as follows:

(i) Based on the CDXHY product type and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(ii) Based on the iTraxx Europe product type and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(iii) Based on the iTraxx Crossover product type and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(iv) Based on the iTraxx Senior Financials product type and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(v) Based on the CDXIG product type and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(vi) Based on the CDX Emerging Markets product type and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(vii) Based on the CDMBX product type; and

(viii) Other credit swaps not covered in paragraphs (b)(2)(i)–(vii) of this section.

(3) *Equity asset class.* There shall be one swap category consisting of all swaps in the equity asset class.

(4) *Foreign exchange asset class.* Swaps in the foreign exchange asset class shall be grouped into swap categories as follows:

(i) By the unique currency combinations of the United States currency paired with a currency of one of the following countries or union: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan.

(ii) By the unique currency pair consisting of two separate currencies from the following countries or union: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, and Taiwan.

(iii) Other swap categories in the foreign exchange asset class not covered in paragraph (b)(4)(i) or (ii) of this section.

(5) *Other commodity asset class.* Swaps in the other commodity asset

class shall be grouped into swap categories as follows:

(i) For swaps that have a physical commodity underlier listed in appendix A of this part, by the relevant physical commodity underlier; or

(ii) Other commodity swaps that are not covered in paragraph (b)(5)(i) of this section.

(c) *Methodologies to determine appropriate minimum block sizes and cap sizes.* In determining appropriate minimum block sizes and cap sizes for publicly reportable swap transactions, the Commission shall utilize the following statistical calculations—

(1) *67-percent notional amount calculation.* The Commission shall use the following procedure in determining the 67-percent notional amount calculation:

(i) For each relevant swap category, select all reliable SDR data for at least a one-year period;

(ii) Convert the notional amount to the same currency or units and use a trimmed data set;

(iii) Determine the sum of the notional amounts of swaps in the trimmed data set;

(iv) Multiply the sum of the notional amount by 67 percent;

(v) Rank order the observations by notional amount from least to greatest;

(vi) Calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 67-percent notional amount calculated in paragraph (c)(1)(iv) of this section;

(vii) Select the notional amount associated with that observation;

(viii) Round the notional amount of that observation up to two significant digits, or if the notional amount associated with that observation is already significant to only two digits, increase that notional amount to the next highest rounding point of two significant digits; and

(ix) Set the appropriate minimum block size at the amount calculated in paragraph (c)(1)(viii) of this section.

(2) *75-percent notional amount calculation.* The Commission shall use the procedure set out in § 43.6(c)(1) with 75-percent in place of 67-percent.

(d) *No appropriate minimum block sizes for swaps in the equity asset class.* Publicly reportable swap transactions in the equity asset class shall not be treated as block trades.

(e) *Process to determine appropriate minimum block sizes.* (1) The Commission shall establish, by swap categories, the appropriate minimum block sizes as described in paragraphs (e)(2) through (5) of this section.

(2) The Commission shall determine the appropriate minimum block sizes

for the swap categories described in paragraphs (b)(1)(i), (b)(2)(i) through (vii), (b)(4)(i), and (b)(5)(i) of this section by applying the methodology described in paragraph (c)(1) of this section.

(3) The parties to a swap in the foreign exchange asset class described in paragraph (b)(4)(ii) of this section may elect to receive block treatment if the notional amount of either currency in the exchange is greater than the minimum block size for a swap in the foreign exchange asset class between the respective currency, in the same amount, and U.S. dollars described in paragraph (b)(4)(i) of this section.

(4) All swaps or instruments in the swap category described in paragraphs (b)(1)(ii), (b)(2)(viii), (b)(4)(iii), and (b)(5)(ii) of this section shall have a block size of zero and be eligible to be treated as a block trade.

(5) *Commission publication of appropriate minimum block sizes.* The Commission shall publish the appropriate minimum block sizes determined pursuant to paragraph (e)(1) of this section on its website at <https://www.cftc.gov>.

(f) *Required notification—(1) Block trades on the trading system or platform, that is not an order book as defined in § 37.3(a)(3) of a swap execution facility, or pursuant to the rules of a swap execution facility or designated contract market.* (i) The parties to a publicly reportable swap transaction that is executed on the trading system or platform, that is not an order book as defined in § 37.3(a)(3) of this chapter of a swap execution facility, or pursuant to the rules of a swap execution facility or designated contract market and that has a notional amount at or above the appropriate minimum block size may elect to have the publicly reportable swap transaction treated as a block trade. If the parties make such an election, the reporting counterparty shall notify the swap execution facility or designated contract market, as applicable, of the parties' election.

(ii) The swap execution facility or designated contract market, as applicable, shall notify the swap data repository of such a block trade election when reporting the swap transaction and pricing data to such swap data repository in accordance with this part.

(iii) The swap execution facility or designated contract market, as applicable, shall not disclose swap transaction and pricing data relating to a block trade subject to the block trade election prior to the expiration of the applicable delay set forth in § 43.5(c).

(2) *Block trade off-facility swap election.* The parties to a publicly

reportable swap transaction that is an off-facility swap and that has a notional amount at or above the appropriate minimum block size may elect to have the publicly reportable swap transaction treated as a block trade. If the parties make such an election, the reporting counterparty for such publicly reportable swap transaction shall notify the applicable swap data repository of the reporting counterparty's election when reporting the swap transaction and pricing data in accordance with this part.

(g) *Special provisions relating to appropriate minimum block sizes and cap sizes.* The following special rules shall apply to the determination of appropriate minimum block sizes and cap sizes—

(1) *Swaps with optionality.* The notional amount of a swap with optionality shall equal the notional amount of the component of the swap that does not include the option component.

(2) *Swaps with composite reference prices.* The parties to a swap transaction with composite reference prices may elect to apply the lowest appropriate minimum block size or cap size applicable to one component reference price's swap category of such publicly reportable swap transaction.

(3) *Notional amounts for physical commodity swaps.* Unless otherwise specified in this part, the notional amount for a physical commodity swap shall be based on the notional unit measure utilized in the related futures contract or the predominant notional unit measure used to determine notional quantities in the cash market for the relevant, underlying physical commodity.

(4) *Currency conversion.* Unless otherwise specified in this part, when the appropriate minimum block size or cap size for a publicly reportable swap transaction is denominated in a currency other than U.S. dollars, parties to a swap and registered entities may use a currency exchange rate that is widely published within the preceding two business days from the date of execution of the swap transaction in order to determine such qualification.

(5) *Aggregation.* The aggregation of orders for different accounts in order to satisfy the minimum block trade size or the cap size requirement is permitted for publicly reportable swap transactions only if each of the following conditions is satisfied:

(i) The aggregation of orders is done by a person who:

(A) Is a commodity trading advisor registered pursuant to section 4n of the Act, or exempt from such registration



under the Act, or a principal thereof, and who has discretionary trading authority or directs client accounts;

(B) Is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter; or

(C) Is a foreign person who performs a similar role or function as the persons described in paragraph (g)(5)(i)(A) or (B) of this section and is subject as such to foreign regulation;

(ii) The aggregated transaction is reported pursuant to this part and part 45 of this chapter as a block trade, subject to the cap size thresholds; and

(iii) The aggregated orders are executed as one swap transaction.

(h) *Eligible block trade parties.* (1) Parties to a block trade shall be “eligible contract participants,” as defined in section 1a(18) of the Act and the Commission’s regulations. However, a designated contract market may allow:

(i) A commodity trading advisor registered pursuant to section 4n of the Act, or exempt from registration under the Act, or a principal thereof, and who has discretionary trading authority or directs client accounts,

(ii) An investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or

(iii) A foreign person who performs a similar role or function as the persons described in paragraph (h)(1)(i) or (ii) of this section and is subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants.

(2) A person transacting a block trade on behalf of a customer shall receive prior written instruction or consent from the customer to do so. Such instruction or consent may be provided in the power of attorney or similar document by which the customer provides the person with discretionary trading authority or the authority to direct the trading in its account.

■ 8. Amend § 43.7 by revising paragraphs (a)(1) through (3) and adding paragraph (a)(4) to read as follows:

**§ 43.7 Delegation of authority.**

(a) \* \* \*

(1) To publish the technical specifications providing the form and manner for reporting and publicly disseminating the swap transaction and pricing data elements in appendix C of this part as described in §§ 43.3(d)(1) and 43.4(a);

(2) To determine cap sizes as described in § 43.4(g);

(3) To determine whether swaps fall within specific swap categories as described in § 43.6(b); and

(4) To determine and publish appropriate minimum block sizes as described in § 43.6(e).

\* \* \* \* \*

■ 9. Revise appendix A to part 43 to read as follows:

**Appendix A to Part 43—Other Commodity Swap Categories**

*Commodity: Metals*

Aluminum  
Copper  
Gold  
Lead  
Nickel  
Silver  
Virtual  
Zinc

*Commodity: Energy*

Electricity  
Fuel Oil  
Gasoline—RBOB  
Heating Oil  
Natural Gas  
Oil

*Commodity: Agricultural*

Corn  
Soybean  
Coffee  
Wheat  
Cocoa  
Sugar  
Cotton  
Soymeal  
Soybean oil  
Cattle  
Hogs

■ 10. Revise appendix B to part 43 to read as follows:

**Appendix B to Part 43—Other Commodity Geographic Identification for Public Dissemination Pursuant to § 43.4(d)(4)**

Swap data repositories are required by § 43.4(d)(4) to publicly disseminate any specific delivery point or pricing point associated with publicly reportable swap transactions in the “other commodity” asset class pursuant to Tables B1 and B2 in this appendix. If the underlying asset of a publicly reportable swap transaction described in § 43.4(d)(4) has a delivery or pricing point that is located in the United States, such information shall be publicly disseminated pursuant to the regions described in Table B1 in this appendix. If the underlying asset of a publicly reportable swap transaction described in § 43.4(d)(4) has a delivery or pricing point that is not located in the United States, such information shall be publicly disseminated pursuant to the countries or sub-regions, or if no country or sub-region, by the other commodity region, described in Table B2 in this appendix.

**Table B1. U.S. Delivery or Pricing Points**

*Other Commodity Group*  
Region

*Natural Gas and Related Products*

Midwest  
Northeast  
Gulf  
Southeast  
Western  
Other—U.S.

*Petroleum and Products*

New England (PADD 1A)  
Central Atlantic (PADD 1B)  
Lower Atlantic (PADD 1C)  
Midwest (PADD 2)  
Gulf Coast (PADD 3)  
Rocky Mountains (PADD 4)  
West Coast (PADD 5)  
Other—U.S.

*Electricity and Sources*

Florida Reliability Coordinating Council (FRCC)  
Midwest Reliability Organization (MRO)  
Northeast Power Coordinating Council (NPCC)  
Reliability First Corporation (RFC)  
SERC Reliability Corporation (SERC)  
Southwest Power Pool, RE (SPP)  
Texas Regional Entity (TRE)  
Western Electricity Coordinating Council (WECC)  
Other—U.S.

*All Remaining Other Commodities (Publicly disseminate the region. If pricing or delivery point is not region-specific, indicate “U.S.”)*

Region 1—(Includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)  
Region 2—(Includes New Jersey, New York)  
Region 3—(Includes Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)  
Region 4—(Includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)  
Region 5—(Includes Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)  
Region 6—(Includes Arkansas, Louisiana, New Mexico, Oklahoma, Texas)  
Region 7—(Includes Iowa, Kansas, Missouri, Nebraska)  
Region 8—(Includes Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)  
Region 9—(Includes Arizona, California, Hawaii, Nevada)  
Region 10—(Includes Alaska, Idaho, Oregon, Washington)

**Table B2. Non-U.S. Delivery or Pricing Points**

*Other Commodity Regions*

Country or Sub-Region

*North America (Other than U.S.)*

Canada  
Mexico

*Central America*

*South America*

Brazil  
Other South America

*Europe*

Western Europe  
Northern Europe

Southern Europe  
Eastern Europe (excluding Russia)  
*Russia*  
*Africa*  
Northern Africa  
Western Africa

Eastern Africa  
Central Africa  
Southern Africa  
*Asia-Pacific*  
Northern Asia (excluding Russia)  
Central Asia  
Eastern Asia

Western Asia  
Southeast Asia  
Australia/New Zealand/Pacific Islands

■ 11. Revise appendix C to part 43 to read as follows.

**BILLING CODE 6351-01-P**

## Appendix C to Part 43 – Swap Transaction and Pricing Data Elements

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
<b>Category: Clearing</b>							
1	Cleared	Indicator of whether the transaction has been cleared, or is intended to be cleared, by a central counterparty.	✓	✓	✓	✓	✓
<b>Category: Custom baskets</b>							
23	Custom basket indicator	Indicator that the swap is based on a custom basket.	✓	✓	✓	✓	✓
<b>Category: Events</b>							
24	Action type	<p>Type of action taken on the transaction reporting or end of day reporting.</p> <p><b>New:</b> An action that reports a new swap transaction. It applies to the first message relating to a new USI or UTI.</p> <p><b>Modify:</b> An action that modifies the state of a previously submitted transaction (e.g., credit event) or changes a term of a previously submitted transaction due to a newly negotiated modification (amendment) or updates previously missing information (e.g., post price swap). It does not include correction of a previous transaction.</p> <p><b>Correct:</b> An action that corrects erroneous data of a previously submitted transaction.</p> <p><b>Error:</b> An action of cancellation of a wrongly submitted entire transaction in case it never came into existence or was not subject to part 43/part 45 reporting requirements but was reported erroneously.</p> <p><b>Terminate:</b> An action that closes an existing transaction because of a new event (e.g., Compression, Novation). This does not apply to transactions that terminate at contractual maturity date.</p> <p><b>Port out:</b> An action that transfers swap transaction from one SDR to another SDR (change of swap data repository).</p> <p><b>Valuation:</b> An update to valuation data. There will be no corresponding Event type.</p> <p><b>Collateral:</b> An update to collateral margin data. There will be no corresponding Event type.</p> <p>Refer to Appendix F of the swap data technical specification for event model sample scenarios.</p>	✓	✓	✓	✓	✓
25	Event type	<p>Explanation or reason for the action being taken on the transaction reporting.</p> <p><b>Trade:</b> A creation, modification, or termination of a transaction.</p> <p><b>Novation:</b> A novation legally moves partial or all of the financial risks of a swap from a transferor to a transferee and has the effect of terminating/modifying the original transaction and creating a new transaction to identify the exposure between the transferor/transferee and remaining party.</p> <p><b>Compression or Risk Reduction Exercise:</b> Compressions and risk reduction exercises generally have the effect of terminating or modifying (i.e., reducing the notional value) a set of existing transactions and of creating a set of new transaction(s). These processes result in largely the same</p>	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		<p>exposure of market risk that existed prior to the event for the counterparty.</p> <p><b>Early termination:</b> Termination of an existing swap transaction prior to scheduled termination or maturity date.</p> <p><b>Clearing:</b> Central clearing is a process where a derivatives clearing organization interposes itself between counterparties to contracts, becoming the buyer to every seller and the seller to every buyer. It has the effect of terminating an existing transaction between the buyer and the seller and thereby ensuring the performance of open contracts.</p> <p><b>Exercise:</b> The process by which a counterparty fully or partially exercises their rights specified in the contract of an option or a swaption.</p> <p><b>Allocation:</b> The process by which an agent, having facilitated a single swap transaction on behalf of several clients, allocates a portion of the executed swap to the clients.</p> <p><b>Clearing and Allocation:</b> A simultaneous clearing and allocation event in a derivatives clearing organization.</p> <p><b>CDS Credit:</b> An event or trigger that results in the modification of the state of a previously submitted credit derivative transaction. Applies only to credit derivatives.</p> <p><b>Porting:</b> The process by which a swap is transferred to another SDR that has the effect of the closing of the swap transaction at one SDR or opening of the same swap transaction using the same UTI/USI in a different SDR (new).</p>					
26	Event identifier	<p>Unique identifier to link transactions resulting when Event type is either COMP (Compression) or CRDT (CDS Credit). The unique identifier may be assigned by the reporting counterparty or a service provider.</p>	✓	✓	✓	✓	✓
27	Event timestamp	<p>Date and time of occurrence of the event as determined by the reporting counterparty or a service provider.</p> <p>In the case of a clearing event, date and time when the original swap is accepted by the derivative clearing organization (DCO) for clearing and recorded by the DCO's system should be reported in this data element.</p> <p>The time element is as specific as technologically practicable.</p>	✓	✓	✓	✓	✓
<b>Category: Notional amounts and quantities</b>							
28	Notional amount	<p>For each leg of the transaction, where applicable:</p> <ul style="list-style-type: none"> <li>- for OTC derivative transactions negotiated in monetary amounts, amount specified in the contract.</li> <li>- for OTC derivative transactions negotiated in non-monetary amounts, refer to Appendix B to the swap data technical specification for converting notional amounts for non-monetary amounts.</li> </ul> <p>In addition:</p> <ul style="list-style-type: none"> <li>• For OTC derivative transactions with a notional amount schedule, the initial notional amount, agreed by the counterparties at the inception of the transaction, is reported in this data element.</li> <li>• For OTC foreign exchange options, in addition to this data element, the amounts are reported using the data elements Call</li> </ul>	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		amount and Put amount. For amendments or lifecycle events, the resulting outstanding notional amount is reported; (steps in notional amount schedules are not considered to be amendments or lifecycle events); • Where the notional amount is not known when a new transaction is reported, the notional amount is updated as it becomes available.					
29	Notional currency	For each leg of the transaction, where applicable: currency in which the notional amount is denominated.	✓	✓	✓	✓	✓
31	Call amount	For foreign exchange options, the monetary amount that the option gives the right to buy.			✓		
32	Call currency	For foreign exchange options, the currency in which the Call amount is denominated.			✓		
33	Put amount	For foreign exchange options, the monetary amount that the option gives the right to sell.			✓		
34	Put currency	For foreign exchange options, the currency in which the Put amount is denominated.			✓		
35	Notional quantity	For each leg of the transaction, where applicable, for swap transactions negotiated in non-monetary amounts with fixed notional quantity for each schedule period (i.e., 50 barrels per month).  The frequency is reported in Quantity frequency and the unit of measure is reported in Quantity unit of measure.					✓
36	Quantity frequency	The rate at which the quantity is quoted on the swap. e.g., hourly, daily, weekly, monthly.					✓
37	Quantity frequency multiplier	The number of time units for the Quantity frequency					✓
38	Quantity unit of measure	For each leg of the transaction, where applicable: unit of measure in which the Total notional quantity and Notional quantity are expressed.				✓	✓
39	Total notional quantity	For each leg of the transaction, where applicable: aggregate Notional quantity of the underlying asset for the term of the transaction. Where the Total notional quantity is not known when a new transaction is reported, the Total notional quantity is updated as it becomes available.				✓	✓
<b>Category: Packages</b>							
40	Package identifier	Identifier (determined by the reporting counterparty) in order to connect • two or more transactions that are reported separately by the reporting counterparty, but that are negotiated together as the product of a single economic agreement. • two or more reports pertaining to the same transaction whenever jurisdictional reporting requirement does not allow the transaction to be reported with a single report to TRs. A package may include reportable and non-reportable transactions. This data element is not applicable • if no package is involved, or • to allocations	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		Where the Package identifier is not known when a new transaction is reported, the Package identifier is updated as it becomes available.					
41	Package transaction price	Traded price of the entire package in which the reported derivative transaction is a component. This data element is not applicable if no package is involved. Prices and related data elements of the transactions (Price currency, Price notation, Price unit of measure) that represent individual components of the package are reported when available. The Package transaction price may not be known when a new transaction is reported but may be updated later.	✓	✓	✓	✓	✓
42	Package transaction price currency	Currency in which the Package transaction price is denominated. This data element is not applicable if: • no package is involved, or • Package transaction price notation = 3	✓	✓	✓	✓	✓
43	Package transaction price notation	Manner in which the Package transaction price is expressed. This data element is not applicable if no package is involved	✓	✓	✓	✓	✓
<b>Category: Payments</b>							
44	Day count convention	For each leg of the transaction, where applicable: day count convention (often also referred to as day count fraction or day count basis or day count method) that determines how interest payments are calculated. It is used to compute the year fraction of the calculation period, and indicates the number of days in the calculation period divided by the number of days in the year.	✓	✓	✓	✓	✓
46	Floating rate reset frequency period	For each floating leg of the transaction, where applicable, time unit associated with the frequency of resets, e.g., day, week, month, year or term of the stream.	✓	✓	✓	✓	✓
47	Floating rate reset frequency period multiplier	For each floating leg of the transaction, where applicable, number of time units (as expressed by the Floating rate reset frequency period) that determines the frequency at which periodic payment dates for reset occur. For example, a transaction with reset payments occurring every two months is represented with a Floating rate reset frequency period of "MNTH" (monthly) and a Floating rate reset frequency period multiplier of 2. This data element is not applicable if the Floating rate reset frequency period is "ADHO." If Floating rate reset frequency period is "TERM," then the Floating rate reset frequency period multiplier is 1. If the reset frequency period is intraday, then the Floating rate reset frequency period is "DAIL" and the Floating rate reset frequency period multiplier is 0.	✓	✓	✓	✓	✓
48	Other payment type	Type of Other payment amount. Option premium payment is not included as a payment type as premiums for option are reported using the option premium dedicated data element.	✓	✓	✓	✓	✓
49	Other payment amount	Payment amounts with corresponding payment types to accommodate requirements of transaction descriptions from different asset classes.	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
50	Other payment currency	Currency in which Other payment amount is denominated.	✓	✓	✓	✓	✓
54	Payment frequency period	For each leg of the transaction, where applicable: time unit associated with the frequency of payments, e.g., day, week, month, year or term of the stream.	✓	✓		✓	✓
55	Payment frequency period multiplier	For each leg of the transaction, where applicable: number of time units (as expressed by the Payment frequency period) that determines the frequency at which periodic payment dates occur. For example, a transaction with payments occurring every two months is represented with a Payment frequency period of "MNTH" (monthly) and a Payment frequency period multiplier of 2. This data element is not applicable if the Payment frequency period is "ADHO." If Payment frequency period is "TERM," then the Payment frequency period multiplier is 1. If the Payment frequency is intraday, then the Payment frequency period is "DAIL" and the Payment frequency multiplier is 0.	✓	✓		✓	✓
<b>Category: Prices</b>							
56	Exchange rate	Exchange rate between the two different currencies specified in the OTC derivative transaction agreed by the counterparties at the inception of the transaction, expressed as the rate of exchange from converting the unit currency into the quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency; USD 1 = EUR 0.9426.			✓		
57	Exchange rate basis	Currency pair and order in which the exchange rate is denominated, expressed as unit currency/quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency, USD 1 = EUR 0.9426.			✓		
58	Fixed rate	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments, per annum rate of the fixed leg(s).	✓	✓			✓
59	Post-priced swap indicator	An indication of whether a transaction satisfies the definition of "post-priced swap" in § 43.2(a).	✓	✓	✓	✓	✓
60	Price	Price specified in the OTC derivative transaction. It does not include fees, taxes or commissions. For commodity fixed/float swaps and similar products with periodic payments, this data element refers to the fixed price of the fixed leg(s). For commodity and equity forwards and similar products, this data element refers to the forward price of the underlying or reference asset. For equity swaps, portfolios swaps, and similar products, this data element refers to the initial price of the underlying or reference asset. For contracts for difference and similar products, this data element refers to the initial price of the underlier.  This data element is not applicable to: • Interest rate swaps and forward rate agreements, as it is understood that the information included in the data elements Fixed rate and Spread may be interpreted as the price of the				✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		<p>transaction.</p> <ul style="list-style-type: none"> <li>• Interest rate options and interest rate swaptions as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction.</li> <li>• Commodity basis swaps and the floating leg of commodity fixed/float swaps as it is understood that the information included in the data element Spread may be interpreted as the price of the transaction.</li> <li>• Foreign exchange swaps, forwards and options, as it is understood that the information included in the data elements Exchange rate, Strike price, and Option premium may be interpreted as the price of the transaction.</li> <li>• Equity options as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction.</li> <li>• Credit default swaps and credit total return swaps, as it is understood that the information included in the data elements Fixed rate, Spread and Upfront payment (Other payment type: Upfront payment) may be interpreted as the price of the transaction.</li> <li>• Commodity options, as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction.</li> </ul> <p>Where the price is not known when a new transaction is reported, the price is updated as it becomes available. For transactions that are part of a package, this data element contains the price of the component transaction where applicable.</p>					
61	Price currency	Currency in which the price is denominated. Price currency is only applicable if Price notation = 1.				✓	✓
62	Price notation	Manner in which the price is expressed.				✓	✓
63	Price unit of measure	Unit of measure in which the price is expressed.				✓	✓
64	Spread	<p>For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments (e.g., interest rate fixed/float swaps, interest rate basis swaps, commodity swaps),</p> <ul style="list-style-type: none"> <li>• spread on the individual floating leg(s) index reference price, in the case where there is a spread on a floating leg(s). For example, USD-LIBOR-BBA plus .03 or WTI minus USD 14.65; or</li> <li>• difference between the reference prices of the two floating leg indexes. For example, the 9.00 USD "Spread" for a WCS vs. WTI basis swap where WCS is priced at 43 USD and WTI is priced at 52 USD.</li> </ul>	✓	✓		✓	✓
65	Spread currency	<p>For each leg of the transaction, where applicable: currency in which the spread is denominated.</p> <p>This data element is only applicable if Spread notation = 1.</p>	✓	✓		✓	✓
66	Spread notation	For each leg of the transaction, where applicable: manner in which the spread is expressed.	✓	✓		✓	✓
67	Strike price	• For options other than FX options, swaptions and similar products, price at which the owner of an option can buy or sell the underlying asset of the option.	✓	✓	✓	✓	✓



#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		<ul style="list-style-type: none"> <li>For foreign exchange options, exchange rate at which the option can be exercised, expressed as the rate of exchange from converting the unit currency into the quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency; USD 1 = EUR 0.9426.</li> <li>Where the strike price is not known when a new transaction is reported, the strike price is updated as it becomes available.</li> <li>For volatility and variance swaps and similar products, the volatility strike price is reported in this data element.</li> </ul>					
68	Strike price currency/currency pair	<p>For equity options, commodity options, and similar products, currency in which the strike price is denominated.</p> <p>For foreign exchange options: Currency pair and order in which the strike price is expressed. It is expressed as unit currency/quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency, USD 1 = EUR 0.9426</p> <p>Strike price currency/currency pair is only applicable if Strike price notation = 1.</p>	✓	✓	✓	✓	✓
69	Strike price notation	Manner in which the strike price is expressed.	✓	✓	✓	✓	✓
70	Option premium amount	<p>For options and swaptions of all asset classes, monetary amount paid by the option buyer.</p> <p>This data element is not applicable if the instrument is not an option or does not embed any optionality.</p>	✓	✓	✓	✓	✓
71	Option premium currency	For options and swaptions of all asset classes, currency in which the option premium amount is denominated. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
73	First exercise date	<p>First unadjusted date during the exercise period in which an option can be exercised.</p> <p>For European-style options, this date is same as the Expiration date. For American-style options, the first possible exercise date is the unadjusted date included in the Execution timestamp.</p> <p>For knock-in options, where the first exercise date is not known when a new transaction is reported, the first exercise date is updated as it becomes available.</p> <p>This data element is not applicable if the instrument is not an option or does not embed any optionality.</p>	✓	✓	✓	✓	✓
<b>Category: Product</b>							
76	Index factor	The index version factor or percent, expressed as a decimal value, that multiplied by the Notional amount yields the notional amount covered by the seller of protection for credit default swap.	✓				
77	Embedded option type	Type of option or optional provision embedded in a contract.	✓	✓	✓	✓	✓
78	Unique Product Identifier UPI	<p>A unique set of characters that represents a particular OTC derivative.</p> <p>The Commission will designate a UPI pursuant to § 45.7.</p> <p>Note: A Unique Product Identifier Short Name, defined as, 'When the Commission designates a UPI pursuant to part 45,</p>	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		disseminate a humanly readable description made available by the UPI issuer corresponding to the UPI <sup>1</sup> must be disseminated by the SDR.					
<b>Category: Settlement</b>							
80	Settlement currency	Currency for the cash settlement of the transaction when applicable. For multi-currency products that do not net, the settlement currency of each leg. This data element is not applicable for physically settled products (e.g., physically settled swaptions).	✓	✓	✓	✓	✓
<b>Category: Transaction related</b>							
82	Non-standardized term indicator	Indicator of whether the swap has one or more additional term(s) or provision(s), other than those disseminated to the public pursuant to part 43, that materially affect(s) the price of the swap.	✓	✓	✓	✓	✓
83	Block trade election indicator	Indicator of whether an election has been made to report the swap as a block swap either by the reporting counterparty or as calculated by the swap data repository acting as a third party for the reporting counterparty.	✓	✓	✓	✓	✓
84	Effective date	Unadjusted date at which obligations under the OTC derivative transaction come into effect, as included in the confirmation.	✓	✓	✓	✓	✓
85	Expiration date	Unadjusted date at which obligations under the swap transaction stop being effective, as included in the confirmation. Early termination does not affect this data element.	✓	✓	✓	✓	✓
86	Execution timestamp	Date and time a transaction was originally executed, resulting in the generation of a new UTI. This data element remains unchanged throughout the life of the UTI.	✓	✓	✓	✓	✓
88	Platform identifier	Identifier of the trading facility (e.g., exchange, multilateral trading facility, swap execution facility) on which the transaction was executed.	✓	✓	✓	✓	✓
90	Prime brokerage transaction indicator	Indicator of whether the swap is a Prime Brokerage transaction.	✓	✓	✓	✓	✓

**BILLING CODE 6351-01-C****■ 12. Remove appendices D, E, and F.**

Issued in Washington, DC, on February 27, 2020, by the Commission.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

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

**Appendices to Real-Time Public Reporting Requirements—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—Statement of Chairman Heath P. Tarbert**

Data is the lifeblood of our markets. Yet for too long, market participants have been burdened with confusing and costly swap data reporting rules that do little to advance the Commission's regulatory functions. In the decade-long effort to refine our swap data rules, we have at times lost sight of Sir Isaac Newton's wisdom: "Truth is ever to be found in simplicity, and not in the multiplicity and confusion of things."

*Overview*

Simplicity should be a central goal of our swap data reporting rules. After all, making rules simple and clear facilitates compliance, price discovery, and risk monitoring. While principles-based regulation can offer numerous advantages, there are areas where a rules-based approach is preferable because of the level of clarity, standardization, and

harmonization it provides. Swap data reporting is one such area.<sup>1</sup>

As it stands, swap data repositories (SDRs) and market participants have been left to wade through parts 43 and 45 of our rules on their own. We have essentially asked them to decide what to report to the CFTC, instead of being clear about what we want. The result is a proliferation of reportable data fields designed to ensure compliance with our rules—but which exceed what market participants can readily provide and what the agency can realistically use. These fields can run hundreds deep, imposing costly burdens on market participants. Yet for all its sprawling complexity, the current data reporting system omits, of all things, uncleared margin information—thereby

<sup>1</sup> See Heath P. Tarbert, *Rules for Principles and Principles for Rules: Tools for Crafting Sound Financial Regulation*, Harv. Bus. L. Rev. (forthcoming 2020) ("A principles-based regime is often a poor choice where standard forms and disclosures are heavily used, as principles do not offer the needed precision.").

creating a black box of potential systemic risk.<sup>2</sup>

And that just describes CFTC reporting. As it stands today, a market participant with a swap reportable to the CFTC might also have to report the same swap to the SEC, the European Securities and Markets Authority (ESMA), and perhaps other regulators as well. The global nature of our derivatives markets has led to the preparation and submission of multiple swap data reports, creating a byzantine maze of disparate data fields and reporting timetables. Market participants should not incur the costs and burdens of reporting a grab-bag of dissimilar data for the very same swap. That approach helps neither the market nor the CFTC: Conflicting data reporting requirements make regulatory coordination more difficult, preventing a panoramic view of risk.

Today we take the first step toward changing this. I am pleased to support the proposed amendments to parts 43 and 45 of the CFTC's rules governing swap data reporting.<sup>3</sup> The proposals simplify the swap data reporting process to ensure that market participants are not burdened with unclear or duplicative reporting obligations that do little to reduce market risk or facilitate price discovery. If the amendments are adopted, we will no longer collect data that does not advance our oversight of the swaps markets.

In fact, the part 45 proposal includes a technical specification that identifies 116 standardized data fields that will help replace the many hundreds of fields now in use by SDRs. We are also proposing to harmonize our swap data reporting requirements with those of the SEC and ESMA. Harmonization would remove the burdens of duplicative reporting while painting a more complete picture of market risk. At the same time, the proposed changes to Part 43 would enhance public transparency as well as provide relief for end users who rely on our markets to hedge their risks. Our swaps markets are integrated and global; it is time for our reporting regime to catch up.

### *Simplified Reporting*

Today's proposals advance my first strategic goal for our agency: Strengthening the resilience and integrity of our derivatives markets while fostering their vibrancy.<sup>4</sup> Simplified reporting is critical to the CFTC's ability to monitor systemic risk. While SDRs

<sup>2</sup> Requiring margin in the uncleared swaps markets ensures that counterparties have the necessary collateral to offset losses, preventing financial contagion. With respect to non-cleared, bilateral swaps, in which there is no central clearinghouse, parties bear the risk of counterparty default. In turn, the CFTC must have visibility into uncleared margin data to monitor systemic risk accurately and to act quickly if cracks begin appear in the system.

<sup>3</sup> We are also re-opening the comment period for part 49, which relates to SDR registration and governance.

<sup>4</sup> See Remarks of CFTC Chairman Heath P. Tarbert to the 35th Annual FIA Expo 2019 (Oct. 30, 2019), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opatarbert2> (announcing the core value of "clarity" and defining it as "providing transparency to market participants about our rules and processes").

now require hundreds of data fields in an effort to comply with parts 43 and 45 of our rules, uncleared margin has been noticeably absent. If finalized, part 45 will require the reporting of uncleared margin data for the first time. This will significantly expand our visibility into potential systemic risk in the swaps markets.

A related problem we address today involves inconsistent data. SDRs currently validate swap transaction data in conflicting ways, causing market participants to report disparate data elements to different SDRs. Today's proposals include guidance to help SDRs standardize their validation of swap data reports, shoring up the resilience and integrity of our markets.

Simplifying the reporting process will also enhance the regulatory experience for market participants at home and abroad, which is another strategic goal for the agency.<sup>5</sup> We have heard from those who use our markets that the complexity of our existing reporting rules creates confusion, leading to reporting errors.<sup>6</sup> This situation neither serves the markets nor advances the agency's regulatory purpose. Indeed, data errors can frustrate transparency and price discovery.

Our proposals today reflect a hard look at the data we are requesting and the data we really need. The proposals provide the guidance needed to collapse hundreds of reportable data fields into a standardized set of 116 that truly advance our regulatory objectives. If adopted, this would reduce burdens on market participants and provide technical guidance to ensure they are no longer guessing at what we require. Clear rules are easier to follow, and market participants will no longer be subject to reporting obligations that raise the costs of compliance without improving the resilience and integrity of our derivatives markets. Just as we are reducing requirements where they are not needed, we are also enhancing them where they are. This is the balanced approach sound regulation demands.

### *Regulatory Harmonization*

Today's proposals also improve the regulatory experience by harmonizing swap data reporting where it is sensible to do so.<sup>7</sup> There is no good reason for a swap dealer or other market participant to report hundreds of differing data fields to multiple jurisdictions for the very same swap

<sup>5</sup> See *id.* (identifying the CFTC's strategic goals).

<sup>6</sup> The problem is compounded by the allowance for "catch-all" voluntary reporting, which creates incentives for market participants to flood the CFTC with any data that might possibly be required. Paradoxically, this kitchen-sink approach can so muddy the water as to undermine a fundamental purpose of data reporting: To create a transparent picture of market risk.

<sup>7</sup> Harmonizing regulation is an important consideration in addressing our increasingly global markets. See Opening Statement of Chairman Heath P. Tarbert Before the Open Commission Meeting on October 16, 2019, available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/heathstatement101619> ("The global nature of today's derivatives markets requires that regulators work cooperatively to ensure the success of the G20 reforms, foster economic growth, and promote financial stability.").

transaction. This situation imposes high costs with very little benefit.

While we should not harmonize for the sake of harmonizing,<sup>8</sup> we can reap real efficiencies by carefully building consistent data reporting frameworks. The proposals would harmonize our swap data reporting timelines with the SEC by moving to a "T+1" system for swap dealers, major swap participants, and derivatives clearing organizations. We would also remove duplicative confirmation data and lift the requirement that end users provide valuation data.

Harmonization also helps the CFTC realize our vision of being the global standard for sound derivatives regulation.<sup>9</sup> We have long been a leader in international swap data harmonization efforts, including by co-chairing the Committee on Payments and Infrastructures and the International Organization of Securities Commissioners (CPMI-IOSCO) working group on critical data elements (CDE) in swap reporting.<sup>10</sup> The purpose of the working group is to standardize CDE fields to facilitate consistent data reporting across borders. Our proposals today would bring this and related harmonization efforts to fruition by incorporating many of the CDE fields and a limited number of CFTC-specific fields into new part 45 technical specifications. Incorporating the CDE fields would sensibly harmonize our reporting system with that of ESMA. As a result, the proposals would advance the CFTC's important role in bringing global regulators together to form a better data reporting system.

The proposals also would harmonize swap data reporting in several other important respects. First, we propose adopting a Unique Transaction Identifier (UTI) requirement in place of the existing Unique Swap Identifier (USI) system, as provided for in the CPMI-IOSCO Technical Guidance.<sup>11</sup> Adopting a UTI system would provide for consistent monitoring of swaps across borders, improving data sharing and risk surveillance. The proposals would also remove the requirement that market participants report duplicative creation and confirmation data, and would adopt reporting timetables that are consistent with those of ESMA and other regulators.<sup>12</sup> These are reasonable efforts that will improve the reporting process, while

<sup>8</sup> *Id.* ("To be sure, as my colleagues have said on several occasions, we should not harmonize with the SEC merely for the sake of harmonization. I agree that we should harmonize only if it is sensible.").

<sup>9</sup> See CFTC Vision Statement, available at <https://www.cftc.gov/About/Mission/index.htm>.

<sup>10</sup> The CFTC also co-chaired the Financial Stability Board's working group on UTI and UPI governance.

<sup>11</sup> The CPMI-IOSCO harmonization group has requested that regulators implement UTI by December 31, 2020. I believe it is important for the CFTC to meet this deadline, which has long been public and reflects input from our staff. The remainder of our proposals today are subject to a 1-year implementation period.

<sup>12</sup> Today's proposals move to a "T+1" reporting deadline for swap dealers, major swap participants, and derivatives clearing organizations and to a "T+2" system for other market participants.

shoring up the CFTC's position as a leader on harmonization.

#### Enhanced Public Transparency

I am also pleased to support our proposals today because they enhance *clarity*, one of the four core values of our agency.<sup>13</sup> Streamlining the part 45 technical specification is intended, in part, to reduce unclear and confusing data reporting fields that do not advance our regulatory objectives. But clarity demands more: We must also ensure we are providing transparent, high-quality data to the public.<sup>14</sup>

Part 43 embodies our public reporting system for swap data, which provides high-quality information in real time. Providing transparent, timely swap data to the public is critically important to the price discovery process necessary for our markets to thrive and grow. Enhanced public transparency also ensures that market participants and end users can make informed trading and hedging decisions.

The CFTC's current system for public reporting is considered the global standard. Even so, it can be improved. Although post-priced swaps are subject to unique pricing factors that affect the "public tape,"<sup>15</sup> they are nonetheless reported after execution just like any other swap. It is of little value for the public to see swaps reported without an accurate price, or any price at all. To remedy this data quality issue and improve price discovery, we are proposing that post-priced swaps now be reported to the public tape after pricing occurs.

The current reporting system for prime broker swaps has led to data that distorts the picture of what is actually happening in the market. Currently, part 43 requires that offsetting swaps executed with prime brokers—in addition to the initial swap reflecting the actual terms of the trade between counterparties—be reported on the public tape. Reporting these duplicative swaps can hinder price discovery by displaying pricing data that includes fees and other costs unrelated to the actual terms of the parties' swap. Cluttering the public tape with duplicative swaps is at best unhelpful, and at worst confusing. To the public, it could appear as though there are twice as many negotiated, arms-length swaps as there actually are. Today's proposals would solve this problem by requiring that only the initial "trigger" swaps be publicly reported.

#### Relief for End Users

Finally, the proposals would help make our derivatives markets work for all Americans, another of the CFTC's strategic goals.<sup>16</sup> While swaps are viewed by many Americans as esoteric products, they can

nonetheless fulfill an important risk-management function for end users like farmers, ranchers, and manufacturers. End users often lack the reporting infrastructure of big banks, and may be unable to report data as quickly as swap dealers and financial institutions. Indeed, demanding that they do so can impair data quality, frustrating our regulatory objectives.

If finalized, today's proposals will no longer require end users to report swap valuation data. It would also give them a "T+2" timeframe for reporting the data we do require. The proposals would therefore remove unnecessary reporting burdens from end users relying on our swaps markets to hedge their risks. In addition, by providing sufficient time for end users to ensure their reporting is accurate, the proposals would also improve the quality of data we receive.

#### Conclusion

It is time for the Commission to reform our swap data reporting rules. Sir Isaac Newton realized long ago that simplicity can often lead to truth. It does not take an apple striking us on the head to realize that simplifying our swap data reporting rules to achieve clarity, standardization, and harmonization will inevitably make for sounder regulation.

### Appendix 3—Concurring Statement of Commissioner Rostin Behnam

I respectfully concur in the Commission's proposal to amend certain real-time public reporting requirements. I support the Commission's ongoing review of its swap reporting rules; however, I think it is very important that we not lose sight of why we have these rules in the first place. Prior to the 2008 financial crisis, swaps were largely exempt from regulation and traded exclusively over-the-counter.<sup>1</sup> Lack of transparency in the over-the-counter swaps market contributed to the financial crisis because both regulators and market participants lacked the visibility necessary to identify and assess swaps market exposures and counterparty relationships and counterparty credit risk.<sup>2</sup> In the aftermath of the financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 (Dodd-Frank Act).<sup>3</sup> The Dodd-Frank Act largely incorporated the international financial reform initiatives for over-the-counter derivatives laid out at the 2009 G20 Pittsburgh Summit, which sought to improve transparency, mitigate systemic risk, and protect against market abuse.<sup>4</sup> With respect

<sup>1</sup> See Commodity Futures Modernization Act of 2000, Public Law 106-554, 114 Stat. 2763 (2000).

<sup>2</sup> See The Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (Official Government Edition), at 299, 352, 363-364, 386, 621 n. 56 (2011), available at <https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>.

<sup>3</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>4</sup> G20, *Leaders' Statement, The Pittsburgh Summit* (Sept. 24-25, 2009) at 9, available at <https://>

to data reporting, the policy initiative developed by the G20 focused on establishing a consistent and standardized global data set across jurisdictions in order to support regulatory efforts to timely identify systemic risk. The critical need and importance of this policy goal given the consequences of the financial crisis cannot be understated.

Among many critically important statutory changes, which have shed light on the over-the-counter derivatives markets, Title VII of the Dodd-Frank Act amended the Commodity Exchange Act and added a new term to the Act: "real-time public reporting."<sup>5</sup> The Act defines that term to mean reporting "data relating to swap transaction, including price and volume, as soon as *technologically practicable* after the time at which the swap transaction has been executed."<sup>6</sup>

As we consider amending these rules, I think it is important that we keep in mind the Dodd-Frank Act's emphasis on transparency, and what transpired to necessitate that emphasis. While most of today's proposal encourages and supports the transparency required by the Act, I am concerned about the proposed amendments that would significantly extend the time delays for public dissemination of block trades. Currently, the time delay for public dissemination of block trades executed pursuant to the rules of a SEF or DCM is 15 minutes.<sup>7</sup> Today's proposal would extend the time delay to 48 hours for all block trades. I look forward to hearing from commenters as to whether this significant reduction in real-time transparency is justified, and whether there are potential risks to market structure efficiency that may reward some participants at the expense of others.

### Appendix 4—Statement of Commissioner Dan M. Berkovitz

#### Introduction

I am voting to issue for public comment the proposed rulemaking that would amend certain rules requiring real-time public reporting of swap trades. The proposal is intended to enhance the existing real-time public reporting framework adopted in 2012. Although I am voting to issue the proposal for public comment, I do not support the provision in the proposal that would permit a 48-hour delay in the reporting of block trades. A 48-hour delay for all block trades is too long.

One of the primary goals of the Dodd-Frank Act is to bring transparency to opaque swap markets. In Commodity Exchange Act section 2(a)(13), Congress required the Commission to adopt real-time public reporting regulations. Congress stated that "[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price

[www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh\\_summit\\_leaders\\_statement\\_250909.pdf](https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf).

<sup>5</sup> 7 U.S.C. 2(a)(13)(A).

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 43.5(d)(2).

<sup>13</sup> See CFTC Core Values, available at <https://www.cftc.gov/About/Mission/index.htm>.

<sup>14</sup> One of the issues we are looking at closely is whether a 48-hour delay for block trade reporting is appropriate. We are hopeful that market participants will provide comment letters and feedback concerning the treatment of block trade delays.

<sup>15</sup> Many post-priced swaps are priced based on the equity markets, and do not have a known price until the equity markets close.

<sup>16</sup> See FIA Expo Remarks, *supra* note 5.

discovery.”<sup>1</sup> Many of the provisions in the proposal will further that statutory purpose by improving the usability of the real-time public reporting occurring under the 2012 regulations.

The provisions permitting a delay of 48 hours in the reporting of block trades, however, could impede rather than foster price discovery. It also could undermine market integrity by providing counterparties to large swaps with an unfair information advantage. While an appropriate block trade reporting delay is mandated by statute to allow effective hedging of the position, the delay should be appropriately limited. I address this concern in greater detail below.

#### *Intended Benefits of the Proposal*

To effectively use real-time data for price discovery, market participants need to be able to compare data reported by the different swap data repositories and assess the validity of the data. Significantly, the proposal would require standardized data reporting using technical specifications and instructions that establish the form and manner in which the data must be reported. This approach promotes uniformity in the data across swap data repositories and reporting parties and thereby facilitates aggregation and validation.

Similarly, the proposal addresses several technical questions that arose during implementation of the 2012 rules that obscured effective price discovery. The issue of whether to report so-called “mirror swaps” executed under prime broker arrangements is addressed by eliminating duplicate reporting of the mirror swap after the “trigger” swap is reported. Duplicate reporting can create a false signal of swap trading volume and potentially obscure price discovery by giving the price reported for a single prime brokerage swap twice as much weight relative to other non-prime brokerage swaps. Similarly, issues involving pricing of certain types of swaps which, by their terms, are priced at a time after the swaps are executed would allow for more accurate price

discovery—*i.e.* the price that is based on market conditions at the time the price is set.

#### *Block Trade Reporting*

The proposal also addresses the issue of block trade reporting. In this area, while the proposal would make a number of improvements, it also raises issues for which public input would be helpful. Congress directed the Commission to establish “the appropriate time delay for reporting large notional swap transactions (block trades) to the public.”<sup>2</sup> The proposal maintains the current framework for block trade reporting, but proposes a number of substantive changes to how the block size is set and when the trades must be reported.

Some of these changes are practical, data driven modifications. The proposal would change the categories of swaps for which different block trade sizes are established so that the block sizing applies to swap products that are comparable in how notional amounts and prices are set. This change was based on both comments received during implementation and on swap data analysis. This change would, if effective, enhance price discovery by eliminating the underreporting of categories of swap products that typically trade at notional levels in excess of the block size simply because they are, for example, in a different currency or trade in different quantities than is typical for the rest of the category to which they are compared. As I have said before, when available, data should be used by the Commission to establish regulations that serve the public policy goals set by Congress.

The proposal also would eliminate several block trade delay periods in the existing rule as short as 15 minutes and replace them with a single 48-hour delay period. This simplified approach to block trade reporting delays could harm price discovery and do so in a manner that is not supported by the need for a delay in block trade reporting. Under the proposal, fully one-third of all trades within a category could be block trades

subject to reporting delays. Such a large carve-out from real-time reporting would harm price discovery and provide an unfair information advantage to swap dealers and other large counterparties.

The need for a 48-hour delay is not apparent. It is my understanding that for many block trades, the dealer seeking to hedge the block position will do so as soon as possible after the trade (if not before) and in most cases within the same trading session. The logic of this is obvious—waiting overnight to establish a hedge could destroy the profit and loss calculated when the block was executed as market prices move further away from the prices at the time the trade was executed. On the other hand, some small number of block trades, those of very large size or with complex features, may take 48 hours or more to hedge. The Commission should calibrate the delay periods accordingly.

I thank the CFTC staff for working with my office to add questions addressing this issue. The questions relating to proposed section 43.5 ask commenters to address whether these issues are of concern and whether the rule would benefit from having two delay periods, one shorter for “smaller” block trades and another for the largest block trades. I look forward to reviewing comments on this and other issues.

#### *Conclusion*

I commend all of the staff at the CFTC who worked on the reporting rules over the years. Getting swap reporting right is a difficult, but important function for the Commission. Improving price discovery through real-time public reporting serves a core CFTC mission. This proposal offers a number of pragmatic solutions to known issues with the current rule. These improvements, however, should not—and need not—come at the expense of market transparency and a level playing field.

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<sup>1</sup> CEA section 2(13)(B) (emphasis added).

<sup>2</sup> CEA section 2(13)(E)(iii).