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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Doc. No. AMS–SC–22–0088]

Softwood Lumber Research, Promotion, Consumer Education, and Information Order; Adjustment to Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements recommendations from the Softwood Lumber Board (Board) to modify the membership by adding alternate positions for certain seats and a public member. In addition to these Board recommended changes, Harmonized Tariff Schedule (HTS) numbers for softwood lumber are also updated with the latest numbers from the U.S. International Trade Commission. The Board administers the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order) with oversight by the U.S. Department of Agriculture (USDA).

DATES: *Effective:* August 19, 2024.

FOR FURTHER INFORMATION CONTACT: Katie Cook, Marketing Specialist, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; Telephone: (202) 720–8085; or Email: Katie.Cook@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule affecting the Order (7 CFR part 1217) is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425).

Executive Orders 12866, 13563 and 14094

USDA issues this final rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies

to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This final rule is not a significant regulatory action within the meaning of Executive Order 12866. Accordingly, this action has not been reviewed by the Office of Management and Budget under section 6 of the Executive Order.

Executive Order 13175

This action was reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS assessed the impact of this final rule on Indian Tribes and determined this final rule will not have Tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with Tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the changes to the regulations will be shared during an upcoming quarterly call, and Tribal leaders will be informed about the revisions to the regulation. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regard to the changes to the Order.

Executive Order 12988

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. Section 524 of the Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under sec. 519 of the Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order,

or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

Under the Order, which became effective on August 3, 2011, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen softwood lumber's competitive position and expand domestic markets for softwood lumber. This program is financed by assessments on domestic manufacturers and importers of softwood lumber. The Board administers the Order with oversight by the USDA.

This final rule modifies the membership of the Board by adding two domestic manufacturer alternates, one importer alternate, a public member and alternate, and updating HTS numbers. The Board discussed the recommendations over several months and, on May 17, 2023, unanimously recommended the changes to the membership and the update to the HTS numbers. Board members present for the vote represented domestic manufacturers and importers.

Adding Alternate Positions and a Public Member to Membership

Section 1217.40 of the Order provides for the membership of the Board and authorizes these changes. The Board is comprised of 10 domestic manufacturers and four importers who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States

during a fiscal period. Currently, the Board struggles to find individuals from under-represented populations who are eligible to serve with the current membership requirements. To mitigate this issue, this final rule adds alternate positions (two for domestic manufacturers; one for importers), a public member, and an alternate public member to the Board.

Unlike most other research and promotion programs, the members on this Board have corporate backgrounds from large, international corporations and serve in leadership positions at their respective companies. Furthermore, according to the Board, about 90% of the manufacturing companies are family owned, therefore these companies typically pass leadership positions on to a family member. It is common industry practice to nominate executive-level employees to serve on the Board, which allows for robust discussions and thoughtful decision making. The Board believes that adding alternates for manufacturers provides succession and development opportunities for prospective nominees.

Adding a public member and alternate also expands the pool of members and allows the Board to tap into broader backgrounds and more diverse perspectives. Ideally, the public member position will be filled by an individual in architecture, construction, engineering, or development sectors, who will participate, voice their opinions, and vote to the benefit to the softwood lumber industry. Much like the alternates for manufacturers, adding an alternate public member creates succession and development opportunities for prospective nominees in the architecture, construction, and engineering industries, as well as an opportunity to provide input and unique perspective on Board actions.

This final rule is the second change to the Board's membership since its inception. In response to industry consolidation in 2019, the membership was reduced from 19 to 14 and more flexibility was added to the Order in terms of certain seats being open to representatives of any size manufacturer or importer. While previous rulemaking sought to decrease membership, this final rule adds certain alternate positions and a public member to help create opportunities for a more diverse and inclusive Board. The Board does not believe they will have difficulty filling the new positions from this final rule because this final rule opens eligibility to a new class of underrepresented and prospective industry members.

In addition to providing more opportunities to recruit diverse candidates, adding alternates will help the Board meet quorum requirements, which became a greater issue after the Board reduced its membership in 2019. Including alternates allows for an absent member seat or vacant seat to be filled as needed to vote on Board motions. Since alternates will not be broken out by size, they may serve in the stead of any size seat if it is from the same region they represent for the two domestic seats, and any importing region for the importer seat.

With the changes to § 1217.40, the membership of the Board increases from 14 to 15 members and four alternates. The new Board will be composed of 10 domestic manufacturer members and two alternates, four importer members and one alternate, and one public member and one alternate. Further, domestic manufacturers will represent three regions: five members and one alternate representing the South region; four members and one alternate representing the West region; and one member representing the Northeast and Lake States region. Alternates for the domestic manufacturers may represent companies of any size. For importer representation, the four members will be two large importers, one small importer, and one importer of any size, while the alternate may represent importers of any size from any region.

As a point of clarification, current § 1217.41(f) of the Order states that no two members shall be employed by a single corporation, company, partnership, or any other legal entity. This final rule maintains this stipulation for alternates, ensuring the Order is not violated and no two members or alternates may be from the same manufacturer or importer. Although there is consolidation in the industry, there are a sufficient number of companies who will be able to fill the 15 member seats and four alternate seats.

Section 1217.44, which is currently titled "Procedure", is revised to be titled "Alternates"; and it creates the alternate position and explains the role of alternate members on the Board. In the event a member is unable to attend a Board meeting due to death, removal, resignation, disqualification, illness, or any other reason, the alternate from the same group (domestic manufacturer, importer, or public member) and region (if applicable) may serve in the member's stead. For example, if a member is unable to attend a singular meeting, an alternate from the same category could step in and serve as a member, counting towards quorum and

will be eligible to vote. However, if a member is unable to serve permanently, the position becomes vacant, and the Board will nominate persons for the vacant seat using the nomination process set forth in § 1217.41. The alternate will serve until the vacancy is permanently filled.

Currently, § 1217.44 specifies the Board's procedures, § 1217.45 specifies the reimbursement and attendance policies when performing Board business, § 1217.46 specifies the powers and duties of the Board, and § 1217.47 specifies prohibited activities. Current §§ 1217.44 to 1217.47 will be redesignated and become §§ 1217.45 to 1217.48 to accommodate the addition of the role of the newly created alternate member positions in § 1217.44. Redesignated §§ 1217.45 to 1217.47 are also revised to include references to alternates.

Conforming Changes

Section 1217.5 defines conflict of interest for current Board members or Board employees. This section is revised to include alternate members to the Board and is a conforming change.

Section 1217.41 specifies the nomination procedures. This final rule revises §§ 1217.41(b) and (c) and redesignates § 1217.41(g) to include alternate members and the public member. Section 1217.41(b) specifies that domestic manufacturers, importers, and public members and alternates may submit a short background statement outlining their qualifications to serve on the Board. Section 1217.41(c) states that all members and alternates may seek nomination for all open or vacant seats for which they are eligible. Section 1217.41(e) is added to prescribe nomination procedures specifically for the public member and alternate positions on the Board.

The nomination procedure provides that the Board conduct outreach and solicit nominees for domestic manufacturers, importers, and public members who are interested in serving on the Board. A nominee could seek nomination to the Board for all seats for which they qualify. The Board evaluates all nominees and submits one recommended candidate for each open seat and at least one additional nominee for each open seat to the Secretary for consideration. Any additional qualified persons interested in serving in any of the open seats but not one of the two forwarded by the Board are designated as additional nominees for consideration by the Secretary.

Current § 1217.41(f), which states that no two members shall be employed by

a single legal entity, is redesignated and revised to include alternates.

Section 1217.42 specifies the term of office. Section 1217.42(a) is revised to include alternates and allow members to serve as an alternate when they are ineligible to serve in the member position after two consecutive terms. In addition, § 1217.42(b) staggers the alternate member position terms so not all alternates will term off the Board at the same time. Like their member counterparts, alternate members are permitted to serve two consecutive, 3-year terms as alternates. If an alternate is nominated and appointed as a member, the eligibility starts over. For example, if an alternate member serves two consecutive terms, they are eligible to serve as a member immediately after their service as an alternate.

Section 1217.43 specifies the removal and filling of vacancies on the Board. Section 1217.43(a) is revised to address the addition of alternates to the Board, and states that if any member or alternate ceases to serve in their appointed capacity, whether they leave their position at their manufacturing or importing entity, or if they no longer qualify as a Board member or alternate

in the respective group or region in which they were appointed, that position becomes vacant. Section 1217.43(b) is revised to add alternates, specifying that, similar to members, if an alternate refuses to perform their duties, the Secretary may remove the member or alternate from the Board.

Board Recommendation To Update HTS Numbers

Section 1217.52(h) specifies the HTS numbers and assessment rates on imported softwood lumber. This final rule updates the HTS numbers to the latest codes published by the U.S. International Trade Commission.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) is required to examine the impact of the action on small entities. Accordingly, AMS considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the actions so that

small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small firms which engage in “Support Activities for Forestry” (domestic softwood lumber manufacturers and importers) as those having annual receipts of no more than \$11.5 million.¹

The RISI/Fast Markets Random Lengths Publication’s yearly average framing lumber composite price was \$759 per thousand board feet (mbf) in 2022. Dividing the \$11.5 million threshold that defines a small firm which provides “Support Activities for Forestry” by this price results in a maximum threshold of 15.15 million board feet (mmbf) of softwood lumber per year that a domestic manufacturer or importer may ship to be considered a small entity for purposes of the RFA. Table 1 shows the number of entities and the amount of volume they represent that may be categorized as small or large based on the SBA definition. This table is based on data from Forest Economic Advisors (FEA) and Customs and Border Protection (CBP).

TABLE 1—DOMESTIC MANUFACTURERS AND IMPORTERS BY SBA SIZE STANDARDS, 2022

	Domestic manufacturers		Importers		Totals	
	Entities	Volume (MMBF)	Entities	Volume (MMBF)	Entities	Volume (MMBF)
Small	150	950	753	1,034	903	1,984
Large	174	36,616	110	14,904	284	51,520
Total	324	37,566	863	15,938	1,187	53,504

Sources: Forest Economic Advisors; Customs and Border Protection.

Table 1 shows that there was a combined total of 1,187 domestic manufacturers and importers of softwood lumber in the industry in 2022. Of these, 903 entities, or 76 percent, shipped or imported less than 15.15 mmbf and would be considered small based on the SBA definition. These 903 entities domestically manufactured or imported 1.984 billion board feet (bbf) in 2022, less than 4 percent of total volume. The final rule will not disproportionately burden small domestic manufacturers and importers of softwood lumber.

This final rule revises § 1217.44 to add the alternate position, revise § 1217.40 to specifically add four alternates and a public member on the

Board and make conforming changes throughout the Order. The Order is administered by the Board with oversight by the USDA. In accordance with program requirements, assessments are collected from domestic manufacturers and importers, and used for research and promotion projects designed to strengthen the position of softwood lumber in the marketplace. Adding two domestic manufacturer alternates, one importer alternate, and one public member and one public member alternate positions will provide more opportunities for diverse candidates to serve on the Board.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection

and recordkeeping requirements imposed by the Order were approved previously under OMB control number 0581–0093. This final rule will not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on domestic manufacturers and importers of softwood lumber.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules

¹ SBA does have a small business size standard for “Sawmills” of 550 employees (see https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf).

Based on USDA’s understanding of the lumber industry, using this criterion would be impractical as sawmills often use contractors rather than employees to operate and, therefore, many mills would fall under this criterion while being, in

reality, a large business. Therefore, USDA used the definition of a small firm which engages in “Support Activities for Forestry” as a more appropriate criterion for this analysis.

that duplicate, overlap, or conflict with this final rule.

Regarding alternatives, the Board considered not changing the current Board makeup and continuing to have issues meeting quorum and diverse members serving on the Board. The Board decided against this option to avoid meeting delays and continued concerns with nominations.

Regarding outreach efforts, the full Board determined making these changes will give further opportunity for the industry to engage with the Board and expand the availability of positions to those from under-represented communities and populations. This final rule was discussed by the Industry Relations and Governance Committee on June 29, 2022, and the full Board unanimously recommended rulemaking on August 11, 2022. Further discussions among the Board took place on May 17, 2023.

A proposed rulemaking concerning this action was published in the **Federal Register** on February 21, 2024 (89 FR 12987). The proposed rulemaking was distributed to all stakeholders of the Board via a newsletter. A copy of the proposed rulemaking was also made available through the internet by AMS via <https://www.regulations.gov>. A 30-day comment period ending March 22, 2024, was provided for interested persons to respond to the proposal.

Comment Analysis

During the proposed rulemaking's 30-day comment period, AMS received two comments, which may be viewed on <https://www.regulations.gov>. One comment did not address the merits of the proposed rulemaking. The second comment was submitted by the Softwood Lumber Board and is in favor of the proposed rulemaking. However, the Board had two points to clarify. Firstly, the Board's intent with adding alternate members is to create succession and development opportunities among perspective nominees, not necessarily junior-level professionals as stated in the proposed rulemaking. Secondly, they elaborated that alternates for domestic manufacturers and importers should not automatically be moved into a member position if there is a vacancy. To keep the Board balanced in terms of large, small, and flexible companies represented, the Board prefers vacant positions to go through a normal nomination process.

AMS agrees with the comments from the Softwood Lumber Board and updated the text in the preamble to this final rule and the regulatory text.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Agricultural research, Confidential business information, Consumer protection, Forest and forest products, Inventions and patents, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agriculture Marketing Service amends 7 CFR part 1217 as follows:

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 1. The authority citation for part 1217 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Revise § 1217.5 to read as follows:

§ 1217.5 Conflict of interest.

Conflict of interest means a situation in which a member, alternate, or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

■ 3. In § 1217.40, revise paragraphs (a) and (b) to read as follows:

§ 1217.40 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Softwood Lumber Board to administer the terms and provisions of the Order and promote the use of softwood lumber. The Board shall be composed of manufacturers for the U.S. market who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States during a fiscal period. Seats on the Board shall be apportioned based on the volume of softwood lumber production that is manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. Seats on the Board shall also be apportioned based on size of operation within each geographic region, as specified in paragraphs (b)(1) and (2) of this section. For purposes of this section, “large” means manufacturers for the U.S. market who account for the top two-thirds of the total annual volume of assessable softwood lumber and “small” means those who account for the remaining one-third of the total annual volume of assessable softwood lumber. If there are no eligible nominees for a large or small

seat within a region, that seat may be filled by a nominee representing an eligible manufacturer for the U.S. market of any size. Should the size of a manufacturer for the U.S. market change during a member's or alternate's term of office, that member or alternate may serve for the remainder of the term.

(b) *Composition of the Board.* The Board shall be composed of 15 members and four alternates, as follows:

(1) *Domestic manufacturers.* Domestic manufacturers must reside in the United States. Ten members and two alternates shall represent domestic manufacturers who reside in the following three regions:

(i) Five members and one alternate shall represent manufacturers of softwood lumber in the U.S. South Region, which consists of the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Of these five members, two members must represent large, two members must represent small, and one member may represent domestic manufacturers of any size. The region's alternate may represent domestic manufacturers of any size;

(ii) Four members and one alternate shall represent manufacturers of softwood lumber in the U.S. West Region, which consists of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Of these four members, two members must represent large, one member must represent small, and one member may represent domestic manufacturers of any size. The region's alternate may represent domestic manufacturers of any size; and

(iii) One member shall represent manufacturers of softwood lumber in the Northeast and Lake States Region, which consists of the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin and all other parts of the United States not listed in paragraph (b)(1)(i), (ii), or (iii) of this section. This member may represent domestic manufacturers of any size.

(2) *Importers.* Four members and one alternate shall represent importers. Of these four members, two members must represent large, one member must represent small, and one member may represent importers of any size. The alternate may represent importers of any

size from any region. At least three of the members must import softwood lumber from the following regions:

(i) Two members must import softwood lumber from the Canadian West Region, which consists of the provinces of British Columbia and Alberta; and

(ii) One member must import softwood lumber from the Canadian East Region, which consists of the Canadian territories and all other Canadian provinces not listed in paragraph (b)(2)(i) of this section that import softwood lumber into the United States.

(3) *Public Member.* One member and one alternate of the Board shall represent the public. The public member and alternate may not be manufacturers for the U.S. market as defined in section 1217.14.

* * * * *

■ 4. Amend § 1217.41 by:

■ a. Revising paragraphs (b) and (c);

■ b. Redesignating paragraphs (e) through (g) as paragraphs (f) through (h), respectively;

■ c. Adding new paragraph (e); and

■ d. Revising redesignated paragraph (g).

The revisions and addition read as follows:

§ 1217.41 Nominations and appointments.

* * * * *

(b) Domestic manufacturers, importer, and public member nominees, for both member and alternate positions, may provide the Board a short background statement outlining their qualifications to serve on the Board;

(c) Domestic manufacturer, importer, public member and all alternate nominees may seek nomination to the Board for all open or vacant seats for which the nominees are eligible;

* * * * *

(e) Nominations for the public member shall be made by the Board. The Board shall submit the names of at least two nominees for the public member seat and at least two nominees for the public member alternate seat to the Secretary.

* * * * *

(g) No two members or alternates shall be employed by a single corporation, company, partnership, or any other legal entity. This includes subsidiaries and affiliates thereof; and

* * * * *

■ 5. Revise § 1217.42 to read as follows:

§ 1217.42 Term of office.

(a) Board members and alternates will serve a three-year term or until the Secretary selects his or her successor.

Each term of office shall begin on January 1 and end on December 31. No member or alternate may serve more than two consecutive terms, excluding any term of office less than three years.

A Board member may serve as an alternate during the years he or she is ineligible to serve in a member position.

(b) For the initial Board alternates, their terms shall be staggered for two, three, and four years. Determination of which alternates shall serve a term of two, three, or four years shall be recommended to the Secretary by the Board.

■ 6. Revise § 1217.43 to read as follows:

§ 1217.43 Removal and vacancies.

(a) In the event that any member or alternate of the Board ceases to work for or be affiliated with the domestic manufacturer or importer, or ceases to do business in the group or region from which the member or alternate was appointed to the Board, such position shall automatically become vacant.

(b) The Board may recommend to the Secretary that a member or alternate be removed from office if the member or alternate consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Secretary may remove the member or alternate if he or she finds that the Board's recommendation shows adequate cause. Further, without recommendation of the Board, a member or alternate may be removed by the Secretary upon showing of adequate cause, including the failure by a member or alternate to submit reports or remit assessments required under this part, if the Secretary determines that such member's or alternate's continued service would be detrimental to the achievement of the purposes of the Act.

(c) If a position becomes vacant, nominations to fill the vacancy may be conducted using the nominations process set forth in § 1217.41 or the Board may nominate eligible persons. A vacancy will not be required to be filled if the unexpired term is less than 6 months.

§§ 1217.44 through 1217.47 [Redesignated as § 1217.45 through 1217.48]

■ 7. Redesignate paragraphs §§ 1217.44 through 1217.47 as §§ 1217.45 through 1217.48, respectively.

■ 8. Add new § 1217.44 to read as follows:

§ 1217.44 Alternates.

An alternate member of the Board, during the absence of a member from the same group (domestic manufacturer, importer, or public member) and region

(as applicable) may serve in the place and stead of such member and perform such duties as assigned. In the event that both a member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate from a different group or region to serve in such member's or alternate's place and stead for the meeting.

■ 9. Revise newly redesignated § 1217.45 to read as follows:

§ 1217.45 Procedure.

(a) A majority of Board members (exclusive of vacant seats) will constitute a quorum so long as at least two of the members present are importer members and five of the members present are domestic manufacturers. An alternate will be counted for the purpose of determining a quorum only if a member from his or her group and region is absent or disqualified from participating. If participation by telephone or other means is permitted, members participating by such means shall count as present in determining quorum or other voting requirements set forth in this section.

(b) All votes at meetings of the Board, executive committee, and other committees will be cast in person or by electronic voting or other means as the Board and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes. Voting by proxy will not be allowed.

(c) Each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by a majority of Board members (exclusive of vacant seats), except for recommendations to change the assessment rate or to adopt a budget, both of which require affirmation by at least a majority of Board members plus two (exclusive of vacant seats).

(d) The Board must give its members, alternates, and the Secretary timely notice of all Board, executive committee, and other committee meetings.

(e) In lieu of voting at a properly convened meeting, and when, in the opinion of the Board's chairperson, such action is considered necessary, the Board may take action by mail, telephone, electronic mail, facsimile, or any other means of communication. Any action taken under this procedure is valid only if:

(1) All members, alternates, and the Secretary are notified.

(2) Members and alternates acting in a member's stead are provided the opportunity to vote. A majority of Board

members or alternates acting in the member's stead (exclusive of vacant seats) vote in favor of the action (unless a vote of a majority of Board members plus two (exclusive of vacant seats) is required under the Order); and

(3) All votes are promptly confirmed in writing and recorded in the Board minutes.

■ 10. Revise redesignated § 1217.46 to read as follows:

§ 1217.46 Reimbursement and attendance.

Board members and alternates will serve without compensation, but will be reimbursed for reasonable travel expenses, as approved by the Board, which they incur when performing Board business.

■ 11. Revise redesignated § 1217.47 to read as follows:

§ 1217.47 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board and such rules, regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among its members a chairperson and, such other officers as may be necessary;

(d) To create an executive committee of five members of the Board comprised of the chairperson and four other members elected by the Board. The duties of the executive committee shall be specified in bylaws that are recommended by the Board and approved by the Secretary;

(e) To create other committees or subcommittees, which may include individuals other than Board members, as the Board deems necessary from its membership and other representatives it deems appropriate;

(f) To employ or contract with such persons, other than the members or alternates, as it may deem necessary to assist the Board in carrying out its duties, and to determine the compensation and define the duties of each;

(g) To notify manufacturers for the U.S. market of all Board meetings through press releases or other means and to give the Secretary the same notice of Board meetings, executive committee, and subcommittee meetings that is given to members and alternates in order that the Secretary's representative(s) may attend such

meetings, and to keep and report minutes of each meeting to the Secretary;

(h) To develop and administer programs, plans, and projects and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for promotion, research, and information, including consumer and industry information, research and advertising designed to strengthen the softwood lumber industry's position in the marketplace and to maintain, develop, and expand markets for softwood lumber. The payment of costs for such activities shall be with funds collected pursuant to the Order, including funds collected pursuant to § 1217.50(f). Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget that specifies the cost to be incurred to carry out the activity;

(2) The contractor or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(i) To prepare and submit to the Secretary for approval 60 calendar days in advance of the beginning of a fiscal period, rates of assessment and a budget of the anticipated expenses to be incurred in the administration of the Order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Board;

(j) To borrow funds necessary for startup expenses of the Order;

(k) To invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order;

(l) To recommend changes to the assessment rates as provided in this part;

(m) To cause its books to be audited by a certified public accountant at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of each audit directly to the Secretary;

(n) To periodically prepare and make public and to make available to manufacturers for the U.S. market reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended;

(o) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and to submit to the Secretary such information pertaining to this part or subpart as he or she may request;

(p) To act as an intermediary between the Secretary and any manufacturer for the U.S. market;

(q) To receive, investigate and report to the Secretary complaints of violations of the Order; and

(r) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the purposes of the Act.

■ 12. Revise redesignated § 1217.48 to read as follows:

§ 1217.48 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to the Order; and

(c) No program, plan or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Softwood lumber of all geographic origins shall be treated equally.

■ 13. In § 1217.52, revise paragraph (h) to read as follows:

§ 1217.52 Assessments.

* * * * *

(h) The HTSUS categories and assessment rates on imported softwood lumber are listed in the following table. The assessment rates are computed using the following conversion factors: One cubic meter (m3) equals 0.423776001 thousand board feet, and one square meter (m2) equals 0.010763104 thousand board feet. Accordingly, the assessment rate per cubic meter and square meter is as follows.

TABLE 1 TO PARAGRAPH (h)

Softwood lumber (by HTSUS number)	Assessment \$/cubic meter	Assessment \$/square meter
4407.11.00	0.1737	0.004412
4407.12.00	0.1737	0.004412
4407.13.00	0.1737	0.004412
4407.14.00	0.1737	0.004412
4407.19.00	0.1737	0.004412
4409.10.05	0.1737	0.004412
4409.10.10	0.1737	0.004412
4409.10.20	0.1737	0.004412
4409.10.90	0.1737	0.004412
4418.99.10	0.1737	0.004412

* * * * *

Erin Morris,Associate Administrator, Agricultural
Marketing Service.

[FR Doc. 2024–15238 Filed 7–17–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 25**[Docket No. FAA–2023–2412; Special
Conditions No. 25–868–SC]**Special Conditions: Airbus Model
A321neo Extra-Long Range (XLR)
Airplane; Cabin Evacuation—
Protection From Fuel Tank Explosion
Due to External Fuel-Fed Ground Fire****AGENCY:** Federal Aviation
Administration (FAA), DOT.**ACTION:** Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Model A321neo XLR airplane. This airplane will have a novel or unusual design feature when compared to the technology envisaged by the airworthiness standards for transport category airplanes. This design feature is an integral rear center tank (RCT). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for fire-safety performance of fuel-tank skin or structure in a post-crash external fuel-fed ground fire. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective July 18, 2024.**FOR FURTHER INFORMATION CONTACT:**Douglas Bryant, Engine and Propulsion
Section, AIR–625, Technical Policy
Branch, Policy and Standards Division,
Aircraft Certification Service, Federal
Aviation Administration, 2200 South216th Street, Des Moines, Washington
98198; telephone and fax 206–231–
3166; email *douglas.n.bryant@faa.gov*.**SUPPLEMENTARY INFORMATION:****Background**

On September 16, 2019, Airbus applied for an amendment to Type Certificate No. A28NM to include the new Model A321neo XLR series airplane. The Airbus Model A321neo XLR series airplane, which is a derivative of the Model A321neo Airbus Cabin Flex (ACF) currently approved under Type Certificate No. A28NM, is a twin-engine transport category aircraft that seats up to 244 passengers and has a maximum takeoff weight of 222,667 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Model A321neo XLR series airplane meets the applicable provisions of the regulations listed in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (e.g., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A321neo XLR series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A321neo XLR series airplane must comply with the fuel venting and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A321neo XLR series airplane will incorporate the following novel or unusual design feature:

An integral RCT.

Discussion

The Airbus Model A321neo XLR series airplane incorporates an integral RCT. This tank is a “center” fuel tank, that would, if approved, be located in the airplane fuselage rather than in its wings. The tank is a “rear” tank, that would be located aft of the center wing fuel tank and behind the wheel bay; it would be in an area of the lower section of the fuselage, partially replacing the aft cargo compartment of the airplane from which this model is derived. The top of the tank would be directly below the floor of the passenger cabin. The fuel tank would be “integral” to the airplane, in that its walls would be part of the airplane structure. The exterior skin of the airplane fuselage would constitute part of the walls of the fuel tank, and these areas are usually separate boundaries (not integral) on other fuselage fuel tanks. An integral fuel tank may be referred to as a conformal fuselage structural fuel tank since boundaries of the fuel tank “conform” with the airplane exterior. The integral RCT is installed in a location that may be exposed to the direct effects of post-crash ground, or pool, fuel-fed fires. An external fuel-fed ground fire or external fuel-fed pool fire is also referred to as ‘external ground fire’.

The airworthiness standards applicable to the Model A321neo XLR do not contain specific standards for post-crash fire-safety performance of fuel-tank skin or structure. In addition, the integral RCT on the A321neo XLR was not envisaged by the FAA when promulgating requirements related to occupant protection when fuel tanks are exposed to external fuel-fed fires. The FAA considered fuel tank designs in widespread use on transport airplanes, including main fuel tanks and auxiliary fuel tanks when promulgating requirements related to occupant protection. Auxiliary fuel tanks are normally located in the center wing and within cargo holds, and in such cases are sometimes referred to as an auxiliary center tank (ACT).

Airplane manufacturers commonly incorporate a center wing fuel tank as an auxiliary fuel tank to make fuel available for increasing the flight range of the airplane. Continued expansion of range performance requirements has resulted in airplane designs using other

areas of the airplane to carry fuel, such as incorporating fuel tanks in the empennage and fuselage. The Airbus model A321neo XLR airplane includes a center wing fuel tank, an integral RCT and the option for additional ACTs within the fuselage. Unlike an integral RCT, a center wing fuel tank and optional ACTs are not expected by the FAA or manufacturers to be exposed to the direct effects of post-crash ground fire because the fuel tank walls are not exterior airplane skin on the center fuel tank or ACT designs.

Due to its unusual configuration, the A321neo XLR's integral RCT will also not incorporate the insulation that usually lines the fuselage skin of a modern transport category airplane. Therefore, the FAA has issued, after notice and comment, a set of special conditions that address that novel or unusual aspect of the A321neo XLR's integral RCT with regard to certain of the FAA's regulatory requirements for thermal/acoustic insulation installations, specifically 14 CFR 25.856(b). Those special conditions, No. 25-825-SC, require that the lower half of the fuselage spanning the longitudinal location of the RCT resist penetration from an external fuel-fed fire, to ensure that the design provides the same level of passenger protection from such fires as do the FAA's existing regulations for such insulation. The special conditions herein address a different flammability aspect of the A321neo XLR's integral RCT.

Pertinent to the fuel tank structure, post-crash-fire occupant survivability is dependent on the time available for occupant evacuation prior to fuel-tank breach or structural failure. Structural failure can be a result of degradation in load-carrying capability caused by a fuel-fed ground fire. Structural failure can also be a result of over-pressurization caused by ignition of fuel vapors inside the fuel tank.

Past experience indicates that occupant survivability following a post-crash fire is greatly influenced by the size and intensity of any fire that occurs. The ability of main fuel tanks, when they have aluminum wing surfaces wetted by fuel on their interior surface, to withstand post-crash-fire conditions, has been demonstrated by tests conducted at the FAA William J. Hughes Technical Center. Results of these tests have verified adequate dissipation of heat across wetted aluminum fuel-tank surfaces so that localized hot spots do not occur, thus minimizing the threat of explosion. This inherent capability of aluminum to dissipate heat also allows the aircraft's lower surface, which is also the fuel

tank boundary, to retain its load-carrying characteristics during a fuel-fed ground fire, and significantly delays structural collapse or burn-through for a time interval that usually exceeds evacuation times. In addition, as an aluminum fuel tank with significant quantities of fuel inside is heated, fuel vapor accumulates in the ullage space, exceeding the upper flammability limit relatively quickly and thus reducing the threat of a fuel-tank explosion prior to fuel-tank burn-through.

The center wing tank and optional ACTs are surrounded by fuselage structure and would not be directly exposed to a post-crash ground fire. This inherent separation is also expected to significantly delay structural collapse or burn-through and reduce the threat of explosion for a time interval that usually exceeds evacuation times. Service history of conventional aluminum airplanes has shown that fuel-tank explosions caused by ground fires have been rare on airplanes configured with flame arrestors in the fuel-tank vent lines. The Model A321neo XLR integral RCT may or may not have equivalent capability of past designs approved with existing regulations, due to the RCT design and location being integral with the fuselage.

There are several part 25 requirements that address fire-safety performance of the fuel tanks and fuselage in the Model A321neo XLR certification basis. However, these requirements do not directly or adequately address standards for post-crash fire-safety performance of fuel-tank skin or structure. These standards address failure conditions or minimize the hazard to the occupants in the event ignition of flammable fluids or vapors occurs. For example, § 25.863 requires applicants to minimize the probability of ignition and resultant hazards if ignition occurs for flammable fluid systems on the airplane. Another example is § 25.981(a) which requires applicants to demonstrate no ignition source may be present at each point in the fuel tank or fuel tank system where catastrophic failure could occur due to ignition of fuel or vapors. Specifically, § 25.981(a)(1) requires "determining the highest temperature allowing a safe margin below the lowest expected autoignition temperature of the fuel in the fuel tanks." Then § 25.981(a)(2) requires "demonstrating that no temperature at each place inside each fuel tank where fuel ignition is possible will exceed the temperature determined under paragraph (a)(1) of this section. This must be verified under all probable operating, failure, and malfunction conditions of each component whose operation, failure, or malfunction could

increase the temperature inside the tank." In addition, § 25.981(a)(3) requires "except for ignition sources due to lightning addressed by § 25.954, demonstrating that an ignition source could not result from each single failure, from each single failure in combination with each latent failure condition not shown to be extremely remote, and from all combinations of failures not shown to be extremely improbable, taking into account the effects of manufacturing variability, aging, wear, corrosion, and likely damage." These airworthiness requirements address ignition sources and are part of the FAA's regulatory framework for preventing fires and explosions; however, taken together, they do not adequately address the potential for a post-crash external ground fire to affect the safety of airplane occupants.

The FAA therefore determined that the airworthiness standards applicable to the Model A321neo XLR airplane do not contain adequate standards for post-crash fire-safety performance of fuel-tank skin or structure. The FAA therefore proposed that special conditions are needed for the Model A321neo XLR airplane, because the integral RCT design, including location in the lower fuselage, is considered an unusual or novel design feature that could expose the RCT to an external ground fire. Factors influencing occupant survival time when a fuel tank is exposed to a ground-fed fire are the structural integrity of the tank; burn-through resistance; flammability of the tank; and the presence of auto-ignition threats during exposure to a fire. As previously discussed, the FAA issued Special Conditions No. 25-825-SC to address the novel or unusual aspect of the A321neo XLR's integral RCT with regard to requirements for thermal/acoustic insulation installations. The FAA considers the occupant survival time related to the burn-through resistance of the integral RCT to be adequately accounted for in those special conditions.

These special conditions address standards for post-crash fire-safety performance of fuel-tank skin or structure by proposing a requirement to prevent the ignition of fuel vapor during an external fuel-fed ground fire. These special conditions include accounting for the potential for hot surface ignition created by the external fuel-fed fire. As described in FAA Advisory Circular 25.981-1D, "Fuel Tank Ignition Source Prevention Guidelines," hot surfaces that can exceed the autoignition temperature of the flammable vapor under consideration are considered to be ignition sources. The FAA intends

this requirement to adequately protect the airplane occupants from the consequences of an integral RCT exposed to an external fuel-fed ground, or pool fire.

The intention of the requirement for the design to prevent ignition is for the applicant to show that ignition sources do not occur, such as from a hot surface, due to the external heat applied to the integral RCT from an external fuel-fed ground fire. Where previously discussed, § 25.981(a) requires applicants to demonstrate that no ignition source may be present but does not specifically address ignition due to an external fuel-fed ground fire.

To provide the same level of safety as provided by the relevant regulations in this model's certification basis, Airbus must demonstrate that the Model A321neo XLR series airplane has sufficient post-crash fire-safety performance of fuel-tank skin or structure to enable occupants to safely evacuate in the event that the integral RCT is exposed to an external fuel-fed ground fire.

The FAA assessed post-crash-survival time during the adoption of § 25.856 and revisions to appendix F to part 25 at Amendment 25-111 for fuselage burn-through protection. Studies conducted by and on behalf of the FAA indicated that following a survivable accident, prevention of fuselage burn-through for approximately 5 minutes can significantly enhance survivability.

The FAA would consider Airbus showing the design prevents ignition of fuel tank vapors in the integral RCT during at least 5 minutes of exposure to an external fuel-fed ground fire as a sufficient time duration for the purposes of these special conditions. The time duration of 5 minutes is consistent with the studies mentioned above showing prevention of fuselage burn-through for approximately 5 minutes enhances occupant survivability. The requirements of the special conditions and the time duration are consistent with the European Union Aviation Safety Agency Special Conditions No. SC-D25.863-01, Cabin Evacuation—Protection from Fuel Tank Explosion due to External Fuel Fed Ground Fire applicable to integral RCTs.

Airbus may consider a flammability reduction system or ignition mitigation means that complies with § 25.981 when showing compliance with these special conditions, provided the system's performance is demonstrated to meet the special conditions. As discussed previously, showing compliance with only § 25.981(b) is insufficient to show post-crash fire-safety performance of fuel-tank skin or

structure. Airbus must also meet these special conditions.

The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25-23-06-SC for the Airbus Model A321neo XLR airplane, which was published in the **Federal Register** on May 7, 2024 (89 FR 38004). The FAA received several comments from an individual regarding the proposed special conditions.

The commenter requested the FAA consider how passengers will be made aware of what the commenter described as the “unique” configuration of a fuel tank directly under passenger seats in what is traditionally a location for baggage and cargo. The commenter suggested that the FAA make passengers aware of their proximity to the airplane fuel.

In the Notice of Proposed Special Conditions No. 25-23-06-SC, which was published in the **Federal Register**, the FAA informed the public of the proposed configuration. As stated in that Notice, while the subject integral RCT is a novel or unusual design feature, the configuration is not unique. Many transport airplanes incorporate fuel tank configurations that result in fuel in close proximity to some passengers. These special conditions address standards for post-crash fire-safety performance of fuel-tank skin or structure. No changes were made to these special conditions as a result of this comment.

The commenter requested the FAA clarify how it addressed the crashworthiness requirements of a fuel tank integral to the fuselage applied by the FAA to the Model A321neo XLR series airplane. The commenter recognized the request is beyond the proposed special conditions.

The FAA disagrees that additional clarification of crashworthiness requirements for the RCT is necessary for these special conditions. The FAA discussed the type certification basis of the Model A321neo XLR series airplane in the Notice of Proposed Special Conditions No. 25-23-06-SC. The crashworthiness requirements applicable to the Model A321neo XLR series airplane are addressed by the type certification basis, and as acknowledged by the commenter, are outside the scope of these special conditions. Therefore, no changes were made to these special conditions as a result of this comment.

The commenter requested the FAA explain what considerations the FAA is making relative to an otherwise survivable accident when the RCT is ruptured and there is an external fuel-fed ground fire already present.

The FAA infers that the commenter requests the FAA further clarify the requirements the FAA applied to the Model A321neo XLR series airplane related to a ruptured RCT in addition to an external fuel-fed ground fire. The FAA considers the commenter's request to be beyond the scope of these special conditions, which addresses standards specifically for the post-crash fire safety performance of fuel-tank skin or structure by establishing a requirement to prevent the ignition of fuel vapor during an external fuel-fed ground fire.

The FAA stated in Notice of Proposed Special Conditions No. 25-23-06-SC, and restated in the discussion above, that several part 25 requirements applicable to the Model A321neo XLR series airplane address fire-safety performance of the fuel tanks and fuselage in the Model A321neo XLR certification basis. These standards address failure conditions or minimize the hazard to the occupants in the event ignition of flammable fluids or vapors occurs. The potential for a ruptured RCT is thus already addressed in the Model A321neo XLR certification basis. Therefore, no changes were made to these special conditions as a result of this comment.

The commenter stated that “the applicant should show not that the design prevents but that it eliminates the possibility that ignition will occur.” The FAA interprets this statement as a request that the FAA require the applicant to fully eliminate any possibility of fuel ignition in the RCT, rather than to minimize the probability of ignition to an acceptable level through ignition-preventative design measures. The FAA does not agree that it is practical to eliminate the possibility that ignition will occur from a design in the case of a fuel tank exposed to a post-crash fuel-fed ground fire. Service experience has shown that existing designs would not meet this standard since aircraft fuel tanks exposed to an external fuel-fed ground fire would eventually experience conditions that would support fuel tank ignition (for example, refer to the fuel tank explosions discussed in the China Airlines Boeing 737 accident report¹). These special conditions are necessary

¹ Japan Transport Safety Board, Aircraft Accident Investigation Report, AA2009-7, China Airlines B18616, August 28, 2009. www.mlit.go.jp/jtsb-eng-air_report/B18616.pdf.

to establish a level of safety equivalent to that established by the existing airworthiness standards. The commenter's proposal would set a requirement beyond existing airworthiness standards and place an unnecessary burden on applicants. Therefore, no changes were made to these special conditions as a result of this comment.

The commenter requested the applicant show compliance by testing the capability of the design. The FAA acknowledges that some testing may be necessary to show compliance with these special conditions but does not agree that only testing must be used. To obtain a type certificate the applicant must follow the requirements of § 21.33(b)(1). No specific aspect of the proposed integral RCT, nor requirement of these special conditions, necessitates or requires that the applicant must demonstrate by test to show compliance. These special conditions do not include specific means of compliance since more than one means of compliance may be acceptable. No changes were made to these special conditions as a result of this comment.

The commenter requested the FAA define the flame size and intensity the applicant must use for representing an external fuel-fed ground fire when showing compliance with these special conditions. Such definition is unnecessary. A post-crash external fuel-fed ground fire depends on many factors, including the specific airplane design and fuel types approved for use. Well-established industry standard fire test methods currently exist for powerplant installation fire protection, as well as cabin safety fire protection, that include standardized fire test conditions that are intended to represent a large pool fire. Applicants may consider these standards and any other available fire testing method, if shown to be applicable to these special conditions, when developing test methods for these special conditions. The FAA does not consider it is necessary to identify any specific test conditions as requirements for these special conditions. Therefore, no changes were made to these special conditions as a result of this comment.

The commenter requested the FAA clarify what it means by sufficient time to evacuate to include occupants to move safely away from the aircraft due to the potential impact from a fuel tank explosion to the surrounding area. The commenter stated the 90-second evacuation test time would be insufficient and the 5-minute time referenced in the Notice of Proposed Special Conditions No. 25–23–06–SC

may be acceptable if justified by the applicant. The commenter also stated the applicant should include an assessment of other aircraft accidents and time to move survivors clear of the aircraft in the justification.

The FAA does not agree to specify a requirement in these special conditions for additional time for airplane occupants to move away from the airplane once safely evacuated. These special conditions are necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. The considerations of moving occupants away from the airplane as proposed by the commenter apply generally to all airplane designs and are not specifically associated with or affected by the novel or unusual design feature of the RCT. Since these special conditions are intended to establish the same level of safety as the relevant regulations in this model's certification basis, by providing sufficient time for a safe evacuation of all occupants after the initiation of an external fuel-fed ground fire, it is unnecessary to include an additional assessment to account for moving occupants away from the airplane. Therefore, no changes were made to these special conditions as a result of this comment.

The commenter requested that the FAA clarify how it considered maintainability of the design features needed to ensure the original design intent for each airplane as it ages. The FAA infers the commenter requests the FAA to include requirements for the airplane manufacturer to require airplane operators to maintain the critical features of the type design associated with these special conditions for the life of the airplane.

The FAA agrees that critical features that need to be identified by the applicant and maintained in service should be appropriately managed; however, the FAA does not agree these special conditions should include a dedicated requirement to address this need. The FAA considers that the Model A321neo XLR certification basis already includes airworthiness standards that account for ensuring critical design features are maintained in service. Specifically, §§ 25.901(c) and 25.1309(b) include requirements for system safety analysis of propulsion and airplane systems. FAA Advisory Circular 25–19A, Certification Maintenance Requirements, provides guidance on the selection, documentation, and control of Certification Maintenance Requirements (CMR). A CMR is a required scheduled maintenance task established during the design certification of the airplane

systems as an operating limitation of the type certificate. The FAA considers it unnecessary to include additional requirements in these special conditions to maintain the type design of critical features since the Model A321neo XLR certification basis includes airworthiness requirements that address this issue. Therefore, no changes were made to these special conditions as a result of this comment.

In conclusion, no changes were made to the special conditions as a result of these comments, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A321neo XLR series airplane for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the Airbus Model A321neo XLR series airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A321neo XLR series airplanes.

Cabin Evacuation—Protection From Fuel Tank Explosion Due to External Fuel-Fed Ground Fire.

The applicant must show the design prevents ignition of fuel tank vapors (due to hot surface) from occurring in

the integral rear center tank during the time required for evacuation. The applicant's showing must also demonstrate that the design provides sufficient time for a safe evacuation of all occupants after the initiation of an external fuel-fed ground fire.

Issued in Kansas City, Missouri, on July 12, 2024.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024-15853 Filed 7-17-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-2395; Project Identifier AD-2023-00767-T; Amendment 39-22773; AD 2023-12-09]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022-08-12, which applies to all The Boeing Company Model 757 airplanes. AD 2022-08-12 required repetitive inspections for skin cracking and shim migration at the upper link drag fittings, diagonal brace cracking, and fastener looseness; and applicable on-condition actions. This AD was prompted by reports of bolt rotation in the engine drag fitting joint and fastener heads and cracks found in the skin of the fastener holes, a determination that certain drag fittings may be made of alternate materials, which could result in reduced structural integrity of the engine strut, and a determination that additional inspections and revised compliance times are needed. This AD retains the requirements of AD 2022-08-12 with revised compliance times for certain actions and requires adding inspections for existing repairs and applicable on condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 22, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 22, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-2395; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Boeing service information incorporated by reference in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website myboeingfleet.com.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-2395.

FOR FURTHER INFORMATION CONTACT:

Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 562-627-5238; email wayne.ha@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022-08-12, Amendment 39-22015 (87 FR 26964, May 6, 2022) (AD 2022-08-12). AD 2022-08-12 applied to all The Boeing Company Model 757 airplanes. The NPRM published in the **Federal Register** on December 21, 2023 (88 FR 88271). The NPRM was prompted by reports of bolt rotation in the engine drag fitting joint and fastener heads and cracks found in the skin of the fastener holes, and the need to reduce the compliance time for certain groups. In the NPRM, the FAA proposed to require repetitive inspections for skin cracking and shim migration at the upper link drag fittings, diagonal brace cracking, and fastener looseness; and applicable on-condition actions. The FAA issued AD 2022-08-12 to address cracking in the wing upper skin and forward drag fittings, which could lead to a compromised upper link and reduced structural integrity of the engine strut, and possible separation of a strut and engine from the airplane during flight.

Actions Since AD 2022-08-12 Was Issued

Since the FAA issued AD 2022-08-12, it was determined that drag fittings made of alternate materials have possibly been installed on some configurations, which could result in reduced structural integrity of the engine strut. The FAA has determined that additional inspections and revised compliance times are needed to maintain structural integrity. Although this AD does not explicitly restate the requirements of AD 2022-08-12, this AD would retain all requirements of AD 2022-08-12. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this AD.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from The Boeing Company, who supported the NPRM without change.

The FAA received additional comments from five commenters, including Aviation Partners Boeing, Delta Air Lines, UPS Airlines, United Airlines, and FedEx Express. The following presents the comments received on the NPRM and the FAA's response to each comment.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing has reviewed the NPRM and has determined that the incorporation of STC ST01518SE for installation of blended or scimitar blended winglets does not affect compliance with the mandated actions in the proposed rule. Boeing does not have delegation to approve repairs in areas affected by the scimitar blended winglet configuration of STC ST01518SE. Therefore, Boeing will not be able to use Organization Designation Authorization (ODA) approval in paragraph (j)(3) of this AD to make an alternative method of compliance (AMOC) finding on behalf of the FAA for alternative inspections and corrective actions in areas affected by the scimitar blended winglet configuration of STC ST01518SE. The operators of scimitar blended winglet airplanes subject to this AD should be aware that approval of any alternative inspections and corrective actions as an AMOC to the final rule will only be obtainable from the FAA through the means described in paragraph (j)(1) of this AD.

The FAA agrees. The FAA has not changed this AD in this regard.

Requests for Revising AMOCs Paragraphs (j)(4) Through (j)(6) of the Proposed Rule

Delta Air Lines, FedEx, UPS Airlines, and United Airlines requested revising AMOCs paragraphs (j)(4), (j)(5), and (j)(6) of the proposed rule. Delta Air Lines stated that restrictions of paragraphs (j)(4) through (j)(6) of the proposed rule would put an extreme and unnecessary burden on Model 757 operators. FedEx was concerned that paragraphs (j)(4) and (j)(5) of the proposed rule would prevent continued operation of the affected airplanes until new AMOC approvals could be obtained. UPS Airlines requested revising paragraphs (j)(4), (j)(5), and (j)(6) of the proposed rule to accept AMOCs issued after March 1, 2021. United Airlines stated that paragraphs (j)(4) through (j)(6) of the proposed rule contains exception for previously approved AMOCs for locations at the wing skin and drag fittings at the upper link drag fittings (fasteners 1–18) that will affect the aircraft operations until new AMOC is received, or new inspection is accomplished.

The FAA agrees with the commenters. The FAA has determined that paragraphs (j)(4), (j)(5), and (j)(6) of the proposed rule are not required. The FAA has determined that the Compliance Tables 19 and 20 of Revision 3 of the Boeing Alert Requirements Bulletin 757–57A0073 RB address all existing repairs and existing drag fitting replacement with universal fitting. The FAA has removed paragraphs (j)(4), (j)(5), and (j)(6) of the proposed rule accordingly.

Request To Not Reduce Inspection Compliance Times Under Certain Circumstances

UPS Airlines proposed that the inspection compliance times for some configurations that installed upper link drag fitting made of optional materials be reduced only if this condition has been confirmed by visual inspection and/or maintenance records review.

The FAA acknowledges UPS Airlines’ concern. However, the FAA does not agree with the proposed request because UPS Airlines did not submit sufficient data to substantiate that the proposed

actions would provide an acceptable level of safety. Under the provisions of paragraph (j) of this AD, the FAA will consider requests for approval of alternative actions and compliance times if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. This AD has not been changed regarding this proposed request.

Request for Revising Paragraphs (h)(1) Through (h)(4) of the Proposed Rule

UPS Airlines also requested to revise paragraphs (h)(1) through (h)(4) of the proposed rule from “Where the Compliance Time columns of the tables” to “Where the Compliance Time columns and notes of the tables.” UPS Airlines explained that both Compliance Time columns and notes in the tables are referred to Boeing Alert Requirements Bulletin 757–57A0073 RB.

The FAA agrees to revise from “Where the Compliance Time columns of the tables” to “Where the Compliance Time columns and notes of the tables” for paragraphs (h)(2), (h)(3), and (h)(4) of this AD, because the notes in compliance tables refer to “On or after the Revision 1 date of Boeing Alert Requirements Bulletin 757–57A0073 RB.” Paragraph (h)(2) of this AD refers to the phrase “the Revision 1 date of Boeing Alert Requirements Bulletin 757–57A0073 RB,” paragraph (h)(3) of this AD refers to the phrase “the Revision 2 date of Boeing Alert Requirements Bulletin 757–57A0073 RB,” and paragraph (h)(4) of this AD refers to the phrase “the Revision 3 date of Boeing Alert Requirements Bulletin 757–57A0073 RB.” However, the FAA does not agree to revise paragraph (h)(1) of this AD, because the notes in the compliance tables only refer to “On or after the Revision 1 date of Boeing Alert Requirements Bulletin 757–57A0073 RB.” The original issue date of Boeing Alert Requirements Bulletin 757–57A0073 RB is not included for paragraph (h)(1) of this AD. The FAA has not changed paragraph (h)(1) of this AD. The FAA has revised paragraphs (h)(2), (h)(3), and (h)(4) of this AD accordingly.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023. This service information specifies procedures for a general visual inspection or records check of the wing upper skin at the drag fitting attachment holes for any existing repair; repetitive general visual and detailed inspections for loose fasteners, skin cracking, and shim migration at the upper link drag fittings, and for cracking in the diagonal brace and diagonal brace fittings; repetitive open-hole high frequency eddy current (HFEC) inspections for cracking of the fastener holes and loose bolt holes; and applicable on-condition actions. On-condition actions include performing an ultrasonic inspection for cracks at any repaired upper wing skin location; installing the upper link and upper link pins; replacing drag fittings; installing bolts, washers, and nuts; performing a torque check of fasteners on the affected shims; trimming affected shims and applying chemical conversion coating on the shims, fillet seal, and drag fittings; and repairing cracks, migrated shims, mistorqued bolts, and loose fasteners.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 496 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive HFEC inspections (retained actions from AD 2022-08-12).	85 work-hours × \$85 per hour = \$7,225 per inspection cycle.	\$0	\$7,225 per inspection cycle ...	\$3,583,600 per inspection cycle.
New actions	Up to 4 work-hours × \$85 per hour = Up to \$340.	\$0	Up to \$340	Up to \$168,640.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive (AD) 2022–08–12, Amendment 39–22015 (87 FR 26964, May 6, 2022); and
- b. Adding the following new AD:

2023–12–09 The Boeing Company:
Amendment 39–22773; Docket No. FAA–2023–2395; Project Identifier AD–2023–00767–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 22, 2024.

(b) Affected ADs

This AD replaces AD 2022–08–12, Amendment 39–22015 (87 FR 26964, May 6, 2022) (AD 2022–08–12).

(c) Applicability

This AD applies to all The Boeing Company Model 757–200, PF, –200CB, and –300 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of bolt rotation in the engine drag fitting joint and fastener heads and cracks found in the skin of the fastener holes, a determination that certain drag fittings may be made of alternate materials, which could result in reduced structural integrity of the engine strut, and a determination that additional inspections and revised compliance times are needed. The FAA is issuing this AD to address cracking in the wing upper skin and forward drag fittings, which could lead to a compromised upper link and reduced structural integrity of the engine strut, and possible separation of a strut and engine from the airplane during flight.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–57A0073, Revision 3, dated May 5, 2023, which is referred to in Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the "Compliance" paragraph

of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023, use the phrase "the Original Issue date of Requirements Bulletin 757–57A0073 RB," this AD requires using "September 10, 2018 (the effective date of AD 2018–16–05, Amendment 39–19345 (83 FR 38250, August 6, 2018))" (AD 2018–16–05).

(2) Where the Compliance Time columns and notes of the tables in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023, use the phrase "the Revision 1 date of Requirements Bulletin 757–57A0073 RB," this AD requires using "January 14, 2021 (the effective date of AD 2020–21–17, Amendment 39–21290 (85 FR 79418, December 10, 2020))" (AD 2020–21–17).

(3) Where the Compliance Time columns and notes of the tables in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023, use the phrase "the Revision 2 date of Requirements Bulletin 757–57A0073 RB," this AD requires using "June 10, 2022 (the effective date of AD 2022–08–12)."

(4) Where the Compliance Time columns and notes of the tables in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023, use the phrase "the Revision 3 date of Requirements Bulletin 757–57A0073 RB," this AD requires using the effective date of this AD.

(5) Where Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, except for the open-hole high frequency eddy current inspections at fastener locations 11–18, if those actions were performed before January 14, 2021 (the effective date of AD 2020–21–17) using Boeing Alert Requirements Bulletin 757–57A0073 RB, dated July 14, 2017.

(2) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before June 10, 2022 (the effective date of AD 2022–08–12) using Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 1, dated August 1, 2019.

(3) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19,

send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR-520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 562-627-5238; email wayne.ha@faa.gov.

(2) Service information identified in this AD that is not incorporated by reference is available at the address specified in paragraph (l)(3) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 757-57A0073 RB, Revision 3, dated May 5, 2023.

(ii) [Reserved]

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website myboeingfleet.com.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on June 14, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024-15827 Filed 7-17-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-0232; Project Identifier MCAI-2023-00353-R; Amendment 39-22758; AD 2024-10-12]

RIN 2120-AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 407 helicopters. This AD was prompted by a report that a certain part-numbered fuel system standpipe assembly (standpipe) may have sharp edges at the interval weld joints due to a quality escape during the manufacturing process. This AD requires inspecting certain fuel system parts and, depending on the inspection results, taking corrective actions and performing a fuel quantity gauging system calibration. Depending on the results of the fuel quantity gauging system calibration, this AD requires performing additional corrective actions and repeating the fuel quantity gauging system calibration. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 22, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 22, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2024-0232; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Bell material, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; phone 1-450-437-2862 or 1-800-363-8023; fax 1-450-433-0272; email productsupport@bellflight.com; or at bellflight.com/support/contact-support.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N 321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at regulations.gov under Docket No. FAA-2024-0232.

FOR FURTHER INFORMATION CONTACT:

Michael Hughlett, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (817) 222-5889; email: michael.hughlett@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Bell Textron Canada Limited Model 407 helicopters, serial numbers 54832 through 54931 inclusive, 54933 through 54939 inclusive, and 54942 through 54954 inclusive, with a certain part-numbered fuel system standpipe assembly installed. The NPRM published in the **Federal Register** on February 20, 2024 (89 FR 12792). The NPRM was prompted by Transport Canada AD CF-2023-11, dated February 23, 2023 (Transport Canada AD CF-2023-11), issued by Transport Canada, which is the aviation authority for Canada. Transport Canada AD CF-2023-11 states that, due to a quality escape, standpipe part number (P/N) 407-062-032-103 may have been delivered with sharp edges at the internal weld joints.

In the NPRM, the FAA proposed to require, with the standpipe removed, inspecting its interior for any sharp edges on each internal weld joint. If there are any sharp edges on any weld joint, the NPRM proposed to require deburring the edges, ensuring not to exceed a certain depth into the tube. The NPRM then proposed to require removing all sanding residue and applying a chemical film to any bare metal surfaces. The NPRM also proposed to require, with the harness assembly removed, inspecting the harness assembly connectors for any mechanical damage and corrosion to the electrical pins, and inspecting the insulation tubing and wires of the harness assembly for any crack and chafing. Depending on these results, the NPRM proposed to require replacing the harness assembly.

If the harness assembly was required to be replaced as a result of the proposed AD requirements, the NPRM proposed to require performing a fuel quantity gauging system calibration.

Depending on the calibration results, the NPRM proposed to require replacing the harness assembly and repeating the fuel quantity gauging system calibration. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the Transport Canada AD in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–0232.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by Transport Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada has notified the FAA about the unsafe condition described in its AD. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bell Alert Service Bulletin 407–21–124, dated February 1, 2022, which specifies procedures for a one-time visual inspection of the internal weld joints of standpipe P/N 407–062–032–103. If there are any sharp edges, this service information specifies rework procedures, which include deburring the sharp edges, removing all residue, and applying a chemical film. This service information also specifies procedures to remove and inspect the harness assembly connectors for any damage to the electrical pins and inspect the insulation tubing and wires for any cracks and chafing.

Additionally, this service information specifies if any damage is found, contacting product support engineering and submitting certain information. Finally, this service information specifies instructions for various fuel procedures and checks.

The FAA also reviewed Fuel Quantity Gauging System, DMC–407–A–95–65–10–01A–273A–A, dated June 2, 2022, of Chapter 95—Instruments, of Bell Model 407 Maintenance Manual, BHT–407–MM, Issue No. 014, dated December 12, 2023, which specifies procedures for a fuel quantity gauging system calibration procedure and inspecting the fuel quantity display information.

This material is reasonably available because the interested parties have

access to it through their normal course of business or by the means identified in ADDRESSES.

Differences Between This AD and the Transport Canada AD

Transport Canada AD CF–2023–11 requires contacting Bell for disposition instructions if damage is found on the harness assembly, whereas this AD requires removing an affected harness assembly from service and replacing it with an airworthy harness assembly.

Costs of Compliance

The FAA estimates that this AD affects 51 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the interior of the standpipe will take approximately 1 work-hour for an estimated cost of \$85 per helicopter and \$4,335 for the U.S. fleet.

Inspecting the harness assembly connectors, insulation tubing, and wiring will take approximately 1 work-hour for an estimated cost of \$85 per helicopter and \$4,335 for the U.S. fleet.

If required, deburring, cleaning, and applying a chemical film to each affected weld joint will take approximately 0.5 work-hour for an estimated cost of \$43 per weld joint.

If required, replacing an affected harness assembly will take approximately 1 work-hour and parts will cost approximately \$1,071 for an estimated cost of \$1,156 per harness replacement.

If required, performing a fuel quantity gauging system calibration will take approximately 10 work-hours for an estimated cost of \$850 per procedure.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing

regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–10–12 Bell Helicopter Textron

Canada Limited: Amendment 39–22758; Docket No. FAA–2024–0232; Project Identifier MCAI–2023–00353–R.

(a) Effective Date

This airworthiness directive (AD) is effective August 22, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 407 helicopters, serial numbers 54832 through 54931 inclusive, 54933 through 54939 inclusive, and 54942 through 54954 inclusive, certificated in any

category, with a fuel system standpipe assembly (standpipe) part number 407-062-032-103 installed.

(d) Subject

Joint Aircraft System Component (JASC) Code: 2897, Fuel system wiring.

(e) Unsafe Condition

This AD was prompted by a report that certain standpipes may have sharp edges at the interval weld joints due to a quality escape during the manufacturing process. The FAA is issuing this AD to detect sharp edges in the standpipe. The unsafe condition, if not addressed, could result in fuel quantity system wiring damage, loss of or erratic fuel quantity indication.

(f) Compliance

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

(g) Requirements

(1) Within 300 hours time-in-service (TIS) or 6 months after the effective date of this AD, whichever occurs first, accomplish the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(i) With the standpipe removed from the aft fuel cell, inspect the interior of the standpipe for any sharp edges on each internal weld joint, as shown in Figure 1 of Bell Alert Service Bulletin 407-21-124, dated February 1, 2022. If there is a sharp edge on any internal weld joint, before further flight, deburr the edges of each affected weld joint using an aluminum oxide abrasive cloth or paper, or equivalent, ensuring not to exceed 0.015 in (0.38 mm) depth into the tube material at a 45-degree angle to the weld joint. Then, using a clean cloth dampened with isopropyl alcohol or equivalent, remove all sanding residue from the weld joint and apply a chemical film material to any bare metal surfaces.

(ii) With the fuel quantity harness assembly (harness assembly) removed, inspect the harness assembly connectors for any mechanical damage and corrosion to the electrical pins and inspect the insulation tubing and wires for any cracks and chafing. For the purposes of this AD, mechanical damage is indicated by deterioration of the connections or pins.

(A) If there is any corrosion or mechanical damage, before further flight, remove the harness assembly from service and replace it with an airworthy harness assembly.

(B) If there is a crack or any chafing, before further flight, remove the harness assembly from service and replace it with an airworthy harness assembly.

(2) If the harness assembly was required to be replaced as a result of the inspection required by paragraph (g)(1)(ii) of this AD or by this paragraph, before further flight, with the standpipe and harness assembly installed, perform a fuel quantity gauging system calibration in accordance with paragraphs 4 through 18 of Fuel Quantity Gauging System, DMC-407-A-95-65-10-01A-273A-A, dated June 2, 2022, of Chapter 95—Instruments, of Bell Model 407 Maintenance Manual, BHT-407-MM, Issue No. 014, dated December 12, 2023. As a

result of the fuel quantity gauging system calibration, if a fuel level does not indicate the correct reading or displays no reading, before further flight, remove the harness assembly from service and replace it with an airworthy harness assembly; and repeat the actions required by this paragraph for the newly installed harness assembly.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The following provisions also apply to this AD.

(i) Related Information

For more information about this AD, contact Michael Hughlett, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (817) 222-5889; email: michael.hughlett@faa.gov.

(j) Material Incorporated by Reference

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

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

(i) Bell Alert Service Bulletin 407-21-124, dated February 1, 2022.

(ii) Fuel Quantity Gauging System, DMC-407-A-95-65-10-01A-273A-A, dated June 2, 2022, of Chapter 95—Instruments, of Bell Model 407 Maintenance Manual, BHT-407-MM, Issue No. 014, dated December 12, 2023.

(3) For Bell Helicopter Textron Canada Limited material, contact Grant Walker, 330 Sparks St., Ottawa, K1A 0N5, Canada; phone: (888) 663-3639; email: grant.walker@tc.gc.ca.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on July 10, 2024.

James D. Foltz,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024-15808 Filed 7-17-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2024-0383; Airspace Docket No. 24-ASO-2]

RIN 2120-AA66

Amendment of Class D Airspace; Fort Liberty, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace extending upward from the surface for Simmons Army Airfield, Fort Liberty, NC, updating the geographic coordinates and amending verbiage in the description.

DATES: Effective 0901 UTC, October 31, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval helps, and guidelines are available on the website. It is available 24 hours a day, 365 days a year.

FAA Order JO 7400.11H Airspace Designations and Reporting Points and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT:

Justin T. Rhodes, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305-5478.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that

section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class D airspace in Fort Liberty, NC. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2024–0383 in the **Federal Register** (89 FR 18859; March 15, 2024) to amend Class D airspace extending upward from the surface for Simmons Army Airfield, Fort Liberty, NC. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D airspace designations are published in Paragraph 5000 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates will be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Class D airspace extending from the surface at Simmons Army Airfield, Fort Liberty, excluding 1,400 feet MSL from the vertical limits (previously “including”), updating the airport’s geographic coordinates, replacing “Notice to Airmen” with “Notice to Air Missions” in the description, and updating reference to “Chart Supplement” (previously “Airport Facility Directory”). Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a

“significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO NC D Simmons AAF, NC [Amended]

Simmons AAF, NC

(Lat. 35°07′55″ N, long. 78°56′10″ W)

That airspace extending upward from the surface to but not including 1,400 feet MSL within a 3.9-mile radius of Simmons AAF, excluding the portion northwest of a line extending from lat. 35°11′48″ N, long. 78°55′35″ W; to lat. 35°06′17″ N, long. 79°00′29″ W, excluding the portion within the Fayetteville, NC, Class C airspace area. This Class D airspace area is effective during the

specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in College Park, Georgia, on July 10, 2024.

Andree C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2024–15483 Filed 7–17–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 7

Bureau of Industry and Security

15 CFR Part 791

[Docket No. 240620–0169]

RIN 0694–AJ71

Redesignation of Regulations for Securing the Information and Communications Technology and Services Supply Chain

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule redesignates regulations governing the procedures for the review of certain transactions involving information and communications technology and services (ICTS) designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary and which pose or may pose undue or unacceptable risks to the United States or U.S. persons. This action reflects the transfer of responsibility for implementing these regulations from the Secretary of Commerce to the Bureau of Industry and Security (BIS), Office of Information and Communications Technology and Services (OICTS).

DATES: This rule is effective July 18, 2024.

FOR FURTHER INFORMATION CONTACT:

Rachel O’Meara, U.S. Department of Commerce, telephone: (202) 482–4124, email: ictsupplychain@doc.gov. For media inquiries: Jessica Stallone, Office of Congressional and Public Affairs, Bureau of Industry and Security, U.S. Department of Commerce: OCPA@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

This final rule is a procedural action to redesignate U.S. Department of Commerce (Department) regulations that govern the procedures for the review of certain transactions involving ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary and which pose or may pose undue or unacceptable risks to the United States or U.S. persons. Responsibility for implementing these regulations lies within the BIS's OICTS. This action moves regulations from subtitle A in the Code of Federal Regulations (CFR), which is generally reserved for Secretarial actions and Department-wide activities and operations, to chapter VII in title 15 of the CFR, where BIS regulations are located. Specifically, this action removes the regulations in title 15, subtitle A, part 7 (under the "Office of the Secretary of Commerce"), reserving that part, and redesignates them as title 15, subtitle B, chapter VII, part 791 (under the "Bureau of Industry and Security, Department of Commerce").

The provisions being redesignated were originally administered by the Office of the Secretary, but were formally transferred to BIS when OICTS was established on March 15, 2022 (consistent with the Consolidated Appropriations Act for Fiscal Year 2022). Therefore, the Department is transferring the regulations to subtitle B, "Regulations Relating to Commerce and Foreign Trade," chapter VII, "Bureau of Industry and Security, Department of Commerce." title 15, subtitle B, chapter VII regulations are specific to BIS authorities and processes. This is a procedural change that does not impact any processes of the Department or BIS, and will have no impact on any public or private entity outside of BIS.

II. Background

The existing 15 CFR part 7 regulations, which are being redesignated, implement Executive Orders (E.O.s), E.O. 13873, "Securing the Information and Communications Technology and Services Supply Chain" (84 FR 22689, May 17, 2019) and E.O. 14034, "Protecting Americans' Sensitive Data From Foreign Adversaries" (86 FR 31423, June 11, 2021).

E.O. 13873 declares a national emergency under the National Emergencies Act (50 U.S.C. Ch. 34, section 1601 *et seq.*) and invokes the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et*

seq.) to take certain actions regarding the unrestricted acquisition and use in the United States of certain information and communication technology and services (ICTS) and classes of ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries. E.O. 13873 authorizes the Secretary, pursuant to IEEPA, to prohibit certain ICTS transactions or approve them subject to the establishment of measures to mitigate identified risks. To implement E.O. 13873, on January 19, 2021, the Department published an interim final rule (86 FR 4909) creating 15 CFR part 7, which sets forth definitions and procedures for the Department to review and determine whether ICTS transactions involving entities with a foreign adversary nexus and U.S. entities present an undue risk of sabotage to or subversion of the ICTS supply chain, or an unacceptable risk to U.S. persons or national security.

E.O. 14034 (86 FR 31423), elaborates on measures to address the national emergency declared in E.O. 13873 with respect to the ICTS supply chain and authorizes the Secretary to evaluate connected software application transactions that may pose an unacceptable risk to the national security of the United States or the security and safety of U.S. persons. To implement E.O. 14034, the Department published a Final Rule (88 FR 39353) that amended 15 CFR 7.1, 7.2, and 7.3.

In June 2023, consistent with the Consolidated Appropriations Act for Fiscal Year 2022, responsibility for implementing the authorities in E.O.s 13873 and 14034, as described above, was transferred by the Secretary to the Deputy Under Secretary of Commerce for Industry and Security, and OICTS was established, with responsibilities managed by an Executive Director who reports to the Under Secretary of Commerce for Industry and Security.

III. Establishment of Subchapter E in Chapter VII and Realignment

Consistent with this transfer, this final rule redesignates the regulations that were promulgated as 15 CFR part 7 of Subtitle A—"Office of the Secretary of Commerce"—to Subtitle B—"Regulations Relating to Commerce and Foreign Trade." Within subtitle B, chapter VII includes other regulations that implement BIS authorities. This final rule also establishes Subchapter E, following Subchapter D, and creates a new part 791 for OICTS's regulations. Subchapter E is titled "Information and

Communications Technology and Services Regulations."

The redesignation in this final rule clarifies to the public that BIS, not the Office of the Secretary, is responsible for implementation of the ICTS regulations. This shift in no way impacts the content or text of current and proposed regulations. Because of this, publication of this final rule is merely procedural and therefore advance notice and opportunity for comment and delay in effective date are unnecessary under the Administrative Procedures Act (4 U.S.C. 553), because OICTS is making a technical change in merely updating the designation of existing regulations.

IV. Redesignation

This final rule redesignates all sections of 15 CFR part 7 as 15 CFR part 791, which will be in the newly created subchapter E of chapter VII. All sections in 15 CFR part 7 will be designated under 15 CFR part 791. Future rulemakings by BIS OICTS will be finalized in title 15, subtitle B, chapter VII.

REDESIGNATIONS

Old section in 15 CFR, subtitle A, part 7	New section in 15 CFR, subtitle B, chapter VII, newly established subchapter E, part 791
Part 7	Part 791
Subpart A—General	Subpart A—General
7.1	791.1
7.2	791.2
7.3	791.3
7.4	791.4
7.5	791.5
7.6	791.6
7.7	791.7
Subpart B—Review of ICTS Transaction	Subpart B—Review of ICTS Transaction
7.100	791.100
7.101	791.101
7.102	791.102
7.103	791.103
7.104	791.104
7.105	791.105
7.106	791.106
7.107	791.107
7.108	791.108
7.109	791.109
7.110	791.110
Subpart C—Enforcement	Subpart C—Enforcement
7.200	791.200

Rulemaking Requirements

1. This action has not been determined to be significant under Executive Order 12866, as it is a technical redesignation that does not materially affect the substance of the underlying rule.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be

subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This action does not impact any information collection or recordkeeping requirements under the PRA.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. BIS finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and an opportunity for public comment on this action because this action merely redesignates existing regulatory text in the Code of Federal Regulations and therefore notice and comment are unnecessary. Furthermore, because this action makes no substantive changes, it does not constitute a substantive rule, and it is not subject to the requirement for a 30-day delay in effective date under 5 U.S.C. 553(d).

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Parts 7 and 791

Administrative practice and procedure, Business and industry, Communications, Computer technology, Critical infrastructure, Executive orders, Foreign persons, Investigations, National security, Penalties, Technology, Telecommunications.

Subtitle A—Office of the Secretary of Commerce

PART 7—SECURING THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AND SERVICES SUPPLY CHAIN

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; E.O. 13873, 84 FR 22689; E.O. 14034, 86 FR 31423.

PART 7—[REDESIGNATED AS PART 791]

■ 2. Redesignate part 7 as part 791, according to the following table:

Part 7	Part 791
Subpart A	Subpart A
§§ 7.1 through 7.7	§§ 791.1 through 791.7.
Subpart B	Subpart B
§§ 7.100 through 7.110. ...	§§ 791.100 through 791.110
Subpart C	Subpart C
§ 7.200	§ 791.200.

§ 791.102 Confidentiality of information.

■ 3. In newly redesignated § 791.102 amend paragraph (c) by removing “§ 7.109 of this part” and adding “§ 791.109” in its place.

§ 791.103 Initial review of ICTS Transactions.

■ 4. In newly redesignated § 791.103:
■ a. Amend paragraph (a) by removing “§ 7.100(a)” and adding “§ 791.100(a)” in its place;
■ b. Amend paragraph (b) introductory text by removing “§ 7.3(a) of this part” and adding “§ 791.3(a)” in its place; and
■ c. Amend paragraph (b)(2) by removing “§ 7.100(a)” and adding “§ 791.100(a)” in its place.

§ 791.104 First interagency consultation.

■ 5. In newly redesignated § 791.104, remove “§ 7.103” and add “§ 791.103” in its place and remove the two instances of “§ 7.103(c)” and add “§ 791.103(c)” in their place.

§ 791.105 Initial determination.

■ 6. In newly redesignated § 791.105:
■ a. Amend paragraph (a) introductory text by removing “§ 7.104” and adding “§ 791.104” in its place and removing “§ 7.103(c)” and adding “§ 791.103(c)” in its place;
■ b. Amend paragraph (b) introductory text by removing “§ 7.104” and adding “§ 791.104” in its place and removing the two instances of “§ 7.103(c)” and adding “§ 791.103(c)” in their place.

§ 791.107 Procedures governing response and mitigation.

■ 7. In newly redesignated § 791.107:
■ a. Amend the introductory text by removing “§ 7.105” and adding “§ 791.105” in its place;
■ b. Amend paragraph (d) by removing “§ 7.109” and adding “§ 791.109” in its place; and
■ c. Amend paragraph (f) by removing “section 7.108 of this rule” and adding “§ 791.108” in its place.

§ 791.108 Second interagency consultation.

■ 8. In newly redesignated § 791.108:
■ a. Amend paragraph (a) by removing “§ 7.107” and adding “§ 791.107” in its

place and removing “§ 7.103(c)” and adding “§ 791.103(c)” in its place;
■ b. Amend paragraph (b) by removing “§ 7.107” and adding “§ 791.107” in its place and by adding “of this section” after “with paragraph (a)”; and
■ c. Amend paragraph (d) by removing “§ 7.109” and adding “§ 791.109” in its place.

§ 791.109 Final determination.

■ 9. In newly redesignated § 791.109, amend paragraph (b) by removing “§ 7.103” and adding “§ 791.103” in its place.

■ 10. Under the authority of section 301 of Title 5, United States Code, (5 U.S.C. 301) and Chapter 40 of Title 15 of the United States Code (15 U.S.C. 1501 *et seq.*), add subchapter E, consisting of parts 790 through 799, to read as follows:

Subchapter E—Information and Communications Technology and Services Regulations

PART 790 [RESERVED]

PART 791—SECURING THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AND SERVICES SUPPLY CHAIN.

PARTS 792–799 [RESERVED]

■ 11. Transfer part 791 to subchapter E.

Elizabeth Cannon,

Executive Director for the Office of Information and Communications Technology and Services.

[FR Doc. 2024–15258 Filed 7–17–24; 8:45 am]

BILLING CODE 3510–20–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 744 and 772

[Docket No. 240712–0190]

RIN 0694–AI06

Standards-Related Activities and the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: In this interim final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise the scope and the terms used in the EAR to describe “standards-related activities” that are subject to the EAR. BIS is making these revisions to ensure that

export controls and associated compliance concerns do not impede the participation and leadership of U.S. companies in legitimate standards-related activities.

DATES:

Effective date: This rule is effective July 18, 2024.

Comment date: Comments must be received by BIS no later than September 16, 2024.

ADDRESSES: You may submit comments, identified by docket number BIS–2020–0017 or RIN 0694–AI06, through the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments. You can find this interim final rule by searching for its *regulations.gov* docket number, which is BIS–2020–0017.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and also provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a “BC” or “P” will be assumed to be public and will be made publicly available through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

A. Background

Participation and leadership in standards development is crucial to protecting and enhancing U.S. national and economic security and has been instrumental to the global technological

leadership of the United States. Standards development underpins U.S. economic prosperity and fortifies U.S. leadership in critical and emerging technologies. The U.S. standards development system is unique because it is built upon a wide variety of processes that are open, voluntary, decentralized, and led by the private sector. These processes feature openness to participation by materially interested stakeholders and consensus-based decision making. Finalized standards are primarily published by private sector standards organizations, not the U.S. Government.

On May 4, 2023, the Biden-Harris Administration announced the “United States Government National Standards Strategy for Critical and Emerging Technology” (USG NSSCET). The USG NSSCET is intended to support and complement existing private sector-led activities and plans, including the American National Standards Institute (ANSI) United States Standards Strategy (USSS), with a focus on critical and emerging technology(ies) (CET). Consistent with the USG NSSCET strategy, the Commerce Department is committed to engaging “with a broad range of private sector, academic and other key stakeholders, including foreign partners, to address gaps and bolster U.S. participation in [CET] standards development activities.” As outlined in the USG NSSCET, the U.S. Government is prioritizing efforts for CET standards development in identified areas that are essential to U.S. national security and competitiveness in critical industries including biotechnologies; positioning, navigation and timing services; communications and networking technologies; and quantum information technologies among others. The USG NSSCET outlines four objectives (investment, participation, workforce, and integrity and inclusivity) and eight corresponding lines of effort to ensure that the United States remains a global leader in developing merit-based standards that embrace transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and broad participation. More information regarding the USG NSSCET can be found here: <https://www.whitehouse.gov/wp-content/uploads/2023/05/US-Gov-National-Standards-Strategy-2023.pdf>.

Since 2019, BIS has made a number of revisions to the EAR (15 CFR parts 730–774) that have affected U.S. participation and leadership in standards-related activities. Most recently, BIS published an interim final rule, “Authorization of Certain “Items”

to Entities on the Entity List in the Context of Specific Standards Activities” (see 87 FR 55241 (September 9, 2022)) (the September 2022 rule), that amended the EAR to authorize the release of specified items subject to the EAR when such release is for a “standards-related activity” as defined in the EAR (a term in double quotes indicates the term is defined in part 772 (Definition of Terms) of the EAR). Additional information about that process, the listing of Huawei Technologies Co., Ltd and its non-U.S. affiliates (collectively “Huawei”), and associated licensing requirements can be found at 84 FR 22961 (May 21, 2019) (background section providing a brief overview of how entities are added to the Entity List); see also 87 FR at 55241 (background section describing licensing requirements for Huawei as a result of being added to the Entity List).

The revisions promulgated in the September 2022 rule sought to ensure that export controls do not impede the participation and leadership of U.S. companies in standards-related activities. As noted in that rule, any impediment to U.S. participation in standards development forums is a national security threat to the United States because it not only limits U.S. leadership in standards development, but other countries are already racing to replace U.S. participation with their own leadership and standards. In many cases, a decrease in U.S. participation not only undermines U.S. national security and foreign policy interests but also contributes to a potential future global standards environment that works to oppose U.S. interests.

BIS Regulatory Actions and Standards

BIS has been actively involved on issues related to standards and export controls since the addition of Huawei to supplement no. 4 to part 744 (Entity List) of the EAR on May 16, 2019 (See 84 FR 22961 (May 21, 2019)). The addition of Huawei to the Entity List imposed a license requirement on all exports, reexports and transfers (in-country) to Huawei and its listed affiliates. Since that action and subsequent additions of other Huawei affiliates to the Entity List, BIS has engaged with industry as well as the interagency on export controls and standards-related activities and has published two interim final rules specific to how the EAR treat standards-related activities.

(a) TGL and the June 2020 IFR

First, to avoid disruption to existing U.S. and global telecommunications networks, on May 22, 2019, BIS issued

a Temporary General License (TGL) to authorize certain activities with Huawei, including, among other things, U.S. industry's participation as necessary for the development of 5G standards by a duly recognized standards body when Huawei was also participating in the standards-related activities (see 84 FR 23468 (May 22, 2019)). The TGL was subsequently extended through August 13, 2020. As the TGL was set to expire, BIS published an interim final rule with a request for comment, "Release of 'Technology' to Certain Entities on the Entity List in the Context of Standards Organizations" (see 85 FR 36719, June 18, 2020) (the June 2020 rule), that amended the EAR to authorize the release of certain technology to Huawei and its affiliates on the Entity List.

The June 2020 rule defined "standards" and "standards organizations" on the basis of the Office of Management and Budget Circular A-119 (OMB A-119) definitions and authorized limited releases of low-level "technology" and "software" to Huawei in the context of "standards" in a "standards organization." In public comments received in response to the June 2020 rule, U.S. industry raised concerns that the definitions and provisions promulgated in the June 2020 rule were chilling U.S. industry's participation in standards development.

Standards development in the United States, unlike in other countries, is driven by the private sector (e.g., industry, academia, etc.), which is an important factor that has fueled effective U.S. leadership in standards development. The U.S. Government takes a consultative role in this process through the work of the Department of Commerce's National Institute of Standards and Technology (NIST). Although the countries from which standards proposals originate are identified during standards development and setting activities, company affiliations are generally not known and are not a requirement for membership or participation.

Certain export control-related factors in the standards-making process, including but not limited to BIS's increased use of end-use and end-user controls, led to an environment of uncertainty for U.S. companies. They stopped sharing information and data in international standards bodies and in legitimate standards development activities because of, e.g., the participation of entities listed on the Entity List (other than Huawei) in standards bodies and standards development activities. Standards bodies began to view the United States

as a less than ideal place to hold standards meetings and discussions, as U.S. export controls introduced an element of non-openness which is contrary to the spirit and definition of standards organization espoused by OMB A-119. As a result, U.S. leadership in international standards development was at risk in key industries. The lack of U.S. participation in standards that form the foundation of future industrial and commercial development worldwide directly and negatively impacts U.S. national security, and limits U.S. global commercial influence. This encourages foreign actors to develop and promote their own standards across the global community at the expense of the United States. Additionally, U.S. non-participation in the development of standards affects U.S. companies as they must manufacture items that meet foreign standards.

(b) September 2022 IFR

In response to the public comments received on the June 2020 rule and following renewed consultation among government agencies, BIS published the September 2022 rule amending the EAR to authorize the release of specified items subject to the EAR without a license to entities added to the Entity List pursuant to § 744.11 in the narrow circumstance when that release occurs in the context of a "standards-related activity," as defined in the September 2022 rule. Specifically, BIS clarified the scope and application of standards activities covered by the authorization by removing the defined terms for "standards" and "standards organization" from the EAR and adding a new definition for "standards-related activity" that more accurately reflects the standards-setting landscape. BIS authorized the release of "software" controlled for anti-terrorism (AT) reasons only and items designated EAR99 (i.e., items subject to the EAR but not identified on the Commerce Control List (supplement no. 1 to part 774) (CCL)) in the scope of the authorization and included the release of specific "software" and "technology" only for the "development," "production," and "use" of cryptographic functionality in the authorization. The rule also required that the items were authorized for release only if there was an intent to "publish" the resulting standard. Additionally, the language regarding "standards-related activity" was removed from the License Requirement column in the Entity List and added to §§ 744.11 and 744.16 of the EAR. The September 2022 rule thus revised the scope of the standards authorization to

apply to entities on the Entity List with license requirement solely referencing § 744.11 and not other end use and end user license requirements in other sections of parts 744 (Control Policy: End-User and End-Use Based) and 746 (Embargoes and Other Special Controls) of the EAR.

Prior to the June 2020 rule, the majority of entities on the Entity list had, and continue to have, a license requirement that refers to § 744.11. Since the publication of the June 2020 rule, however, BIS has published a number of rules that have expanded end-use and end-user controls. As a result, since the publication of the June 2020 rule, over 400 additional entities have been added to the Entity List with a license requirement that references a provision other than § 744.11. In recognition of these circumstances, in the September 2022 rule, BIS requested comments on whether excluding these other end-use and end-user provisions of the EAR from the authorization would negatively impact and prevent U.S. industry from actively participating and leading in "standards-related activities," or if export controls and compliance concerns would continue to limit U.S. leadership and participation in standards-related activities, thereby negatively impacting U.S. commercial and national security interests.

B. Changes to Licensing Requirements in the Context of Specific Standards Activities

Based on public comments received from the September 2022 rule (as summarized in Section D), as well as continued discussions with other U.S. Government agencies and industry, BIS is amending the EAR to ensure that export controls and associated compliance concerns do not continue to impede or jeopardize U.S. participation and leadership in legitimate standards-related activities. The national security threat that results from ceding, and in some cases ceasing, U.S. participation and leadership in standards development and promulgation far outweighs the risks related to the limited release of the authorized low-level technology and software to parties on the Entity List when released in the context of a "standards-related activity." BIS has concluded that excluding end-use and end-user controls from the authorization has had and will continue to have unintended negative consequences on the U.S. national security interests by curtailing U.S. involvement in legitimate standards-related activities.

As further detailed in the White House report on USG NSSCET

discussing the key objective of U.S. participation, the U.S. Government is taking action to “remove and prevent barriers to private sector participation in standards development.” Standards activities and development will continue to drive technological and industrial growth with or without input from U.S. companies. For U.S. industry to keep its leadership role and continued participation in standards development, especially in critical and emerging technologies identified in the USG NSSCET, the U.S. Government must address this issue comprehensively. As public comments to prior efforts to control exports related to standards development have shown, not addressing U.S. industry’s uncertainty regarding the end-use and end-user controls in the EAR is counterproductive and endangers U.S. commercial and strategic interests over the long term. To address these concerns and to further streamline and clarify controls over technology and software subject to the EAR as related to standards-related activities, BIS is making the following revisions to the EAR:

1. Moving the authorization for “standards-related activity” that was added to § 744.11 in the September 2022 rule to § 734.10. BIS is also making necessary conforming changes to § 744.16 and the introductory paragraph to supplement no. 4 to Part 744. This final rule does not change existing provisions in these sections regarding patents and whether they are subject to the EAR.

2. Revising the existing definition of ‘standards-related activity’ and adding the revised definition to § 734.10. This rule clarifies that a “standards-related activity” includes activities conducted with the intent to “publish” a standard as well as those conducted for an already “published” standard. BIS revises the definition of “standards-related activity” to remove the phrase “with which compliance is not mandatory.” In addition, in Part 772, BIS is revising the definition for “standards-related activity” to reference § 734.10.

When “technology” or “software” is released for a “standards-related activity,” the same item scope promulgated in the September 2022 continues to apply, *i.e.*, specific “technology” or “software” is not subject to the EAR if the item is designated EAR99, controlled on the CCL for anti-terrorism (AT) reasons only, or the release is of specified “software” and “technology” when specifically for the “development,”

“production,” and “use” of cryptographic functionality.

C. Request for Additional Public Comments for This Interim Final Rule

Instructions for submission of comments, including comments that contain business confidential information, are found in the ADDRESSES section of this interim final rule. BIS is requesting comment on whether the revisions promulgated in this interim final rule effectively promote Objective 2 of the USG NSSCET by removing and preventing barriers to private sector participation in standards development.

D. Summary and Response to Comments Received Regarding the September 2022 Standards Interim Final Rule

The summary and responses to the nine relevant comments that BIS received from the September 2022 interim final rule have been separated into seven topic areas. For topics in which the comments expressed the same or very similar viewpoints, BIS has addressed them by topic area rather than by individual comment. For topic areas in which the commenters expressed unique viewpoints, thoughts, or ideas, BIS has addressed the individual comments. The majority of comments have been addressed by the revisions to the EAR promulgated in this rule. BIS greatly appreciates the public comments received and encourages continued engagement and feedback.

Topic Area 1: Limits on standards-related activities due to export controls creates economic and national security risks for the United States.

Five commenters noted that any chilling of U.S. participation and leadership in standards development creates new security risks and vulnerabilities that threaten U.S. economic and national security interests. For example, one commenter stated that when its organization is restricted from engaging in information-sharing activities because those activities are not covered under the definition of “standards-related activities,” its organization loses the opportunity to receive valuable and potentially time-sensitive information about cyber incidents, threats, and vulnerabilities as well as the ability to further discuss those issues among the organization’s members and identify needed and appropriate resolutions.

Another commenter stated that “it is important that there be a two-way communication regarding security vulnerabilities discovered in hardware and software items. If participation of

Entity List entities is restricted, then security vulnerabilities discovered by these entities, many of which are quite large, may be withheld as they develop their own competing standards after being locked out of access to participation.” The same commenter went on to state that “we believe that the revised EAR exemption, as amended by the IFR, continues to work against the stated intent of the IFR and against the national security interests of the United States by prohibiting the dissemination of technology and software subject to the EAR in the context [of] standards-related activity when these specified items are released by open membership organizations” that develop their standards via an open process available to any member.

Response: BIS understands, as commenters have stated, that limits on the sharing of information in a standards development environment have both economic and national security implications. The national security threat that results from ceding U.S. participation and leadership in standards development and promulgation far outweighs the risks related to the limited release of low-level technology and software to parties on the Entity List in the context of a “standards-related activity” that supports U.S. commercial and economic interests. Therefore, in this rule, BIS is amending part 734 of the EAR so that activities that meet the definition of “standards-related activity” are no longer subject to the EAR. Specifically, when released for a “standards-related activity,” “technology” or “software” is not subject to the EAR if it meets the item scope of 734.10(b)(1) and is released for a “published” standard and/or occurs with the intent that the resulting standard will be “published.”

The USG NSSCET specifically highlights U.S. leadership in standards development of critical technologies. The USG NSSCET Executive Summary explicitly states that: “strength in standards development has been instrumental to the United States’ global technological leadership. Standards development underpins economic prosperity across the country and fortifies U.S. leadership in the industries of the future at the same time. Bolstering U.S. engagement in standards for critical and emerging technology (CET) spaces will strengthen U.S. economic and national security.”

Additionally, the Export Control Reform Act of 2018 (ECRA; 50 U.S.C. 4801–4852) states under § 4811(3) that: “the national security of the United States requires that the United States maintain its leadership in the science,

technology, engineering, and manufacturing sectors, including foundational technology that is essential to innovation. Such leadership requires that United States persons are competitive in global markets.”

Both the USG NSSCET and ECRA support and endorse the revisions to the EAR to ensure that export controls and licensing requirements do not prove detrimental to or limit the ability of U.S. industry to participate in and lead international standards development across industries, especially in areas critical to United States industrial, commercial, and national security leadership.

Topic Area 2: U.S. export controls continue to hinder U.S. leadership and participation in international standards development.

Six commenters expressed concern that the export controls and license requirements related to the sharing of information in a standards-development forum, as implemented in the September 2022 rule, were continuing to hinder and chill U.S. companies’ participation in international standards development. Specifically, one commenter stated that “[o]pen standardization is critical to U.S. leadership across established and emerging technology areas and limiting [the] ability of SSO’s [standard setting organizations] would provide significant barriers to U.S. participation and leadership in standardization.” Another commenter noted that the current authorization is “[i]nsufficient to maintain U.S. leadership at organizations that work on standards” and that it does not adequately “support global cooperation on other critical activities conducted by standards organizations.” One commenter stated that unless BIS broadens the scope of the authorization, they anticipate that the organization’s legal department will not allow it to participate in any meetings at which Entity List parties could potentially be in attendance.

Four commenters noted that the export controls and license requirements that apply only to U.S. companies have the effect of walling off U.S. standards development from global development and allowing foreign actors to develop and promote their own standards across the global community at the expense of the United States. One of the commenters stated that controls that lead SSOs to limit U.S. entities’ participation in global standards development will “fragment the standardization ecosystem that has served U.S. interests well to date” Another commenter stated that

authorization “would impose a significant compliance burden as international standards organizations would need to restructure groups to isolate standards related activities from other activities and spend resources to monitor communications among members.” As noted above, another commenter said, “if participation of Entity List entities is restricted, then security vulnerabilities discovered by these entities, many of which are quite large, may be withheld as they develop their own competing standards after being locked out of access to participation.” Finally, a commenter noted that artificial limits on sharing of information favors compliance by larger commercial enterprises at the expense of smaller parties, including other standards organizations that do not have the same resources as large commercial operations.

Response: BIS agrees that the September 2022 authorization is not broad enough to allow U.S. companies to participate freely in standards development due to uncertainty regarding whether the information they are sharing is subject to the EAR and, if so, whether EAR license requirements apply. BIS recognizes the importance of protecting sensitive and leading-edge U.S. technology but understands the national security implications of limiting U.S. participation and leadership in international standards development. BIS appreciates that the U.S. Government needs to apply U.S. export controls in a way that supports and encourages U.S. technological leadership in standards development, particularly in light of efforts by adversarial countries to coordinate, subsidize, and promote activities in international standards bodies for the benefit of their own enterprises and industry leadership. BIS also recognizes that an environment of competing national standards or the exclusion of U.S. companies in international standards development is not advantageous to U.S. commercial or national security interests. Therefore, in this final rule, BIS has made “standards-related activities” not subject to the EAR as long as the “release” of the “software” or “technology” during these activities meets the criteria contained in revised § 734.10 of the EAR. This treatment of “standards-related activity” as defined in § 734.10 will support U.S. companies’ efforts to create and maintain a leadership position in the global standards community in all industries.

BIS further agrees that fragmentation in the standards development environment could provide foreign

actors and organizations with an opening to develop their own unique and separate international standards, without U.S. industry input or participation, and at the expense of U.S. commercial and national security interests. This fragmentation leads to significant disadvantages for U.S. industry by providing foreign actors with the opportunity to specify their own indigenous benchmarks that U.S. companies must adhere to or lose market share. U.S. non-participation in the foreign development of such standards also affects U.S. companies’ bottom line as they must revise their manufacturing processes to meet the foreign standards. This final rule alleviates such concerns by providing U.S. companies the ability to freely participate in all standards-development forums by making the release of software or technology in such forums not subject to the EAR, provided the releases meet the criteria of new § 734.10(b) of the EAR. It also obviates the need for U.S. companies to wall off their input into global standards development.

Topic Area 3: Revise the definition of “standards-related activity.”

BIS received comments requesting that the agency revise, expand, and clarify the definition of “standards-related activity.”

Four commenters suggested that BIS should expand the definition of “standards-related activity.” One commenter stated that the definition should include but not be limited to “the sharing of technical assistance and exchange of information within conformity assessment procedures, with the intent that the resulting standard will be “published” in order to clarify that sharing and exchanging technical information is within the scope of the authorization. Another commenter suggested that the definition is too narrow and should be expanded to “activities outside of “standards-related activities”” so as to include “many vital functions of international standards organizations that are necessary and incidental to standards related activity but may be conducted outside the context of standards development, such as fostering the exchange of information on developing industry trends and discussions of emerging issues among members.” Another commenter suggested expanding the definition “to include information sharing activities by members of standards organizations on emerging issues and developments.” The last commenter on this topic proposed allowing a standards-related activity to occur if conducted in a Voluntary Consensus Standards Body

(VCSB), as defined by OMB Circular A-119. In the September 2022 rule, BIS removed the “standards organization” definition and replaced it with a “standards-related activity authorization.” According to the commenter, however, the VCSB definition does not require that standards be “published.”

Five commenters requested that BIS remove the word mandatory from the definition of “standards-related activity” in part 772 of the EAR. Essentially all of the commenters stated that in the context of standards development, whether or not a standard will be voluntary or mandatory makes no difference to the stakeholders involved in the development of the standard. Additionally, some voluntary standards become mandatory when adopted through national (domestic) regulations, such as international aircraft standards promulgated by the International Civil Aviation Organization (ICAO).

Five commenters stated that the current wording of the authorization implied that standards-related activities were covered by the authorization only before or during publication of the standard. These commenters asked for clarification that such activities continued to be covered by the authorization after publication of the standards. One commenter noted that conformance testing is a vital component in the commercialization of standards compliant products and that the “vast majority of such activities only usefully occur after a standard has been published and compliant products have been produced.” Another commenter noted that “BIS already provides examples of activities that occur in connection with already published standards (promulgating, revising, amending, reissuing, interpreting, implementing . . .)” but that such actions do not yet exist. These commenters gave examples of three SSOs engaged in cellular, wireless, and other devices that routinely engage in standards-related activities for already published standards, such as conformity assessments. Two commenters requested clarification on whether organizations that are not VCSBs that “require a party to be a member of an organization to receive standards in their final form” would qualify for the authorization.

One commenter suggested that BIS extend the current authorization to additional standards activities that occur before the standard is published. According to this commenter, in information and communications

technology (ICT) “compliance testing also includes pre-product release activities intended to help products reliably interoperate with other products implementing the same standards. The need for such activities arises from the fact that ICT standards frequently do not provide sufficient detail to ensure complete interoperability without additional tinkering.” This commenter suggests that the additional tinkering is often done via a “plugfest” which is “an activity that allows competing vendors to meet and test their products against each other, often anonymous to each other, to work out the final technical changes necessary to allow consumers and business purchasers to achieve the type of ‘plug and play’ ease of use they require. Because plugfests are usually conducted before products reach the marketplace, and often before their existence or specifications have been publicly disclosed, they are non-public and conducted on a confidential basis. Typically, the technical information exchanged one on one between two vendors includes only that information that is necessary to allow each vendor to work out the cause of a lack of compatibility.”

Response: BIS agrees with most of these comments. In new § 734.10(b), BIS revises and clarifies the scope of what is authorized when released for a “standards-related activity.” When released for a “standards-related activity,” “technology” or “software” is not subject to the EAR once it meets at least one condition in both § 734.10(b)(1) and (2). The scope of the “technology” or “software” covered by the authorization has not been revised and is now listed in § 734.10(b)(1). The conditions in § 734.10(b)(2) clarify that activities that occur after the publication of a standard are included in the definition of “standards-related activity”—i.e., a “standards-related activity” occurring specific to an already “published” standard is included in the authorization. BIS also removed the phrase “with which compliance is not mandatory” from the definition of “standards-related activity.”

BIS is not expanding the definition of “standards-related activity” to include activities that are conducted in a VCSB as the expansion is unwarranted. Based on public comment and engagement with other agencies, BIS has determined that the relevant activities of a VCSB are already captured in the definition of “standards-related activity” or, as in the example provided by the commenter, not subject to the EAR (see discussion in Topic Area 4). BIS welcomes public

comments on whether there are additional VCSB activities that are excluded from the current definition of “standards-related activity” and remain subject to the EAR.

Topic Area 4: Expand the definition of “published in § 734.7 of the EAR.”

Comment: Six commenters suggested that the definition of “published” be expanded to cover standards development activities. One commenter suggested that the EAR’s definition of “published” should be expanded to include the “sharing of technical assistance and exchange of information within conformity assessment procedures.”

Response: The definition of “standards-development activity” in part 772 already explicitly includes the exchange of technical data in the conformity process provided it is for the purpose of standards-development activities. Therefore, no further revisions are warranted to the definition of “published” to reference the exchange of technical data.

Comment: Another commenter suggested amending the text of § 734.7 of the EAR to replace the phrase “without restrictions upon its further dissemination” with the phrase “in hard copy or electronic form available from, or viewable at, one or more public websites.” The commenter makes this suggestion because “virtually all standards bear copyright notices, and many standards setting organizations (SSOs) add further legends highlighting that copying and further distribution of their standards are prohibited. Some vigorously defend their copyrights in court.” While it is true that many SSOs (and particularly consortia) give their standards away for free, most traditional SSOs derive a significant percentage of their revenues from the sale of their standards. Thus, in the view of this commenter, “requiring unlimited downstream distribution” as provided in existing § 734.7 “would violate the copyrights of SSOs.”

Response: BIS believes that the regulatory amendments to § 734.10 of the EAR promulgated in this rule obviate the need to amend § 734.7 of the EAR to account for standards that may be copyrighted. In this final rule, BIS has removed “standards-related activities” from being subject to the EAR, as long as the release of the “software” or “technology” meets the definition of a “standards-related activity” as defined in part 772 of the EAR, and meets the requirements for “release” in new § 734.10(b)(1) and the conditions of its “release” in new § 734.10(b)(2) of the EAR.

According to the criteria in new § 734.10(b)(2), the “standards-related activity” must be either for a “published” standard or occurs with the intent that the resulting standard will be “published.”

Comment: Another commenter asked for confirmation that “the references to ‘published’ standards in the definition are not limited to standards-related activities only by those involved in the standard’s development.” The commenter also asked for confirmation that a third-party entity that is not a member of the organization that published the standard (for example, a consortium or a certification authority) but engages in “standards-related activity” with that standard is consistent with the definition of “published” as used in the definition of “standards-related activity.”

Response: BIS confirms that this scenario is consistent with the definition of “standards-related activity” in § 734.10 and the definition of “published” in § 734.7 of the EAR. The changes in this rule remove standards-related activities from being subject to the EAR when the stated conditions are met; as long as the conditions in new § 734.10(b)(1) and (2) are met, then the activities would not be subject to the EAR.

Comments: One commenter stated that their organization’s “model of open membership dissemination does not publish in conformity with the strict publish definition used in the IFR” because although it makes standards readily available to the public, the interested member of the public must also be “willing to agree to the terms and conditions in its membership agreement and pay its dues.” The organization releases the resulting standards to all members without restriction. According to that commenter, “this model does not conform to the strict definition of ‘published’, so [the organization’s] standards-related activities do not qualify for the exemption under the terms of the IFR.”

Another commenter suggested that the definition of “published” be amended “to include dissemination to membership organization . . . that are open to the public without restriction, apart from confidentiality responsibilities, standard terms and conditions, a demonstrated interest in the design, development, manufacture or sale of products or services which utilize the standards at issue, and dues or membership fees.” An additional commenter requested clarification regarding the definition of “published” to make “clear whether BIS recognizes

that some standards organizations require a party to be a member of the organization to receive standards in their final form.”

Response: The relevant criteria in § 734.7 of the EAR that makes information not subject to the EAR is applicable when the information has been made available to the public without restrictions upon its further dissemination. This does not rely on cost or membership, provided that any member of the interested public could pay the associated membership dues and become a member if they so desired. Further, § 734.7(a)(1) states that unclassified “technology” or “software” is “published” and therefore not subject to the EAR, when it has been made available to the public without restrictions upon its further dissemination such as through “subscriptions available without restriction to any individual who desires to obtain or purchase the published information.”

Topic Area 5: Apply standards authorization to sections of EAR other than § 744.11.

Three commenters expressed concern that the September 2022 authorization continued to chill U.S. industry participation in international standards development because it applied only to releases of “software” and “technology” to entities that were added to the Entity List under § 744.11 of the EAR. These commenters noted that to allow the United States to freely participate in standards development forums, the authorization must be extended to all end users listed in part 744 of the EAR. One commenter stated the “Entity (L)ist is not all encompassing of potentially restricted parties, particularly within context of EAR Part 744. Parties having other [part 744] designations (such as military end-users (MEU) in § 744.21) may be present in such meetings or could otherwise receive the output documentation of such meetings.” Another commenter noted that the authorization “does not address territorial and end-use/end-user controls beyond the Entity List,” which have affected standards organizations and that deter U.S. companies from participating and requiring standards organization to restrict their participation. All three commenters requested the expansion of the authorization to the release of the same types of items enumerated in § 744.11(a)(1) to other part 744 end users.

Another commenter stated that modifications such as expansion or flexibility should be applied to the end-use and end-user controls to enable U.S.

industry to remain a thought-leader on standards-related activities. According to this commenter, the current authorization “requires the U.S. party to continually monitor membership of a standards organization to determine whether only parties on the Entity List are present or whether other restricted parties are potential recipients.” This requires U.S. parties to “over screen” and continuously perform and refresh their due diligence to ensure that a non-designated party has not been added to one of the restricted lists.

Two additional commenters expressed the same concern with regard to the amount of resources required to continuously monitor the end-use and end-user controls in part 744 of the EAR. These commenters suggested that the standards authorization be extended to other sections in part 744 but that this extension could be limited to countries listed in Country Group E (supplement no. 1 to part 740) of the EAR.

Another commenter noted that the current sanctions and resulting license requirements for Russia and Belarus extend to certain EAR99 and AT-only controlled items; therefore, these restrictions have an even larger effect on U.S. participation in standards development than Entity List designations. This commenter stated that as long as the standards-related authorization “does not apply to MEU or parties in Russia or Belarus, the international standards environment is likely to continue to fragment, which undermines U.S. leadership in these areas.” This commenter also recommended expanding the authorization to parties outside of Country Group E that are not on the Entity List “so that standards organizations (and U.S. membership) can fully benefit from the intent of the [authorization].”

Three commenters requested that the current standards authorization be expanded to all entities on the Entity List (supplement no. 4 to part 744). One commenter noted that such an expansion would be “critical to US leadership across established and emerging technology areas” and that limiting the authorization to only Entity List entities provides “significant barriers to U.S. participation and leadership in standardization, fragment[s] the standardization ecosystem that has served U.S. interests well to date and create[s] new security risks and vulnerabilities that threaten U.S. economic and national security interests.” Another commenter noted that unless BIS broadens the scope of the authorization, they anticipate that the organization’s legal department will

not allow it to participate in meetings that may include Entity List entities.

Response: The September 2022 rule expanded the scope of the authorization of releases of “software” and “technology” to all entities that were added to the Entity List under § 744.11 of the EAR.

This rule addresses the commenter’s other concerns by removing from EAR jurisdiction “technology” and “software” listed in new § 734.10(b)(1) when they meet at least one condition in new § 734.10(b)(2). This means that the “technology” and “software” will not be subject to the EAR when released for standards-related activities as that term is defined in part 772 of the EAR to all end users listed in part 744 of the EAR.

BIS notes that this change affects major industries in which global participation is crucial to create, maintain, and monitor international safety and operability standards. For example, as two commenters pointed out, the Russian Federal Air Transportation Agency (FATA) and the U.S. Federal Aviation Administration (FAA) both participate in the ICAO, an agency of the United Nations that coordinates the principles and techniques of international air navigation and sets worldwide standards for civil aviation safety. ICAO has members that are subject to unilateral U.S. export controls under part 744 of the EAR beyond the Entity List; however, U.S. participation in the forum is crucial in furtherance of U.S. support of civil air safety, security, efficiency, capacity, and environmental protection and so that the commercial interests of U.S. aircraft manufacturers and aviation equipment manufacturers are sufficiently presented in the discussions. Lack of U.S. participation would cede the development of international standards to foreign actors that may not only disregard U.S. commercial and national security interests but actively work to destabilize them.

This rule addresses these concerns by removing from EAR jurisdiction “technology” and “software” listed in new § 734.10(b)(1) when they meet at least one condition in new § 734.10(b)(2). This means that the specified “technology” and “software” will not be subject to the EAR when released for standards-related activities as that term is discussed in 734.

Topic Area 6: Current authorization and license requirements increase the compliance burden for U.S. companies.

Four commenters stated that the current authorization increases the export control compliance burden of

U.S. companies and standards organizations and their members. Two commenters stated this sentiment explicitly, with one commenter adding that “compliant use of the exemption IFR would impose a significant compliance burden as international standards organizations would need to restructure groups to isolate standards related activities from other activities and spend resources to monitor communications among members.” A third commenter stated that “analyzing and complying with uneven or inconsistent rules and exemptions requires additional resources that [their organization] could allocate to projects, training, or developing standards.” The requester asked that BIS keep in mind that it (and other standards organizations) do not have the same resources as large commercial operations.” However, another commenter stated that the changes promulgated in the September 2022 rule reduced the compliance burden on their organization.

Response: One organization’s compliance burden has been reduced under the existing regulations, and with the publication of this rule and the changed focus on the activities themselves, BIS fully expects that the compliance burden for the other organizations will also be reduced. This is because this rule removes from EAR jurisdiction “technology” and “software” listed in new § 734.10(b)(1) when they meet at least one condition in new § 734.10(b)(2). Accordingly, the listed “technology” and “software” will not be subject to the EAR when released for “standards-related activities” as that term is discussed in part 734 of the EAR.

Topic Area 7: Use clear language and clarification.

One commenter suggested that BIS use clear language and clarification in future regulations. Specifically, this commenter stated that “any efforts to simplify, clarify or limit [the technology] restrictions would be gratefully received by SSO’s, their decision makers, and their members.”

Response: BIS will continue to strive to use clear language and to use guidance, including a frequently asked questions (FAQ) document, to further clarify published regulations in accordance with the Plain Writing Act of 2010.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018

(ECRA) (codified, as amended, at 50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has been designated as significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This interim final rule involves the collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to change because this rule does not impose any additional license requirements. Current information regarding this collection of information—including all background materials—can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements, including prior notice and the opportunity for public comment.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are

not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 772

Exports.

Accordingly, parts 734, 744 and 772 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

■ 1. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 1, 2023, 88 FR 75475 (November 3, 2023).

■ 2. Amend § 734.3 by revising paragraph (b)(3)(iv) to read as follows:

§ 734.3 Items subject to the EAR.

* * * * *

(b) * * *

(3) * * *

(iv) Appear in patents or open (published) patent applications available from or at any patent office, unless covered by an invention secrecy order, or are otherwise patent information or are for a standards-related activity as described in § 734.10;

* * * * *

■ 3. Section 734.10 is revised to read as follows:

§ 734.10 Patents and standards-related activity.

(a) *Patents.* “Technology” is not subject to the EAR if it is contained in any of the following:

(1) A patent or an open (published) patent application available from or at any patent office;

(2) A published patent or patent application prepared wholly from foreign-origin “technology” where the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office;

(3) A patent application, or an amendment, modification, supplement or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5; or

(4) A patent application when sent to a foreign country before or within six months after the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.

(b) *Standards-related activity.* A standards-related activity includes the development, adoption, or application of a standard (*i.e.*, any document or other writing that provides, for common and repeated use, rules, guidelines, technical or other characteristics for products or related processes and production methods), including but not limited to conformity assessment procedures. A “standards-related activity” includes an action taken for the purpose of developing, promulgating, revising, amending, issuing or reissuing, interpreting, implementing or otherwise maintaining or applying such a standard. When released for a “standards-related activity,” “technology” or “software” is not subject to the EAR provided it meets at least one condition in both paragraphs (b)(1) and (2) of this section:

(1) The “technology” or “software” is:

(i) Designated EAR99;

(ii) Controlled on the CCL for anti-terrorism reasons only; or

(iii) For the following ECCN “items” level paragraphs of “technology” or “software” specifically for the “development,” “production,” or “use” of cryptographic functionality once the release is for a “standards-related activity:” “software” that is classified under ECCN 5D002.b or 5D002.c.1 (for equipment specified in ECCN 5A002.a and 5A002.c only); “technology” that is classified under ECCN 5E002 (for equipment specified in ECCN 5A002.a, .b and .c); and “technology” for software controlled under ECCN 5D002.b or .c.1 (for equipment specified in ECCN 5A002.a and .c only) when the release is for a “standards-related activity;” and

(2) The “standards-related activity:”

(i) Is for a “published” standard; or

(ii) Occurs with the intent that the resulting standard will be “published.”

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 4. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; 3 CFR, 2022 Comp., p. 563; Notice of September 7, 2023, 88 FR 62439 (September 11, 2023); Notice of November 1, 2023, 88 FR 75475 (November 3, 2023).

■ 5. Section 744.11 is amended by revising paragraph (a) introductory text and removing and reserving paragraph (a)(1) to read as follows:

§ 744.11 License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States.

* * * * *

(a) *License requirement, availability of license exceptions, and license application review policy.* A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity that is listed on the Entity List is a party to the transaction as described in § 748.5(c) through (f) of the EAR unless otherwise authorized or excluded in this section. License exceptions may not be used unless authorized in the Entity List entry for the entity that is party to the transaction. Applications for licenses required by this section will be evaluated as stated in the Entity List entry for the entity that is party to the transaction, in addition to any other applicable review policy stated elsewhere in the EAR.

* * * * *

■ 6. Section 744.16 is amended by revising paragraph (a) to read as follows:

§ 744.16 ENTITY LIST

* * * * *

(a) *License requirements.* In addition to the license requirements for items specified on the CCL, you may not, without a license from BIS, export, reexport, or transfer (in-country) any items included in the License Requirement column of an entity’s entry on the Entity List (supplement no. 4 to this part) when that entity is a party to a transaction as described in § 748.5(c) through (f) of the EAR. The specific license requirement for each listed entity is identified in the license requirement column on the Entity List in supplement no. 4 to this part.

* * * * *

■ 7. Supplement no. 4 to part 744 is amended by revising the introductory text to read as follows:

Supplement No. 4 to Part 744—Entity List

This supplement lists certain entities subject to license requirements for specified items under this part 744 and part 746 of the EAR. License requirements for these entities include exports, reexports, and transfers (in-country) unless otherwise stated. A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity that is listed on the Entity List is a party to the transaction as described in § 748.5(c) through (f) of the EAR. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.

* * * * *

PART 772—DEFINITIONS OF TERMS

■ 8. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 9. Section 772.1 is amended by
■ a. Revising the definition of
“Standards-related activity.”

The revisions read as follows:

§ 772.1 Definitions of Terms as Used in the Export Administration Regulations (EAR).

* * * * *

Standards-related activity. See
§ 734.10 of the EAR.

* * * * *

Thea D. Rozman Kendler,
Assistant Secretary for Export
Administration.

[FR Doc. 2024–15810 Filed 7–17–24; 8:45 am]

BILLING CODE 3510–33–P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

Food and Drug Administration

21 CFR Part 630

[Docket No. FDA–2022–D–0362]

**Blood Pressure and Pulse Donor
Eligibility Requirements: Compliance
Policy; Guidance for Industry;
Availability**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final

guidance entitled “Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy; Guidance for Industry.” The guidance document addresses certain regulatory requirements for determining donor eligibility that apply to blood establishments that collect blood and blood components for transfusion or for further manufacturing use, including Source Plasma. In a final rule dated May 22, 2015, FDA amended the regulations applicable to blood establishments for determining donor eligibility and testing blood and blood components. The revised requirements were implemented in order to assure the safety of the blood supply and to protect donor health. This guidance finalizes the draft guidance entitled “Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy; Draft Guidance for Industry” issued on May 24, 2022.

DATES: The announcement of the guidance is published in the **Federal Register** on July 18, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets

Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2022–D–0362 for “Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy; Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Myrna Hanna, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled “Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy.” The document addresses certain regulatory requirements for determining donor eligibility that apply to blood establishments that collect blood components for transfusion or for further manufacturing use, including Source Plasma. In the final rule dated May 22, 2015 (80 FR 29841) entitled “Requirements for Blood and Blood Components Intended for Transfusion or for Further Manufacturing Use,” FDA amended the regulations applicable to blood establishments for determining donor eligibility and testing blood and blood components.¹ The revised requirements were implemented in order to assure the safety of the blood supply and to protect donor health. The final rule became effective on May 23, 2016. FDA has developed the document in response to feedback from blood establishments regarding the donor eligibility requirements for blood pressure and pulse in 21 CFR 630.10 and the corresponding requirements for medical supervision in 21 CFR 630.5.

¹ The Office of the Federal Register has published this document under the category “Rules and Regulations” pursuant to 1 CFR 5.9(b). The categorization is solely for purposes of publication in the **Federal Register** and does not change the nature of the document and is not intended to affect its validity, content, or intent. See 1 CFR 5.1(c).

The guidance describes the circumstances in which FDA does not intend to take regulatory action for a blood establishment’s failure to comply with certain regulations for determining the eligibility of blood donors with blood pressure or pulse measurements outside of the specified limits.

This guidance finalizes the draft guidance entitled “Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy; Draft Guidance for Industry” issued on May 24, 2022 (87 FR 31567). Changes made from the draft to the final guidance took into consideration comments received. After considering the comments, we made a few clarifying edits to the guidance and other editorial changes.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on blood pressure and pulse donor eligibility requirements and explains our compliance policy with respect to these requirements. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 601 have been approved under OMB control number 0910-0338; the collections of information in 21 CFR parts 606 and 630 have been approved under OMB control number 0910-0116.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: July 5, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-15228 Filed 7-17-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10004]

RIN 1545-BM19

Guidance Under Section 367(b) Related to Certain Triangular Reorganizations and Inbound Nonrecognition Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the treatment of property used to acquire parent stock or securities in connection with certain triangular reorganizations involving one or more foreign corporations; the consequences to persons that receive parent stock or securities pursuant to such reorganizations; and the treatment of certain subsequent inbound nonrecognition transactions following such reorganizations and certain other transactions. The final regulations affect corporations engaged in certain triangular reorganizations involving one or more foreign corporations, certain shareholders of foreign corporations acquired in such reorganizations, and foreign corporations that participate in certain inbound nonrecognition transactions.

DATES:

Effective date: These regulations are effective on July 17, 2024.

Applicability dates: For dates of applicability, see §§ 1.367(a)-3(g)(1)(viii), 1.367(b)-3(g)(7)(i), 1.367(b)-4(i), 1.367(b)-6(a)(1)(v) and (vi), 1.367(b)-10(e)(2), (3), and (5), and 1.1411-10(i).

FOR FURTHER INFORMATION CONTACT:

Brady Plastaras at (202) 317-6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2023, the Department of the Treasury (Treasury Department) and the IRS published proposed regulations (REG-117614-14) in the **Federal Register** (88 FR 69559) under section 367(b) of the Internal Revenue Code (the “Proposed Regulations”) that would implement the regulations announced and described in Notice 2014-32 (2014-20 IRB 1006) and Notice 2016-73 (2016-52 IRB 908), with modifications. This document finalizes the Proposed Regulations without substantive change. Terms used but not defined in this preamble have the

meaning provided in the Proposed Regulations.

In response to a request for comments in the Proposed Regulations, one comment was received and is discussed in the Summary of Comment and Explanation of Revisions. This comment is available at <https://www.regulations.gov> or upon request. No public hearing was held on the Proposed Regulations because there were no requests to speak.

Summary of Comment and Explanation of Revisions

I. § 1.367(b)–10(d) Anti-Abuse Rule

As the preamble to the Proposed Regulations explained, the existing regulations in § 1.367(b)–10 (the “2011 Final Regulations”) contain an anti-abuse rule under which “appropriate adjustments” are made if, “in connection with a triangular reorganization, a transaction is engaged in with a view to avoid the purpose” of the 2011 Final Regulations. See § 1.367(b)–10(d). The anti-abuse rule contains an example illustrating that the earnings and profits of S may, under certain circumstances, be deemed to include the earnings and profits of a corporation related to P or S for purposes of determining the consequences of the adjustments provided for in the 2011 Final Regulations.

Notice 2014–32 described certain clarifications with respect to the scope of the anti-abuse rule and illustrated certain of those clarifications with an additional example. See Notice 2014–32, sections 4.03 and 4.04. The Proposed Regulations proposed to implement those clarifications along with two new examples that further illustrate the broad scope of the anti-abuse rule. See proposed § 1.367(b)–10(d)(3) (*Example 2*) (relating to a downstream property transfer) and (d)(4) (*Example 3*) (relating to a taxable debt exchange). The Proposed Regulations did not propose to alter the anti-abuse rule’s operative text, which remains unchanged from the 2011 Final Regulations. Because *Examples 2* and *3* (as well as *Example 1*, which was described in Notice 2014–32) merely illustrate applications of the same operative rule finalized in the 2011 Final Regulations, the adjustments described in those examples reflect adjustments that would be made under the 2011 Final Regulations. That is, these examples illustrate fact patterns to which the anti-abuse rule already applies, independent of the inclusion of the examples in the Proposed Regulations. The additional language

that was proposed to be added to § 1.367(b)–10(d)(1) similarly clarifies potential situations to which the anti-abuse rule applies, and therefore also reflects adjustments that would be made under the 2011 Final Regulations, notwithstanding that that language was first described in Notice 2014–32.

The comment asserted that *Examples 2* and *3* are an expansion of the operative anti-abuse rule because they involve fact patterns and impose corrective adjustments that were not described in prior guidance and implicate concerns that were not present when the 2011 Final Regulations were issued. The comment claimed that the anti-abuse rule has a narrow application that is limited to scenarios described by the one example in § 1.367(b)–10(d) of the 2011 Final Regulations. In that example, S’s earnings and profits are increased where S is “created, organized, or funded to avoid the application of [the 2011 Final Regulations] with respect to the earnings and profits of [a related corporation].” As the comment correctly observed, this adjustment increases the likelihood that the 2011 Final Regulations will apply to treat the P acquisition as a deemed distribution. The comment also argued, however, that the only type of adjustments permitted under the anti-abuse rule are adjustments that increase S’s earnings and profits and, moreover, that the anti-abuse rule may impose those adjustments only if they bear on the P acquisition, because the P acquisition is the only type of transaction that can be “in connection with” an applicable triangular reorganization.

The comment contended that *Example 3* effectively introduces a new rule by, for the first time, applying the anti-abuse rule to “override” the § 1.367(b)–10(a)(2)(iii) priority rule, which in the example would otherwise prevent the P acquisition from being treated as a deemed distribution. The comment also argued that *Example 3* further expands the scope of the anti-abuse rule by applying it “in connection with” a transaction that occurs after the applicable triangular reorganization rather than in connection with the P acquisition itself. The comment similarly asserted that *Example 2* presents a fact pattern that is not within the purview of the anti-abuse rule because that example references a regulation that was issued after the TCJA, and as such cannot reflect an abuse that the 2011 Final Regulations contemplate. Therefore, the comment recommended that *Examples 2* and *3* should either be eliminated from the final regulations or made to apply only

prospectively as of October 5, 2023, the date the Proposed Regulations were filed with the **Federal Register**.

The Treasury Department and the IRS maintain that *Examples 2* and *3* are simply illustrations of the same operative anti-abuse rule—unchanged since it was published in the 2011 Final Regulations—and therefore decline to adopt the comment’s recommendation. The comment misunderstands the nature and purpose of the anti-abuse rule, which is intended to serve as a backstop to § 1.367(b)–10 in cases where taxpayers purposely attempt to structure around the application of those regulations. That structuring may take many forms and implicate other technical provisions in ways that are not foreseeable, including by taking advantage of changes in law that create novel planning opportunities. The anti-abuse rule is designed to be adaptable to such changing or unforeseen circumstances and, as such, is not limited to a particular type of avoidance transaction.

This adaptability is reflected in the wording of the anti-abuse rule, which, as described above, applies (i) “if, in connection with a triangular reorganization,” (ii) “a transaction is engaged in with a view to avoid the purpose” of § 1.367(b)–10. Neither of those two elements limit the anti-abuse rule to a specific form of avoidance transaction, as doing so would undercut the adaptability that is essential to the proper functioning of the rule. Moreover, the preamble to temporary regulations issued in 2008 (TD 9400, 73 FR 30301), the predecessor regulations to the 2011 Final Regulations in § 1.367(b)–10, explains that the phrase “in connection with” is “a broad standard that includes any transaction related to the reorganization even if the transaction is not part of the plan of reorganization” (73 FR 30302). The P acquisition is not the exclusive type of transaction that may implicate the anti-abuse rule, nor is there any requirement that such transaction precede the applicable triangular reorganization.

Once the anti-abuse rule applies, “appropriate” adjustments may be made. The types of corrective adjustments that may be appropriate are not circumscribed to a particular set of adjustments for the same reason that the anti-abuse rule is not limited to a particular form of avoidance transaction. That is, the anti-abuse rule naturally accommodates a range of adjustments because the nature of the corrective adjustment will depend on the form of the abusive transaction. These adjustments necessarily include adjustments that may have the effect of

modifying the application of technical rules, including the priority rule, as almost any avoidance transaction involves the exploitation of some technical provision. The Treasury Department and the IRS have long maintained that the anti-abuse rule is not defined by the one example described in the 2011 Final Regulations, which uses the phrase “for example” to indicate explicitly that the example is just one possible illustration of the rule and not, as the comment argues, the only possible illustration. *See* Notice 2014–32, section 3 (expressing the concern that taxpayers “may be interpreting the anti-abuse rule too narrowly . . .”).

These final regulations do, however, make a minor change to the facts of *Example 3*. As described in the Proposed Regulations, that example stated that USP did not satisfy the holding period requirement with respect to section 245A because “USP has held its stock in FP for fewer than 365 days.” The Treasury Department and the IRS did not intend for that statement to create any inference as to how the holding period requirement could be satisfied and accordingly revise the example’s facts to provide that USP simply “will not” satisfy the holding period requirement.

The comment also questioned why the clarifications to the application of the anti-abuse rule that were described in Notice 2014–32, such as *Example 1*, were not included among the rules listed in proposed § 1.367(b)–10(e)(2) as having an April 25, 2014, applicability date. Section 1.367(b)–10(e)(2) does not explicitly reference those clarifications because, as noted above, they simply clarify potential situations to which the anti-abuse rule applies. On the other hand, the other changes described in Notice 2014–32 modify substantive rules and are therefore listed under § 1.367(b)–10(e)(2) as having an April 25, 2014, applicability date.

II. Definition of “Foreign Subsidiary”

Under the Proposed Regulations, the excess asset basis (“EAB”) rules create a deemed distribution of specified earnings to the foreign acquired corporation from foreign subsidiaries, with specified earnings drawn from each subsidiary on a pro rata basis. *See* proposed § 1.367(b)–3(g)(1) and (3). A “foreign subsidiary” is defined by reference to the ownership requirements of section 1248(c)(2)(B). Section 1248(c)(2)(B) describes a 10-percent ownership threshold, taking into account the constructive ownership rules in section 958(b). Under that definition, therefore, a foreign

subsidiary could include a foreign corporation that the foreign acquired corporation is treated as owning solely through constructive ownership and in which it has no direct or indirect ownership interest. These final regulations make a minor change to § 1.367(b)–3(g)(1) to clarify that possible result. *See* § 1.367(b)–3(g)(1), fourth sentence (“the distribution is treated as being made through any intermediate owners, or directly from any constructively owned foreign subsidiaries, where applicable”) (emphasis added).

The Treasury Department and the IRS believe this rule appropriately balances the need for a comprehensive mechanism to correct a foreign acquired corporation’s basis imbalance with administrability concerns. For example, while in many cases the basis imbalance could be corrected by taking into account the earnings and profits of the particular subsidiary that participated in an applicable triangular reorganization, that subsidiary may no longer be identifiable or exist when the EAB rules are applied to the foreign acquired corporation. Thus, sourcing specified earnings on a pro rata basis from related foreign corporations provides an administrable rule while reducing the possibility that the basis imbalance goes uncorrected.

Effect on Other Documents

The following publications are obsolete as of July 17, 2024: Notice 2014–32 (2014–20 IRB 1006) Notice 2016–73 (2016–52 IRB 908)

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

displays a valid control number assigned by the OMB.

The collections of information in § 1.367(b)–1(c)(4)(viii) and (ix) apply to taxpayers that engage in transactions described in § 1.367(b)–3(g) or § 1.367(b)–10. These reporting requirements are necessary for the IRS’s audit and examination purposes, and in particular to identify transactions that should be subject to these final regulations.

The information collection is a statement by corporations attached to their timely filed Federal tax returns (or Form 5471, as applicable) that describes certain transactions and computations, as described in §§ 1.367(b)–3(g) and 1.367(b)–10, that are relevant to these final regulations. Any collection burden will be accounted for in OMB control number 1545–0123.

Taxpayers should keep copies of their filed returns and associated documentation as required by section 6001 of the Internal Revenue Code (the Code). These general tax records are already approved by the OMB under control number 1545–0123. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. As discussed in the preamble to the Proposed Regulations, this certification is based on the expectation that the taxpayers affected by these final regulations will generally be domestic and foreign corporations that participate in certain triangular reorganizations. The triangular reorganizations at issue represent a narrow set of abusive transactions that have typically been engaged in by large, publicly traded corporations. Such transactions are highly sophisticated and are thus unlikely to involve small domestic entities.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations (REG–117614–14) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small

business, and no comments were received.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Statement of Availability of IRS Documents

Any IRS Revenue Procedure, Revenue Ruling, Notice, or other guidance cited in this document is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these regulations is Brady Plastaras of the Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.1411–10 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1411–10 also issued under 26 U.S.C. 367.

* * * * *

■ **Par. 2.** Section 1.367(a)–3 is amended by revising paragraphs (a)(2)(iv) and (g)(1)(viii) to read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) * * *

(2) * * *

(iv) *Certain triangular reorganizations described in § 1.367(b)–10.* If, in an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T (as defined in § 1.367(b)–10(a)(3)(i)) in connection with a transaction described in § 1.367(b)–10 (applying to certain acquisitions of parent stock or securities for property in triangular reorganizations), section 367(a)(1) does not apply to such U.S. persons with respect to the exchange of the stock or securities of T if the condition in paragraph (a)(2)(iv)(A) or (B) of this section is satisfied. *See* § 1.367(b)–10(a)(2)(iii) (providing a similar rule that excludes certain transactions from the application of § 1.367(b)–10).

(A) The amount of gain in the T stock or securities that would otherwise be recognized under section 367(a)(1) (without regard to any exceptions thereto) pursuant to the indirect stock transfer rules of paragraph (d) of this section is less than the sum of the amount of the deemed distribution under § 1.367(b)–10 that would be treated and subject to U.S. tax as a dividend under section 301(c)(1) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) and the amount of such deemed distribution that would be treated and subject to U.S. tax as gain from the sale or exchange of property under section 301(c)(3) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) if § 1.367(b)–10 would otherwise apply to the triangular reorganization.

(B) T is a foreign corporation, but only to the extent that the stock or securities of T are exchanged for stock or securities of P that were acquired by S in exchange for property in the P acquisition (as the terms P, S, property, and P acquisition are defined in § 1.367(b)–10(a)). Such exchange of T stock or securities is subject to the rules

under § 1.367(b)–4(g). Section 367(a) applies to the exchange of T stock or securities to the extent that such stock or securities are exchanged for P stock or securities that were not acquired by S in exchange for property in the P acquisition.

* * * * *

(g) * * *

(1) * * *

(viii) Except as provided in this paragraph (g)(1)(viii), paragraph (a)(2)(iv) of this section applies to exchanges occurring on or after May 17, 2011. For exchanges that occur prior to May 17, 2011, *see* § 1.367(a)–3T(b)(2)(i)(C) as contained in 26 CFR part 1 revised as of April 1, 2011. Paragraph (a)(2)(iv)(A) of this section, to the extent it relates to amounts that would be subject to U.S. tax or give rise to an inclusion under section 951(a)(1)(A) that would be subject to U.S. tax, applies to triangular reorganizations that are completed on or after April 25, 2014, unless T was not related to P or S (within the meaning of section 267(b)) immediately before the triangular reorganization; the triangular reorganization was entered into either pursuant to a written agreement that was (subject to customary conditions) binding before April 25, 2014, and at all times afterwards, or pursuant to a tender offer announced before April 25, 2014, that is subject to section 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) and Regulation 14(D) (17 CFR 240.14d–1 through 240.14d–101) or that is subject to comparable foreign laws; and to the extent the P acquisition that occurs pursuant to the plan of reorganization is not completed before April 25, 2014, the P acquisition was included as part of the plan before April 25, 2014. Paragraph (a)(2)(iv)(B) of this section applies to transactions completed on or after December 2, 2016. Paragraph (a)(2)(iv)(A) of this section, to the extent it relates to amounts that would give rise to an inclusion under section 951A(a) that would be subject to U.S. tax, applies to triangular reorganizations that are completed on or after October 5, 2023.

* * * * *

■ **Par. 3.** Section 1.367(b)–1 is amended by:

■ 1. Removing the language “and” at the end of paragraph (c)(2)(iv)(B);

■ 2. Removing the period at the end of paragraph (c)(2)(v) and adding the language “; and” in its place;

■ 3. Adding paragraph (c)(2)(vi);

■ 4. In paragraph (c)(3)(ii)(A), removing the language “paragraph (c)(2)(i) or (v)” and adding in its place the language “paragraph (c)(2)(i), (v), or (vi)”;

- 5. Revising paragraph (c)(4)(v);
- 6. Removing the language “and” at the end of paragraph (c)(4)(vi);
- 7. Removing the period at the end of paragraph (c)(4)(vii)(B) and adding a semicolon in its place; and
- 8. Adding paragraphs (c)(4)(viii) and (ix).

The additions and revision read as follows:

§ 1.367(b)–1 Other transfers.

* * * * *

(c) * * *

(2) * * *

(vi) A domestic or foreign corporation (S) that acquires stock or securities of another corporation (P) in a transaction described in § 1.367(b)–10(a)(1), without regard to the exceptions in § 1.367(b)–10(a)(2).

* * * * *

(4) * * *

(v) Any information that is or would be required to be furnished with a Federal income tax return pursuant to regulations or other guidance under section 332, 351, 354, 355, 356, 361, 368, or 381 (whether or not a Federal income tax return is required to be filed), if such information has not otherwise been provided by the person filing the section 367(b) notice;

* * * * *

(viii) In the case of a corporation (S) described in paragraph (c)(2)(vi) of this section, the rules of this paragraph (c)(4) apply by treating the acquisition of the stock or securities of P in exchange for property as the section 367(b) exchange referred to in paragraph (a) of this section. The section 367(b) notice must also include a complete description of the acquisition of the stock or securities of P in exchange for property, including a description of the property provided in exchange for the stock or securities and any related transactions involving the acquisition of the stock or securities. The section 367(b) notice must describe any adjustments made pursuant to § 1.367(b)–10 or, if no adjustments are made, explain why no such adjustments were made; and

(ix) In the case of an exchange to which § 1.367(b)–3(g) applies, a statement describing how any excess asset basis (as defined in § 1.367(b)–3(g)(2)(i)) arose, the amount of excess asset basis, and a description of the computation of the amount of excess asset basis.

* * * * *

■ **Par. 4.** Section 1.367(b)–2 is amended by:

- 1. In paragraph (c)(1), adding a sentence after the current first sentence;
- 2. Adding a sentence to the end of paragraph (d)(2)(ii);

■ 3. In paragraph (d)(3)(ii), removing the language “subsidiaries of” and adding in its place the language “corporations owned by”;

■ 4. Adding a sentence to the end of paragraph (d)(3)(ii);

■ 5. In paragraph (e)(4) (*Example 2*), removing the language “foreign subsidiary” and adding in its place the language “foreign corporation”; and

■ 6. In paragraphs (j)(2)(i) and (ii), removing the language “is required to include in income either the all earnings and profits amount or the section 1248 amount under the provisions of § 1.367(b)–3 or 1.367(b)–4” and adding in its place the language “exchanges stock pursuant to a transaction described in § 1.367(b)–3 or § 1.367(b)–4(b)(1)(i), (b)(2)(i), (b)(3), (e), or (g)”.

The additions read as follows:

§ 1.367(b)–2 Definitions and special rules.

* * * * *

(c) * * *

(1) * * * But see § 1.1411–10(c)(3)(ii), which for certain exchanges modifies the section 1248 amount for purposes of section 1411. * * *

* * * * *

(d) * * *

(2) * * *

(ii) * * * But see § 1.1411–10(c)(3)(ii), which for certain exchanges modifies the all earnings and profits amount for purposes of section 1411.

* * * * *

(3) * * *

(ii) * * * But see § 1.367(b)–3(g)(1), which adjusts the all earnings and profits amount through a deemed distribution of certain earnings and profits of foreign subsidiaries owned by the foreign acquired corporation.

* * * * *

■ **Par. 5.** Section 1.367(b)–3 is amended by adding paragraph (g) to read as follows:

§ 1.367(b)–3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(g) *All earnings and profits amount adjusted for excess asset basis*—(1) *General rule.* If there is excess asset basis with respect to a foreign acquired corporation and the condition described in paragraph (g)(1)(i) or (ii) of this section is satisfied, then, except as provided in paragraph (g)(5) of this section, an exchanging shareholder to which paragraph (b)(3)(i) of this section applies must compute the all earnings and profits amount with respect to its stock in the foreign acquired corporation as if, immediately before the inbound nonrecognition transaction, the

foreign acquired corporation had received a distribution of property from a foreign subsidiary under section 301 in an amount equal to the specified earnings. In addition, the deemed distribution described in the preceding sentence is treated as occurring for all purposes of the Internal Revenue Code. For purposes of this paragraph (g)(1), the amount of the distribution from a foreign subsidiary is equal to the amount of earnings and profits of that foreign subsidiary that is designated as specified earnings under paragraph (g)(3) of this section. In the case of a foreign subsidiary the stock of which is not held directly by the foreign acquired corporation, the distribution is treated as being made through any intermediate owners, or directly from any constructively owned foreign subsidiaries, where applicable. For purposes of this paragraph (g)(1), references to the foreign acquired corporation, S, and a foreign subsidiary include any predecessor corporation.

(i) S previously acquired in exchange for property stock or securities of the foreign acquired corporation in connection with a triangular reorganization described in § 1.358–6(b)(2), and the foreign acquired corporation and S did not make adjustments that have the effect of a distribution of property from S to the foreign acquired corporation under § 1.367(b)–10(b)(1).

(ii) The excess asset basis is attributable, directly or indirectly, to property previously provided by a foreign subsidiary of the foreign acquired corporation in connection with a transaction not described in paragraph (g)(1)(i) of this section and undertaken with a principal purpose to create such excess asset basis.

(2) *Definitions.* The following definitions apply for purposes of this paragraph (g).

(i) *Excess asset basis.* The term *excess asset basis* means, with respect to a foreign acquired corporation, the amount by which the inside asset basis of that corporation exceeds the sum of the following amounts:

(A) The earnings and profits of the foreign acquired corporation attributable to its outstanding stock. For purposes of this paragraph (g)(2)(i)(A), such earnings and profits are determined under the principles of § 1.367(b)–2(d) but without regard to whether the exchanging shareholder is described in paragraph (b)(1) of this section or whether the exchanging shareholder is a U.S. person or a foreign person. Such earnings and profits include amounts described in section 1248(d)(3) or (4).

(B) The aggregate basis in the outstanding stock of the foreign acquired corporation determined immediately before the nonrecognition transaction described in paragraph (a) of this section (the inbound nonrecognition transaction) and therefore without regard to any basis increase described in § 1.367(b)–2(e)(3)(ii) resulting from such inbound nonrecognition transaction.

(C) The aggregate amount of liabilities of the foreign acquired corporation that are assumed (determined under the principles of section 357(d)) by the domestic acquiring corporation in the inbound nonrecognition transaction.

(ii) *Foreign subsidiary*. The term *foreign subsidiary* means, with respect to a foreign acquired corporation, a foreign corporation with respect to which the foreign acquired corporation satisfies the ownership requirements of section 1248(c)(2)(B) but for this purpose treating the foreign acquired corporation as the United States person referred to in section 1248(c)(2)(B).

(iii) *Inbound nonrecognition transaction*. The term *inbound nonrecognition transaction* has the meaning set forth in paragraph (g)(2)(i)(B) of this section.

(iv) *Inside asset basis*. The term *inside asset basis* means, with respect to a foreign acquired corporation, the aggregate of the adjusted basis of all the assets of that corporation in the hands of the domestic acquiring corporation determined immediately after the inbound nonrecognition transaction.

(v) *Lower-tier earnings*. The term *lower-tier earnings* means, with respect to a foreign acquired corporation, the sum of the earnings and profits (including deficits) of each foreign subsidiary.

(vi) *Property*. The term *property* has the same meaning as in § 1.367(b)–10(a)(3)(ii).

(vii) *S*. The term *S* has the same meaning as in § 1.367(b)–10(a)(3)(i).

(viii) *Specified earnings*. The term *specified earnings* means, with respect to a foreign acquired corporation, the lesser of the following amounts:

(A) Lower-tier earnings; and

(B) The excess asset basis of the foreign acquired corporation.

(3) *Designation of specified earnings*. If lower-tier earnings exceed specified earnings, then the portion of lower-tier earnings that is designated as specified earnings is determined by reference to the earnings and profits of each foreign subsidiary on a pro rata basis in proportion to each foreign subsidiary's share of lower-tier earnings.

(4) *Anti-abuse rule*. Appropriate adjustments are made pursuant to this

section if a transaction is engaged in with a view to avoid the purposes of this paragraph (g). For example, if a transaction is engaged in with a view to reduce excess asset basis, including by increasing the basis in the stock of the foreign acquired corporation without a corresponding increase in the basis of the assets of the foreign acquired corporation, that increase in the basis in the stock of the foreign acquired corporation will be disregarded for purposes of computing excess asset basis.

(5) *Prohibition against affirmative use*. This paragraph (g) does not apply to an inbound nonrecognition transaction if a transaction described in paragraph (g)(1) of this section was entered into with a principal purpose of subjecting the inbound nonrecognition transaction to this paragraph (g). For example, this paragraph (g) will not apply to an inbound nonrecognition transaction if a taxpayer engaged in a transaction described in paragraph (g)(1) of this section with a principal purpose of accessing tax attributes of lower-tier foreign subsidiaries by reason of a deemed distribution of lower-tier earnings of the foreign acquired corporation.

(6) *Examples*. The application of this paragraph (g) is illustrated by the examples in this paragraph (g)(6). In each example, all corporations have a calendar year-end and use the United States dollar as their functional currency.

(i) *Example 1: Excess asset basis from triangular reorganization*—(A) *Facts*.

USP, a domestic corporation, owns all of the stock of USS, also a domestic corporation, and 80 percent of the stock of FP, a foreign corporation. USS owns the remaining 20 percent of the stock of FP. FP owns all of the stock of FS1, which in turn owns all of the stock of FS2. Both FS1 and FS2 are foreign corporations. In a reorganization described in section 368(a)(1)(F) (F reorganization), US Newco, a newly formed domestic corporation, acquires all of the assets of FP solely in exchange for stock of US Newco, which FP distributes to USP and USS in liquidation. Immediately before the F reorganization, the stock of FP owned by USP has a fair market value of \$80x and an adjusted basis of \$4x. The stock of FP owned by USS has a fair market value of \$20x and an adjusted basis of \$1x. The all earnings and profits amounts with respect to USP's stock of FP and USS's stock of FP, determined before any adjustments required by paragraph (g)(1) of this section, are \$32x and \$8x, respectively. FP holds assets with an adjusted basis of \$95x, has no

liabilities, and has \$40x of earnings and profits attributable to its outstanding stock. FS1 and FS2 have \$30x and \$70x of earnings and profits, respectively, all of which are described in section 959(c)(3). Dividends paid by FS2 to FS1, and by FS1 to FP, would qualify for the exception to foreign personal holding company income under section 954(c)(6). Before the applicability date described in paragraph (g)(7)(i) of this section, and separate from the F reorganization, FS1 provided property to FP in exchange for stock of FP in connection with a triangular reorganization described in § 1.358–6(b)(2), and neither FP nor FS1 made adjustments that had the effect of a distribution of property from FS1 to FP under § 1.367(b)–10(b)(1).

(B) *Analysis*—(1) *All earnings and profits amount*. The F reorganization is an asset acquisition described in section 368(a)(1) and is thus subject to section 367(b) and this section. Under paragraph (b)(3) of this section, USP and USS each must include in income as a deemed dividend the all earnings and profits amount with respect to their stock of FP. Because there is excess asset basis with respect to FP (as determined in paragraph (g)(6)(i)(B)(2) of this section), USP and USS must compute the all earnings and profits amounts attributable to their stock of FP as if FP had received a distribution of specified earnings, immediately before the F reorganization. See paragraph (g)(1) of this section. Because the stock of FS2 is indirectly owned by FP, to the extent the specified earnings are determined by reference to the earnings and profits of FS2, FS2 is treated as making a distribution to FS1 under section 301, and FS1 is then treated as making a distribution to FP under section 301 in an amount equal to the sum of the amount of specified earnings determined by reference to the earnings and profits of FS1 (determined without regard to the deemed distribution from FS2) and the amount of the deemed distribution received from FS2. See *id.*

(2) *Excess asset basis*. The amount of excess asset basis is \$50x, calculated as the amount by which FP's inside asset basis (\$95x) exceeds the sum of FP's earnings and profits (\$40x), the aggregate basis in the outstanding stock of FP (\$5x), and the amount of liabilities of FP assumed by US Newco in the F reorganization (\$0). See paragraph (g)(2)(i) of this section.

(3) *Deemed distribution of specified earnings*. The amount of specified earnings equals \$50x, the lesser of the following amounts: the sum of the earnings and profits of FS1 and FS2 (\$100x); and the amount of excess asset

basis with respect to FP (\$50x). *See* paragraph (g)(2)(viii) of this section. FP is accordingly treated as receiving a distribution of \$50x from FS1. *See* paragraph (g)(1) of this section. Under paragraph (g)(3) of this section, \$15x ($\$50x \times (\$30x/\$100x)$) of FS1's earnings and profits and \$35x ($\$50x \times (\$70x/\$100x)$) of FS2's earnings and profits are designated as specified earnings. FS2 is treated as distributing \$35x to FS1. *See* paragraph (g)(1) of this section. Under sections 301(c)(1) and 954(c)(6), the \$35x deemed distribution from FS2 to FS1 is treated as a dividend that does not give rise to foreign personal holding company income. FS1 must accordingly increase its earnings and profits described in section 959(c)(3) by \$35x, and FS2 must decrease its earnings and profits described in section 959(c)(3) by the same amount. FS1 is then treated as making a distribution of \$50x to FP. *See* paragraph (g)(1) of this section. Under sections 301(c)(1) and 954(c)(6), the \$50x deemed distribution is also treated as a dividend that does not give rise to foreign personal holding company income. FP must accordingly increase its earnings and profits described in section 959(c)(3) by \$50x to \$90x, and FS1 must decrease its earnings and profits described in section 959(c)(3) by the same amount.

(4) *Adjusted all earnings and profits amount attributable to USP's FP stock.* USP must compute the all earnings and profits amount attributable to its stock of FP after taking into account the \$50x increase to FP's earnings and profits that resulted from the deemed distribution of specified earnings. *See* paragraph (g)(1) of this section. Because USP owns 80% of the stock of FP, \$40x (calculated as 80% of \$50x) of the specified earnings are attributable to USP's stock of FP and are included in the all earnings and profits amount attributable to USP's stock of FP. The all earnings and profits amount that USP must include in income as a deemed dividend is therefore \$72x ($\$32x + \$40x$).

(5) *Adjusted all earnings and profits amount attributable to USS's FP stock.* USS must compute the all earnings and profits amount attributable to its stock of FP after taking into account the \$50x increase to FP's earnings and profits that resulted from the deemed distribution of specified earnings. *See* paragraph (g)(1) of this section. Because USS owns 20% of the stock of FP, \$10x (calculated as 20% of \$50x) of the specified earnings are attributable to USS's stock of FP and are included in the all earnings and profits amount attributable to USS's stock of FP. The all earnings and profits amount that USS must include in

income as a deemed dividend is therefore \$18x ($\$8x + \$10x$).

(ii) *Example 2: Principal purpose of creating excess asset basis—(A) Facts.* USP, a domestic corporation, owns all of the stock of FP, which in turn owns all of the stock of FS. Both FP and FS are foreign corporations. The all earnings and profits amount with respect to USP's stock of FP, determined before any adjustments required by paragraph (g)(1) of this section, is \$50x. FP has no other earnings and profits other than the \$50x that reflect USP's all earnings and profits amount. FS has \$200x of earnings and profits, all of which are earnings and profits described in section 959(c)(2) (PTEP) because those earnings and profits gave rise to an earlier income inclusion under section 951 with respect to USP. Increases in stock basis were made under section 961 by reason of USP's section 951 inclusion. FP has excess asset basis of \$100x as a result of a previous transaction that was undertaken with a principal purpose of creating excess asset basis in which FS provided \$100x of property to FP. At the time of that transaction, FP did not also have a principal purpose of subjecting an inbound nonrecognition transaction to this paragraph (g) and thus paragraph (g)(5) of this section is not applicable. Subsequently, in a liquidation described in section 332, FP distributes all of its assets to USP and the stock of FP is cancelled (the FP liquidation).

(B) *Analysis—(1) All earnings and profits amount.* The FP liquidation is subject to section 367(b) and this section. Under paragraph (b)(3) of this section, USP must include in income as a deemed dividend the all earnings and profits amount with respect to its stock of FP. Because there is excess asset basis with respect to FP, USP must compute the all earnings and profits amount attributable to its stock of FP as if FP had received a distribution of specified earnings immediately before the FP liquidation. *See* paragraph (g)(1) of this section.

(2) *Deemed distribution of specified earnings.* The amount of specified earnings equals \$100x, the lesser of the following amounts: the earnings and profits of FS (\$200); and the amount of excess asset basis with respect to FP (\$100x). *See* paragraph (g)(2)(viii) of this section. FS is accordingly treated as making a distribution of \$100x to FP. *See* paragraph (g)(1) of this section. Under sections 301(c)(1) and 959(b), the \$100x deemed distribution from FS to FP is treated as a distribution of PTEP that is not included in the gross income of FP for purposes of section 951. The distribution reduces FS's earnings and

profits and PTEP with respect to USP by \$100x and increases FP's earnings and profits and PTEP with respect to USP by \$100x. Furthermore, appropriate adjustments are made under section 961 for the distribution of PTEP.

(3) *Adjusted all earnings and profits amount attributable to USP's stock of FP.* USP must compute the all earnings and profits amount attributable to its stock of FP after taking into account the \$100x increase to FP's earnings and profits that resulted from the deemed distribution of specified earnings. *See* paragraph (g)(1) of this section. Because the deemed distribution consisted entirely of PTEP with respect to USP, the deemed distribution does not affect USP's all earnings and profits amount of \$50x. *See* § 1.367(b)–2(d)(2)(ii). USP must therefore include \$50x in income as a deemed dividend under this section. USP must also recognize any foreign currency gain or loss under section 986(c) with respect to the \$100x of PTEP of FP. *See* § 1.367(b)–2(j)(2).

(7) *Applicability date—(i) In general.* This paragraph (g) (other than paragraphs (g)(2)(viii), (g)(3) and (5) of this section) applies to transactions completed on or after December 2, 2016, and to any transactions treated as completed before December 2, 2016, as a result of an entity classification election made under § 301.7701–3 of this chapter that is filed on or after December 2, 2016. Paragraphs (g)(2)(viii), (g)(3) and (5) of this section apply to transactions completed on or after October 5, 2023.

(ii) *Transactions completed (or elections made) on or after December 2, 2016, and before October 5, 2023.* Except as provided in paragraph (g)(7)(iii) of this section, the following definitions (in lieu of the corresponding definitions or in addition to the definitions in paragraph (g)(2) of this section) and rules apply with respect to transactions completed on or after December 2, 2016, and to any transactions treated as completed before December 2, 2016, as a result of an entity classification election made under § 301.7701–3 of this chapter that is filed on or after December 2, 2016, but before October 5, 2023:

(A) The term *specified earnings* means, with respect to the stock of a foreign acquired corporation that is exchanged by an exchanging shareholder, the lesser of the following amounts (but not below zero):

(1) The sum of the earnings and profits (including a deficit) with respect to each foreign subsidiary of the foreign acquired corporation that are attributable under section 1248(c)(2) to the stock of the foreign acquired

corporation exchanged (lower-tier earnings). For purposes of the preceding sentence, the modifications described in § 1.367(b)–2(d)(2) and (d)(3)(i) apply. Thus, for example, the amount of the earnings and profits of a foreign subsidiary that are attributable to stock of the foreign acquired corporation is determined without regard to whether the foreign subsidiary was a controlled foreign corporation at any time during the five years preceding the inbound nonrecognition transaction.

(2) The product of the excess asset basis of the foreign acquired corporation, multiplied by the exchanging shareholder's specified percentage.

(3) The amount of gain that would be realized by the exchanging shareholder if, immediately before the inbound nonrecognition transaction, the exchanging shareholder had sold the stock of the foreign acquired corporation for fair market value, reduced by the exchanging shareholder's all earnings and profits amount (for this purpose, determined without regard to the modifications described in this paragraph (g)) (specified stock gain).

(B) The term *specified percentage* means, with respect to an exchanging shareholder, a fraction (expressed as a percentage), the numerator of which is the sum of the aggregate of the specified stock gain with respect to all exchanging shareholders to which paragraph (b)(3) of this section applies and the aggregate of the gain realized (regardless of whether such gain is recognized) with respect to the stock exchanged by all other exchanging shareholders.

(C) If there is excess asset basis with respect to a foreign acquired corporation, as determined under paragraph (g)(2)(i) of this section, a taxpayer may reduce the excess asset basis to the extent that the excess asset basis is not attributable, directly or indirectly, to property provided by a foreign subsidiary of the foreign acquired corporation. For example, if there was a transfer of property to the foreign acquired corporation described in section 362(e)(2), and the election described in section 362(e)(2)(C) was made to limit the basis in the stock received in the foreign acquired corporation to its fair market value, then, for purposes of determining excess asset basis, the basis in the stock of the foreign acquiring corporation may be determined without regard to the application of section 362(e)(2).

(iii) *Early application.* A taxpayer and its related parties (within the meaning of sections 267(b) and 707(b)(1)) may choose to apply paragraphs (g)(1) through (6) of this section to all open

taxable years beginning before July 17, 2024, provided that the taxpayer and its related parties consistently apply paragraphs (g)(1) through (6) of this section and § 1.367(b)–1(c)(4)(ix) for such years.

■ **Par. 6.** Section 1.367(b)–4 is amended by:

■ 1. In paragraph (a), adding a sentence after the fifth sentence;

■ 2. In paragraph (a), removing the language “paragraph (g)” in the current sixth sentence and adding in its place the language “paragraph (h)” and removing the language “paragraph (h)” in the current seventh sentence and adding in its place the language “paragraph (i)”;

■ 3. In paragraph (e)(5) *Example 2* (ii)(B), removing the language “paragraph (g)(1)” wherever it appears and adding in its place the language “paragraph (h)(1)”;

■ 4. In paragraph (f)(3) *Example 2* (ii), removing the language “paragraph (g)(1)” wherever it appears and adding in its place the language “paragraph (h)(1)”;

■ 5. Redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively;

■ 6. Adding a new paragraph (g);

■ 7. In newly redesignated paragraph (i), adding a sentence after the sixth sentence; and

■ 8. In newly redesignated paragraph (i), removing the language “paragraph (h), paragraphs (a), (b) introductory text, (b)(1)(i)(C), (d)(1), (e), (f), and (g)” and adding in its place the language “paragraph (i), paragraphs (a), (b) introductory text, (b)(1)(i)(C), (d)(1), (e), (f), and (h)”, and removing the language “paragraphs (f) and (g)(5)” and adding in its place the language “paragraphs (f) and (h)(5)”.

The additions read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) * * * Paragraph (g) of this section provides rules regarding exchanges that occur pursuant to a transaction described in § 1.367(b)–10(a)(1), without regard to the exceptions in § 1.367(b)–10(a)(2). * * *

* * * * *

(g) *Income inclusion and gain recognition in exchanges occurring in connection with certain triangular reorganizations—(1) Rule.* If, in an exchange under section 354 or 356 that occurs in connection with a transaction described in § 1.367(b)–10, an exchanging shareholder exchanges stock or securities of a foreign acquired corporation, then, to the extent that the

exchanging shareholder receives stock or securities of P acquired by S in exchange for property in the P acquisition, the shareholder must—

(i) Include in income as a deemed dividend the section 1248 amount attributable to the stock that the shareholder exchanges; and

(ii) After taking into account the increase in basis in the stock provided in § 1.367(b)–2(e)(3)(ii) resulting from the deemed dividend (if any), recognize all realized gain with respect to the stock or securities that would not otherwise be recognized.

(2) *Special rules and definitions.* For the purposes of this paragraph (g), an *exchanging shareholder* means a United States person or foreign person that exchanges stock of a foreign acquired corporation in a prescribed exchange, regardless of whether such United States person is a section 1248 shareholder or such foreign person is a foreign corporation in which a United States person is a section 1248 shareholder. As used in this paragraph (g), the terms P, S, property, and P acquisition have the meanings provided in § 1.367(b)–10(a), and the term *foreign person* means a person that is not a United States person.

(3) *Example.* The following example illustrates the rules of this paragraph (g):

(i) *Facts.* USP, a domestic corporation, owns all of the stock of FP and USS. FP is a foreign corporation that owns all of the stock of FS, a foreign corporation. USS is a domestic corporation that owns all of the stock of FT, a foreign corporation. USS owns 100 shares of stock of FT, which constitutes a single block of stock with a fair market value of \$100x, an adjusted basis of \$20x, and a section 1248 amount of \$50x. FS has earnings and profits of \$60x. A dividend from FS to FP would qualify for the exception to foreign personal holding company income under section 954(c)(6). FP issues 100 shares of voting stock with a fair market value of \$100x to FS, \$40x of which (the 40-percent FP block) is issued in exchange for \$40x of newly issued common stock of FS and \$60x of which (the 60-percent FP block) is issued in exchange for \$60x of cash. FS acquires all of the stock of FT held by USS solely in exchange for the \$100x of voting stock of FP (that is, FS exchanges both the 40-percent FP block and the 60-percent FP block) in a triangular reorganization described in section 368(a)(1)(B) (triangular B reorganization).

(ii) *Analysis—(A) Application of § 1.367(b)–10.* The triangular B reorganization is described in § 1.367(b)–10, and the \$60x of cash constitutes property under § 1.367(b)–

10(a)(3)(ii). Pursuant to § 1.367(b)–10(b)(1), adjustments must be made that have the effect of a distribution of property in the amount of \$60x from FS to FP under section 301. The \$60x deemed distribution is treated as separate from, and occurring immediately before, FS's acquisition of the 60-percent FP block used in the triangular B reorganization. The \$60x deemed distribution from FS to FP results in \$60x of dividend income to FP under section 301(c)(1) that is not foreign personal holding company income under section 954(c)(6).

(B) *Application of paragraph (g) of this section.* Pursuant to § 1.367(a)–3(a)(2)(iv)(B), this paragraph (g) applies to \$60x of the stock of FT (the 60-percent FT block) exchanged for the 60-percent FP block. Thus, under paragraph (g)(1)(i) of this section, USS must include in income a \$30x deemed dividend (representing 60 percent of USS's \$50x section 1248 amount) with respect to the 60-percent FT block exchanged for the 60-percent FP block. In addition, under paragraph (g)(1)(ii) of this section, USS must recognize its realized gain that would not otherwise be recognized with respect to the 60-percent FT block. USS's fair market value and adjusted basis in the 60-percent FT block are \$60x (60 percent of the \$100x fair market value of the stock of FT) and \$12x (60 percent of the \$20x adjusted basis of the stock of FT), respectively. USS's initial built-in gain with respect to the 60-percent FT block is accordingly \$48x (\$60x fair market value less \$12x adjusted basis). The \$30x deemed dividend increases USS's basis in the 60-percent FT block to \$42 (\$12x + \$30x), leaving \$18x (\$60x – \$42x) of built-in gain. USS must therefore recognize the remaining \$18x of gain with respect to the 60-percent FT block.

(C) *Application of paragraph (b) of this section and regulations under section 367(a).* USS has \$32x of built-in gain in the remaining \$40x of stock of FT (the 40-percent FT block) that USS exchanged for the 40-percent FP block, calculated as USS's initial \$80 of built-in gain in all of its stock of FT less the \$48x of initial built-in gain attributable to the 60-percent FT block. USS's section 1248 amount in the 40-percent FT block is \$20x, calculated as 40 percent of USS's \$50x section 1248 amount. USS does not recognize a deemed dividend of the \$20x section 1248 amount under paragraph (b) of this section because FT remains a controlled foreign corporation with respect to which USS is a section 1248 shareholder immediately after the triangular B reorganization. Unless USS

properly files a gain recognition agreement pursuant to §§ 1.367(a)–3(b) and 1.367(a)–8, USS recognizes the \$32x of built-in gain under section 367(a)(1) with respect to the 40-percent FT block.

(i) * * * Paragraph (g) of this section applies to transactions completed on or after December 2, 2016. * * *

■ **Par. 7.** Section 1.367(b)–6 is amended by adding paragraphs (a)(1)(v) and (vi) to read as follows:

§ 1.367(b)–6 Effective/applicability dates and coordination rules.

(a) * * *
(1) * * *

(v) Section 1.367(b)–2(j)(2) applies to transactions completed on or after October 5, 2023, and to any transactions treated as completed before October 5, 2023, as a result of an entity classification election made under § 301.7701–3 of this chapter that is filed on or after October 5, 2023.

(vi) Section 1.367(b)–1(c)(2)(vi), (c)(4)(viii), and (c)(4)(ix) apply to taxable years ending on or after October 5, 2023. However, a taxpayer and its related parties (within the meaning of sections 267(b) and 707(b)(1)) may choose to apply the rules referred to in the preceding sentence to all open taxable years ending before October 5, 2023, provided that the taxpayer and its related parties consistently apply such rules and § 1.367(b)–3(g) for such years.

■ **Par. 8.** Section 1.367(b)–10 is amended by:

- 1. Adding two sentences to the end of paragraph (a)(1);
- 2. Revising paragraphs (a)(2)(ii) and (iii);
- 3. Removing the language “and” at the end of paragraph (a)(3)(ii)(A);
- 4. Removing the period at the end of paragraph (a)(3)(ii)(B) and adding the language “; and” in its place;
- 5. Adding paragraph (a)(3)(ii)(C);
- 6. Removing paragraph (b)(2);
- 7. Redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(2), (3), and (4), respectively;
- 8. Revising newly redesignated paragraph (b)(2);
- 9. Adding two sentences to the end of newly redesignated paragraph (b)(3);
- 10. In newly redesignated paragraph (b)(4)(ii), removing the sixth sentence, revising the current seventh sentence, and adding two sentences at the end of the paragraph; and
- 11. Revising paragraphs (c), (d), and (e).

The revisions and additions read as follows:

§ 1.367(b)–10 Acquisition of parent stock or securities for property in triangular reorganizations.

(a) * * *
(1) * * * See § 1.367(b)–3(g) for the treatment of certain inbound nonrecognition transactions following transactions described in this section. See § 1.367(b)–4(g) for rules applicable to certain exchanging shareholders that exchange stock of T in connection with a transaction described in this section.

(2) * * *
(ii) S is a domestic corporation, P is not a controlled foreign corporation (within the meaning of § 1.367(b)–2(a)), P's stock in S is not a United States real property interest (within the meaning of section 897(c)), and the deemed distribution that would result from the application of this section would not be treated as a dividend under section 301(c)(1) that would be subject to U.S. tax under either section 881 (for example, by reason of an applicable treaty or by reason of an absence of earnings and profits) or section 882; or

(iii) In an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T and the amount of gain in the T stock or securities that would otherwise be recognized under section 367(a)(1) is equal to or greater than the sum of the amount of the deemed distribution under this section that would be treated and subject to U.S. tax as a dividend under section 301(c)(1) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) and the amount of such deemed distribution that would be treated and subject to U.S. tax as gain from the sale or exchange of property under section 301(c)(3) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) if this section would otherwise apply to the triangular reorganization. The exception provided in this paragraph (a)(2)(iii) does not apply if T is a foreign corporation. See § 1.367(a)–3(a)(2)(iv) (providing a similar rule that excludes certain transactions from the application of section 367(a)(1)).

(3) * * *
(ii) * * *
(C) Stock of S that is nonqualified preferred stock (as defined in section 351(g)(2)).

(b) * * *
(2) *Timing of deemed distribution.* If P controls (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraph (b)(1) of this section are made as if the deemed distribution is a

separate transaction occurring immediately before the P acquisition. If P does not control (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraph (b)(1) of this section are made as if the deemed distribution is a separate transaction occurring immediately after P acquires control of S, but before the reorganization.

(3) * * * Thus, P's adjustment to the basis in its S stock under § 1.358-6 is determined as if P provided the P stock or securities pursuant to the plan of reorganization, notwithstanding that S acquired the P stock or securities in exchange for property in the P acquisition. *See also* § 1.367(b)-13.

(4) * * *
(ii) * * * Pursuant to paragraph (b)(2) of this section, the adjustments described in paragraph (b)(1) of this section are made as if the deemed distribution is a separate transaction occurring immediately before FS's purchase of the P stock on the open market. * * * US1's transfer of its FT stock in exchange for P stock is subject to § 1.367(b)-4(g). If, contrary to the facts in this paragraph (b)(4), US1 had built-in gain with respect to its FT stock, then such gain would be recognized in accordance with § 1.367(b)-4(g).

(c) *Collateral adjustments.* This paragraph (c) provides additional rules that apply by reason of the deemed distribution described in paragraph (b)(1) of this section. A deemed distribution described in paragraph (b)(1) of this section is treated as occurring for all purposes of the Internal Revenue Code. Thus, for example, the ordering rules of section 301(c) apply to characterize the deemed distribution to P as a dividend from the earnings and profits of S, return of stock basis, or gain from the sale or exchange of property, as the case may be. Furthermore, section 959 may apply to the deemed distribution if S is a foreign corporation, and section 881, 882, 897, 1442, or 1445 may apply to the deemed distribution if S is a domestic corporation. Appropriate corresponding adjustments must be made to S's earnings and profits consistent with the principles of section 312.

(d) *Anti-abuse rule—(1) Rule.* Appropriate adjustments must be made pursuant to this section if, in connection with a triangular reorganization, a transaction is engaged in with a view to avoid the purpose of this section. For example, if S is created, organized, or funded to avoid the application of this section with respect to the earnings and profits of another corporation, the earnings and profits of S (or any successor corporation) may be deemed

to include the earnings and profits of such other corporation (or any successor corporation) for purposes of determining the consequences of the adjustments provided in this section, and appropriate corresponding adjustments may be made to account for the application of this section to the earnings and profits of such other corporation (or any successor corporation). Adjustments may be made under this paragraph (d) whether S is funded before or after a triangular reorganization, and such funding may include capital contributions, loans, and distributions. The following examples illustrate the application of this paragraph (d), the application of which is not limited to the particular situations described in the examples.

(2) *Example 1: Deemed increase to S's earnings and profits—(i) Facts.* FP is a foreign corporation that owns all of the stock of USS, a domestic corporation. USS has no assets, liabilities, or earnings and profits. FP issues \$10x of voting stock to USS in exchange for \$10x of newly issued stock of USS, and FP also issues \$90x of voting stock to USS in exchange for a note newly issued by USS with a fair market value of \$90x (USS note). FP would be subject to U.S. tax under section 881 on a distribution from USS if, contrary to the facts, USS had earnings and profits for purposes of applying section 301(c) to the distribution. USS acquires all the stock of UST, a domestic corporation that is unrelated to FP and USS, from a foreign person in exchange for the \$100x of voting stock of FP in a triangular reorganization described in section 368(a)(1)(B) (triangular B reorganization). UST has \$100x of earnings and profits. USS's purchase of the \$90x of stock of FP in exchange for the USS note in connection with the triangular B reorganization is engaged in with a view to avoid the purpose of this section.

(ii) *Analysis.* Because USS's purchase of the \$90x of stock of FP in exchange for the USS note is engaged in with a view to avoid the purpose of this section, the anti-abuse rule applies and appropriate adjustments are made. In particular, for purposes of determining the consequences of the deemed distribution provided for in paragraph (b)(1) of this section, the earnings and profits of USS are deemed to include the earnings and profits of UST. USS is therefore treated as having made a deemed distribution equal to \$90x, which reflects the portion of the stock of FP that USS acquired in exchange for property (the USS note). Because USS is deemed to have \$100x of earnings and profits, the entire \$90x deemed

distribution is treated as a dividend under section 301(c)(1). The deemed distribution is treated as separate from, and occurring immediately before, USS's acquisition of the stock of FP used in the triangular B reorganization. No adjustments are made by FP to the basis in its stock of USS except as provided in § 1.358-6. Under paragraph (b)(3) of this section, FP's adjustment to the basis in its stock of USS under § 1.358-6 is determined as if FP provided all \$100x of the stock of FP pursuant to the plan of reorganization.

(3) *Example 2: Downstream property transfer—(i) Facts.* USP is a domestic corporation that owns all of the stock of FS1, a foreign corporation. FS1 holds a note receivable issued by USP with a fair market value of \$100x (USP note), and FS1 has more than \$100x of earnings and profits. USP has no income inclusion under section 951(a)(1)(B) with respect to the USP note after the application of § 1.956-1(a)(2). FS1 forms USS Newco, a domestic corporation, to which it transfers the USP note in exchange for voting stock of USS Newco. USS Newco then forms FS2 Newco, a foreign corporation, and FS1 transfers all of its remaining assets (except for its stock in USS Newco) to FS2 Newco in exchange for additional voting stock of USS Newco in a transaction intended to qualify as a triangular reorganization described in section 368(a)(1)(C) (triangular C reorganization). FS1 liquidates into USP pursuant to the triangular C reorganization, and USP receives the stock of USS Newco held by FS1. FS1's transfer of the USP note to USS Newco in connection with the intended triangular C reorganization is engaged in with a view to avoid the purpose of this section.

(ii) *Analysis.* Because FS1's transfer of the USP note to USS Newco is in connection with a triangular reorganization and is engaged in with a view to avoid the purpose of this section, the anti-abuse rule applies and appropriate adjustments are made. FS1's formation of USS Newco and transfer of the USP note to USS Newco, together with the distribution of the shares of USS Newco pursuant to the liquidation of FS1, is treated under the anti-abuse rule as a distribution of \$100x, consistent with its substance. Accordingly, adjustments are made consistent with there having been such a distribution. Because FS1 has more than \$100x of earnings and profits, the adjustments made are consistent with USS Newco having received a \$100x dividend from FS1 separate from, and immediately before, the triangular C reorganization. USS Newco must

therefore include \$100x in gross income as if it had received that amount as a dividend and increase its earnings and profits by the same amount. FS1 must decrease its earnings and profits by \$100x. For purposes of determining USS Newco's basis in its stock of FS2 Newco, § 1.367(b)–13 applies by treating USS Newco as P (within the meaning of § 1.367(b)–13(a)(2)(ii)). Under paragraph (b)(3) of this section, USS Newco's adjustment to the basis in its FS2 Newco stock under § 1.367(b)–13 is determined as if USS Newco provided the stock of USS Newco stock pursuant to the plan of reorganization.

(4) *Example 3: Taxable debt exchange*—(i) *Facts*. USP is a domestic corporation that owns all of the stock of FP, a foreign corporation, and USS, a domestic corporation. Furthermore, FP owns all of the stock of FS, a foreign corporation, and USS owns all of the stock of UST, a domestic corporation. FP has no earnings and profits, and FS has more than \$100x of earnings and profits. USP will not satisfy the requirements of sections 245A and 246(c) with respect to dividends received from FP. FS transfers a note issued by FS with a fair market value of \$100x (FS note) to FP in exchange for \$100x of voting stock of FP, and FS then uses the stock of FP to acquire all of the stock of UST held by USS in a triangular reorganization described in section 368(a)(1)(B) (triangular B reorganization). Because a dividend from FS to FP would not constitute foreign personal holding company income under section 954(c)(6), the taxpayer asserts that the exception in paragraph (a)(2)(iii) of this section applies and therefore does not make any adjustments pursuant to this section. FP then transfers the FS note to USP in exchange for a note issued by USP with a fair market value of \$100x (USP note). The USP note constitutes United States property within the meaning of section 956(c), and USP would otherwise have an inclusion under section 951(a)(1)(B) and § 1.956–1(a)(2) if FP had earnings and profits. FS's transfer of the FS note to FP, and FP's subsequent transfer of the FS note to USP in connection with the triangular B reorganization, are engaged in with a view to avoid the purpose of this section.

(ii) *Analysis*. Because the transfers of the FS note are in connection with a triangular reorganization and are engaged in with a view to avoid the purpose of this section, the anti-abuse rule applies and appropriate adjustments are made. FS is therefore treated as having made a distribution to FP of \$100x, reflecting the value of the stock of FP that FS acquired in exchange

for property (the FS note). The deemed distribution is treated as separate from, and occurring immediately before, FS's acquisition of the stock of FP stock used in the triangular B reorganization. Because FS has more than \$100x of earnings and profits, the entire deemed distribution is treated as a dividend under section 301(c)(1). The deemed dividend causes FP to increase its earnings and profits by \$100x but does not constitute foreign personal holding company income to FP under section 954(c)(6). FP thus has \$100x of earnings and profits available to support inclusions under section 951(a)(1)(B) in connection with FP's subsequent acquisition of the USP note. No adjustments are made by FP to the basis in its stock of FS except as provided in § 1.358–6. Under paragraph (b)(3) of this section, FP's adjustment to the basis in its stock of FS under § 1.358–6 is determined as if FP provided the stock of FP pursuant to the plan of reorganization.

(e) *Applicability dates*—(1) *General rule*. This section applies to triangular reorganizations occurring on or after May 17, 2011. For triangular reorganizations that occur before May 17, 2011, see § 1.367(b)–14T as contained in 26 CFR part 1 revised as of April 1, 2011.

(2) *Triangular reorganizations completed on or after April 25, 2014*. The following paragraphs apply to triangular reorganizations that are completed on or after April 25, 2014, unless T was not related to P or S (within the meaning of section 267(b)) immediately before the triangular reorganization; the triangular reorganization was entered into either pursuant to a written agreement that was (subject to customary conditions) binding before April 25, 2014, and at all times afterwards, or pursuant to a tender offer announced before April 25, 2014, that is subject to section 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) and Regulation 14(D) (17 CFR 240.14d–1 through 240.14d–101) or that is subject to comparable foreign laws; and to the extent the P acquisition that occurs pursuant to the plan of reorganization is not completed before April 25, 2014, the P acquisition was included as part of the plan before April 25, 2014:

(i) Paragraph (a)(2)(ii) of this section, to the extent it does not apply where P is a controlled foreign corporation, and to the extent it relates to dividends that would be subject to U.S. tax;

(ii) Paragraph (a)(2)(iii) of this section, to the extent it relates to amounts that would be subject to U.S. tax or give rise to an inclusion under section

951(a)(1)(A) that would be subject to U.S. tax;

(iii) Paragraph (b)(3) of this section, to the extent it relates to P's provision of its stock or securities pursuant to the plan of reorganization; and

(iv) Paragraphs (b) and (c) of this section, to the extent they do not reference the rule described in former paragraph (b)(2) of this section (relating to the deemed contribution), as contained in 26 CFR part 1 revised as of April 1, 2021.

(3) *Transactions completed on or after December 2, 2016*. The following paragraphs apply to transactions completed on or after December 2, 2016:

(i) Paragraph (a)(2)(iii) of this section, to the extent it does not apply where T is a foreign corporation; and

(ii) Paragraph (a)(3)(ii)(C) of this section.

(4) *Deemed distributions that occurred in taxable years ending before November 2, 2020*. Former paragraph (c)(1) of this section, as contained in 26 CFR part 1 revised as of April 1, 2021, to the extent it references section 902, applies to deemed distributions that occur in taxable years ending before November 2, 2020.

(5) *Triangular reorganizations completed on or after October 5, 2023*. Paragraph (a)(2)(iii) of this section, to the extent it relates to amounts that would give rise to an inclusion under section 951A(a) that would be subject to U.S. tax, applies to triangular reorganizations that are completed on or after October 5, 2023.

■ **Par. 9.** Section 1.1248–1 is amended by adding a sentence to the end of paragraph (a)(1) to read as follows:

§ 1.1248–1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

(a) * * *

(1) * * * See § 1.1411–10(c)(3) for additional rules concerning the application of section 1248 for purposes of section 1411.

* * * * *

■ **Par. 10.** Section 1.1411–10 is amended by:

■ 1. In paragraph (c)(3), revising the paragraph heading and removing the language “With respect to stock of a CFC” and adding in its place “With respect to stock of a foreign corporation that is a CFC (or that was a CFC at any time during the 5-year period ending on the date of sale or exchange)”;

■ 2. Revising paragraph (c)(3)(i) and the introductory text of paragraph (c)(3)(ii); and

■ 3. Adding paragraph (d)(5) and adding a sentence to the end of paragraph (i).

The revisions and additions read as follows:

§ 1.1411–10 Controlled foreign corporations and passive foreign investment companies.

* * * *

(c) * * *

(3) *Application of sections 1248 and 367(b).* * * *

(i) In determining the amount of gain recognized on the sale or exchange of stock of a foreign corporation under section 1248(a) or the amount of gain realized on the exchange of stock of a foreign corporation under § 1.367(b)–4 or 1.367(b)–5, basis is determined in accordance with the provisions of paragraph (d) of this section; and

(ii) Section 1248(a), and § 1.367(b)–2(c)(1) and (d)(2)(ii) apply without regard to the exclusions for certain earnings and profits under section 1248(d)(1) and (6), except that those exclusions will apply with respect to the earnings and profits of a foreign corporation that are attributable to:

* * * *

(d) * * *

(5) *Basis adjustments under section 367(b).* With respect to stock of a foreign corporation that is exchanged in a transaction subject to section 367(b), the portion of the basis increase provided by § 1.367(b)–2(e)(3)(ii) by reason of paragraph (c)(3)(ii) of this section is made solely for purposes of section 1411.

* * * *

(i) * * * Paragraph (c)(3) of this section, to the extent it references regulations issued under section 367(b), and paragraph (d)(5) of this section, apply to transactions completed on or after October 5, 2023, and to any transactions treated as completed before October 5, 2023, as a result of an entity classification election made under § 301.7701–3 of this chapter that is filed on or after October 5, 2023.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: June 26, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–15232 Filed 7–17–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Determination

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a determination.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a services determination issued pursuant to an April 6, 2022 Executive Order. The determination was previously issued on OFAC's website.

DATES: The determination was issued on June 12, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: <https://ofac.treasury.gov>.

Background

On April 6, 2022, the President, invoking the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), issued Executive Order (E.O.) 14071 of April 6, 2022, “Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression” (87 FR 20999, April 8, 2022). Among other prohibitions, section 1(a)(ii) of E.O. 14071 prohibits the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any category of services as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to any person located in the Russian Federation.

On June 12, 2024, pursuant to delegated authority, the Director of OFAC, in consultation with the Department of State, issued “Determination Pursuant to Section 1(a)(ii) of Executive Order 14071,” which determined that the prohibitions in section 1(a)(ii) of E.O. 14071 shall

apply to the following categories of services: information technology (IT) consultancy and design services; and IT support services and cloud-based services for the following categories of software: enterprise management software and design and manufacturing software.

The determination was made available on OFAC's website (<https://ofac.treasury.gov>) when it was issued. The text of the determination is below.

OFFICE OF FOREIGN ASSETS CONTROL

DETERMINATION PURSUANT TO SECTION 1(a)(ii) OF EXECUTIVE ORDER 14071

Prohibition on Certain Information Technology and Software Services

Pursuant to sections 1(a)(ii), 1(b), and 5 of Executive Order (E.O.) 14071 of April 6, 2022 (“Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression”) and 31 CFR 587.802, and in consultation with the Department of State, I hereby determine that the prohibitions in section 1(a)(ii) of E.O. 14071 shall apply to the following categories of services:

(1) Information technology (IT) consultancy and design services; and
(2) IT support services and cloud-based services for the following categories of software: enterprise management software and design and manufacturing software (collectively, “Covered Software”).

As a result, the following activities are prohibited, except to the extent provided by law, or unless licensed or otherwise authorized by the Office of Foreign Assets Control:

The exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of IT consultancy and design services or of IT support services or cloud-based services for Covered Software to any person located in the Russian Federation.

This determination excludes the following:

(1) Any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States person;

(2) Any service in connection with the wind down or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person;

(3) Any service for software that is:

(i) Subject to the Export Administration Regulations, 15 CFR part 730 *et seq.*, (EAR) and for which the

exportation, reexportation, or transfer (in-country) to the Russian Federation of such software is licensed or otherwise authorized by the Department of Commerce; or

(ii) Not subject to the EAR and for which the exportation, reexportation, or transfer (in-country) to the Russian Federation of such software would be eligible for a license exception or otherwise authorized by the Department of Commerce if it were subject to the EAR.

This determination shall take effect beginning at 12:01 a.m. eastern daylight time on September 12, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2024–15709 Filed 7–17–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2024–OPE–0065]

Research and Development Infrastructure Grant

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) issues priorities, requirements, and definitions for use in the Research and Development Infrastructure (RDI) grant program. The Department may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2024 and later years. We intend for these priorities, requirements, and definitions to help Historically Black Colleges and Universities (HBCUs), Tribal Controlled Colleges and Universities (TCCUs), and Minority-Serving Institutions (MSIs) implement transformational investments in research infrastructure, including research productivity, faculty expertise, graduate programs, physical infrastructure, human capital development, and partnerships leading to increases in external funding.

DATES: These priorities, requirements, and definitions are effective August 19, 2024.

FOR FURTHER INFORMATION CONTACT:

Jason Cottrell, Ph.D., U.S. Department of Education, 400 Maryland Avenue SW, Room 5C122, Washington, DC 20202–4260. Telephone: (202) 453–7530. Email: Jason.Cottrell@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to

access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The RDI grant program is designed to provide HBCUs, TCCUs, and MSIs, including Asian American and Native American Pacific Islander Serving Institutions (AANAPISIs), Alaska Native and Native Hawaiian Serving Institutions (ANNH), Hispanic Serving Institutions (HSIs), Native American Serving Non-Tribal Institutions (NASNTIs), and Predominantly Black Institutions (PBIs), and consortia led by an eligible institution of higher education, with funds to implement transformational investments in research infrastructure, including research productivity, faculty expertise, graduate programs, physical infrastructure, human capital development, and partnerships leading to increases in external and sustained funding.

Assistance Listing Number: 84.116H.
Program Authority: 20 U.S.C. 1138–1138d.

We published a notice of proposed priorities, requirements, and definitions in the **Federal Register** on May 17, 2024 (89 FR 43352) (NPP). That document contained background information and the Department's reasons for proposing the particular priorities, requirements, and definitions. There is one substantive difference between the proposed priorities, requirements, and definitions and these final priorities, requirements, and definitions.

We have added Priority 5, as described below.

Public Comment: In response to our invitation in the NPP, six parties submitted comments on the proposed priorities, requirements, and definitions. Generally, we do not address technical and other minor changes, or suggested changes that the law does not authorize us to make under applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities, requirements, or definitions.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities, requirements, and definitions since publication of the NPP follows.

Priorities

Comments: One commenter suggested that we modify Proposed Priority 1 to support schools that demonstrate intention and realistic capacity to move from any research status under the American Council on Education's Carnegie Classification System to classification as a Research College and

University (RCU) or a Doctoral University with High Research Activity (R2), rather than limiting support to RCU and R2 institutions seeking to move up to classification as R2 or Doctoral University with Very High Research Activity (R1), respectively. The commenter suggested that, if an applicant can demonstrate a realistic prospect of movement into R1, it already has a substantial level of research and development infrastructure and financial capacity.

Discussion: The purpose of the RDI grant program is to support institutions that have limited resources and diverse student enrollments—as the eligible entities, HBCUs, TCCUs, and MSIs, do—with funds to implement transformational investments in research infrastructure to move into R2 or R1 status. Attaining R2 or R1 status assists institutions with recruiting top students and faculty, funding top-of-the-line facilities to conduct research, and producing and disseminating cutting-edge knowledge. While we recognize that a wide range of institutions, regardless of Carnegie classification, could benefit from additional investments in research and development (R&D) infrastructure, the Department believes that these limited funds have the greatest potential to transform R&D infrastructure at institutions if they are targeted to support institutions in making steps towards R2 and R1 status under the Carnegie Classification System. The funding is designed to help institutions move towards R2 or R1 status, regardless of how close they are to achieving it.

Changes: None.

Comments: One commenter proposed amending Proposed Priority 4 to align the Pell Grant recipient threshold from the proposed 50 percent of undergraduate students to the current Department of Education Office of Postsecondary Education standards for Title III and Title V grant programs. The commenter stated that this change would, by aligning requirements across Department programs, ease administrative burden on institutions.

Discussion: The 50 percent Pell recipient threshold in Priority 4 is a higher bar than either of the metrics used for eligibility for titles III and V programs. To be designated as eligible to apply under the titles III and V programs, institutions must demonstrate high enrollment of needy students by meeting either of the following two criteria: (1) at least 50 percent of its degree-seeking students received financial assistance under the Federal Pell Grant, Federal Supplemental

Educational Opportunity Grant (FSEOG), or Federal Work Study (FWS) programs; or (2) the percentage of its undergraduate degree-seeking students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction. For purposes of this priority, we believe this higher standard is appropriate because the explanatory statement originally authorizing funding for this program, contained within Division H of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), specified that these grants are intended to provide “transformational” investments to improve institutions’ R&D infrastructure. The Department believes these funds have the highest potential to transform an institution’s R&D infrastructure if they are targeted to the institutions with the fewest resources that enroll the highest percentages of needy students. We do not believe that this metric imposes any burden upon applicants because the Department will use administrative data to calculate the Pell percentage for applicant institutions.

Changes: None.

Comments: None.

Discussion: As we stated in the NPP, TCCUs currently have their own Carnegie classification and are not included in the R1, R2, or RCU classifications. Accordingly, we proposed Priority 2 for TCCUs, which uses an alternative measure of their R&D infrastructure. Since publication of the NPP, the American Council on Education announced that starting in 2025, TCCUs will be included in the same classification system as HBCUs, MSIs, and other institutions.¹ Therefore, we are adding a priority for TCCUs that mirrors the priorities for HBCUs and MSIs for use following the change to the Carnegie classifications, while maintaining Priority 2 so that the grant program can support TCCUs until such change occurs.

Changes: We have added Priority 5 to support projects proposed by TCCUs to implement high-quality transformative research capacity initiatives designed to move the institution from R2 to R1, or from RCU to R2, research activity status.

Requirements

Comments: Three commenters suggested changes to the match and

waiver requirements. Two commenters proposed eliminating the match and waiver requirements, and another commenter suggested that schools applying under Priorities 2 or 4 should be exempt automatically from the match requirement.

Discussion: We believe that a match requirement will help ensure that there is sufficient institutional investment in the work supported by the grant to achieve and sustain a transformational impact. We recognize that some applicants will have fewer resources, which is the reason we include the exceptions. Rather than creating exceptions for some types of institutions, we think it is simpler to have a general matching requirement and allow low-resourced schools to qualify for a waiver.

Changes: None.

Comments: One commenter suggested that we revise Proposed Requirement 1, Use of Funds, to include “humanities” under allowable activity 1 and that we further specify that faculty development under activity 14 must improve or enhance faculty capacity to manage R&D projects in fields of research for which funds have been awarded under this program.

Discussion: Under activity 1, grantees may use funds to improve infrastructure relating to the enumerated fields, as well as “other disciplines.” The humanities would constitute another discipline under this allowable use of funds, and, accordingly, no change is required. We designed activity 14 relating to faculty professional development to allow for broad support, based on the specific needs of the faculty in the context of the particular project. We do not think that being more prescriptive would benefit grantees.

Changes: None.

Comments: One commenter recommended not restricting the indirect cost rate.

Discussion: The indirect cost reimbursement is limited to 8 percent of a modified total direct cost base. The Department proposed this limitation in order to maximize the Federal resources that support direct costs associated with the project.

Changes: None.

Definitions

Comments: One commenter suggested that the definition for Research Colleges and Universities (RCUs) should include an option to use data from an institution’s annual financial statements instead of data from the National Science Foundation (NSF) Higher Education Research and Development (HERD) survey.

Discussion: To ensure that the program is supporting transformational investments in R&D infrastructure, consistent with the Explanatory Statement for this program, the Department is using the Carnegie Classifications for Institutional Research to determine an institution’s current level of research activity. We believe this is the best measure because of the standardization for doctoral degree production and the measures of institutional dollars expended by the institution annually. Because Carnegie classifications are based on data from the NSF HERD survey, using this measure ensures consistency in how we assess institutional research activity.

Changes: None.

Final Priorities

The Secretary establishes the following priorities for use in the RDI grant program.

Priority 1: Funding for Historically Black Colleges and Universities’ Research and Development Infrastructure.

Projects proposed by HBCUs to implement high-quality transformative research capacity initiatives and designed to move the institution from R2 to R1, or from RCU to R2, research activity status.

Priority 2: Funding for Tribal Controlled Colleges and Universities’ Research and Development Infrastructure.

Projects proposed by TCCUs to improve their research and development activities, including infrastructure, faculty development, and academic programs.

Priority 3: Funding for Minority-Serving Institutions’ Research and Development Infrastructure.

Projects proposed by MSIs to implement high-quality transformative research capacity initiatives and designed to move the institution from R2 to R1, or from RCU to R2, research activity status.

Priority 4: MSI Pell Grant Percentage.

Projects proposed by lead applicants with an enrollment of Pell Grant recipients that accounts for 50 percent or higher of their undergraduate student enrollment, as measured by the Department using the most recent data available in the Integrated Postsecondary Education Data System (IPEDS).

Priority 5: Funding for Tribal Controlled Colleges and Universities’ Research And Development Infrastructure.

Projects proposed by TCCUs to implement high-quality transformative research capacity initiatives and

¹ 2025 Research Designations FAQs—CARNEGIE CLASSIFICATION OF INSTITUTIONS OF HIGHER EDUCATION ([acenet.edu](https://www.acenet.edu)).

designed to move the institution from R2 to R1, or from RCU to R2, research activity status.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Secretary establishes the following requirements for use in the RDI grant program.

Requirement 1—Use of Funds.

Grantees must conduct one or more of the following activities:

(1) Providing for the improvement of infrastructure existing on the date of the grant award, including deferred maintenance, or the establishment of new physical infrastructure, including instructional program spaces, laboratories, and research facilities relating to the fields of science, technology, engineering, the arts, mathematics, health, agriculture, education, medicine, law, and other disciplines.

(2) Hiring and retaining faculty, students, research-related staff, or other personnel, including research personnel skilled in operating, using, or applying technology, equipment, or devices to conduct or support research.

(3) Supporting research internships and fellowships for students, including undergraduate, graduate, and post-doctoral positions, which may include providing direct student financial assistance and other supports to such students.

(4) Creating new, or expanding existing, academic positions, including

internships, fellowships, and post-doctoral positions, in fields of research for which research and development infrastructure funds have been awarded to the grantee under this program.

(5) Creating and supporting inter- and intra-institutional research centers (including formal and informal communities of practice) in fields of research for which research and development infrastructure funds have been awarded to the grantee under this program, including hiring staff, purchasing supplies and equipment, and funding travel to relevant conferences and seminars to support the work of such centers.

(6) Building new institutional support structures and departments that help faculty learn about, and increase faculty and student access to, Federal research and development grant funds and non-Federal academic research grants.

(7) Building data and collaboration infrastructure so that early findings and research can be securely shared to facilitate peer review and other appropriate collaboration.

(8) Providing programs of study and courses in fields of research for which research and development infrastructure funds have been awarded to the grantee under this program.

(9) Paying operating and administrative expenses for, and coordinating project partnerships with members of, the consortium on behalf of which the eligible institution has received a grant under this program, provided that grantees may not pay for the expenses of any R1 institutions that are members of the consortia.

(10) Installing or extending the life and usability of basic systems and components of campus facilities related to research, including high-speed broadband internet infrastructure sufficient to support digital and technology-based learning.

(11) Expanding, remodeling, renovating, or altering biomedical and behavioral research facilities existing on the date of the grant award that received support under section 404I of the Public Health Service Act (42 U.S.C. 283k).

(12) Acquiring and installing furniture, fixtures, and instructional research-related equipment and technology for academic instruction in campus facilities in fields of research for which research and development infrastructure funds have been awarded to the grantee under this program.

(13) Providing increased funding to programs that support research and development at the eligible institution that are funded by the National Institutes of Health, including through

their Path to Excellence and Innovation program.

(14) Faculty professional development.

(15) Planning purposes.

Requirement 2—Indirect Cost Rate Information. A grantee's indirect cost reimbursement is limited to 8 percent of a modified total direct cost base. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www.ed.gov/about/offices/list/ocfo/intro.html.

Requirement 3—Matching Requirements and Exceptions. Grantees must provide a 1:1 match, which can include in-kind donations. The Secretary may waive the matching requirement on a case-by-case basis upon a showing of any of the following exceptional circumstances:

(i) The difficulty of raising matching funds for a program to serve an area with high rates of poverty in the lead applicant's geographic location, defined as a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other Tribal land or county that has a poverty rate of at least 25 percent as determined every 5 years using American Community Survey 5-Year data;

(ii) Serving a significant population of students from low-income backgrounds at the lead applicant location, defined as at least 50 percent (or the eligibility threshold for the appropriate institutional sector available at <https://www2.ed.gov/about/offices/list/ope/itudes/eligibility.html#app>) of degree-seeking enrolled students receiving need-based grant aid under Title IV of the HEA;

(iii) Significant economic hardship as demonstrated by low average educational and general expenditures per full-time equivalent undergraduate student at the lead applicant institution, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction without need of a waiver, as determined by the Secretary in accordance with the annual process for designation of eligible Titles III and V institutions; or

(iv) Information that otherwise demonstrates a commitment to the long-term sustainability of the applicant's projects, such as evidence of a consortium relationship with an R1 institution, a State bond, State matching, planning documents such as

a campus plan, multi-year faculty hiring plan, support of industry, Federal grants received, or a demonstration of institutional commitment that may include commitment from the institution's board.

Requirement 4: Limitation on Grant Awards. The Department will only make awards to applicants that are not the individual or lead applicant in a current active grant from the RDI grant program.

Final Definitions

The Secretary establishes the following definitions for use in the RDI grant program.

Research 1: Very High Research Spending and Doctorate Production (R1) means that an institution has spent at least \$50 million in total research and development (R&D) in a year, as reported to the National Science Foundation (NSF) Higher Education Research and Development (HERD) Survey, and awarded at least 70 research/scholarship doctorates in a year, as reported to IPEDS.

Research 2: High Research Spending and Doctorate Production (R2) means that an institution has spent at least \$5 million in total R&D in a year, as reported to the NSF HERD Survey, and awarded at least 20 research/scholarship doctorates in a year, as reported to IPEDS. It does not include institutions designated R1.

Research Colleges and Universities (RCU) means that an institution has spent at least \$2.5 million in total R&D in a year, as reported to the NSF HERD Survey. It does not include institutions designated R1 or R2.

Historically Black College or University means an institution that meets the eligibility requirements under section 322(2) of the Higher Education Act of 1965, as amended (HEA).

Minority-Serving Institution means an institution that is eligible to receive assistance under sections 317 through 320 of part A of title III, or under title V of the HEA.

Tribal Controlled Colleges or Universities has the meaning ascribed it in section 316(b)(3) of the HEA.

Underrepresented students means students enrolled in postsecondary, career, or technical education who are in one or more of the following subgroups: (i) A student from a low-income background. (ii) A student who is American Indian, Alaska Native, Asian American, Black, Hispanic or Latino, Native Hawaiian, and/or Pacific Islander.

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection

criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use any of these priorities, requirements, or definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as amended by Executive Order 14094. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs

(recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these final priorities, requirements, and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

The potential costs associated with these priorities, requirements, and definitions are minimal, while the potential benefits are significant. The Department believes that this final regulatory action will not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program will outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be burdensome

for eligible applicants, including small entities.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that these final priorities, requirements, and definitions will not have a significant economic impact on a substantial number of small entities.

The small entities that this final regulatory action will affect are IHEs that meet the eligibility requirements described in section 241(1) of the HEA. The Secretary believes that the costs imposed on applicants by the final priorities, requirements, and definitions will be limited to paperwork burden related to preparing an application and that the benefits will outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the final priorities, requirements, and definitions will impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for RDI grant program funds, an eligible applicant would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a grant. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its

development of an application, such as the use of that application to seek funding from other sources to address the institution's R&D infrastructure needs.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it will be able to meet the costs of compliance using the funds provided under this program.

Paperwork Reduction Act of 1995

These final priorities, requirements, and definitions do not contain any information collection requirements.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024-15537 Filed 7-17-24; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2024-0034; FRL-11775-02-R5]

Air Plan Approval; Ohio; OAC Chapter 3745-17 Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to Ohio's particulate matter rules into the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). The revisions to Ohio's particulate matter rules remove provisions for facilities or emissions units that have permanently shut down, update facility names and addresses, and make nonsubstantive revisions to the language of the rules. EPA proposed to approve this action on April 15, 2024, and received two comments.

DATES: This final rule is effective on August 19, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2024-0034. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through <https://www.regulations.gov> or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Emily Crispell, Environmental Scientist, at (312) 353-8512 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Emily Crispell, Air and Radiation Division (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353-8512, crispell.emily@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. Background Information

On January 18, 2024, the Ohio Environmental Protection Agency (Ohio) requested SIP approval of a variety of amendments to its regulations in Ohio Administrative Code (OAC) Chapter 3745-17, entitled “Particulate Matter Standards.” The amended rules include administrative revisions such as the removal of provisions that pertain to facilities that have permanently shut down, renumbering of emissions units

for facilities that have combined operations, and modification of wording for phrases that Ohio wishes to rephrase. Ohio amended its request on February 21, 2024, to request EPA not act on the alternate set of opacity limits mentioned in OAC Rule 3745–17–03. Accordingly, EPA is not acting on those provisions.

EPA proposed to approve the requested revisions to OAC Chapter 3745–17 on April 15, 2024, at 89 FR 26115. The notice of proposed rulemaking (NPRM) provides a more complete discussion of the revisions that Ohio requested be approved and EPA's evaluation of these revisions.

The public comment period for this proposed rule ended on May 15, 2024. EPA received two comments on the proposal. All of the comments received are included in the docket for this action.

The first comment came from an anonymous commenter and pertained to environmental spills that have occurred in Ohio. The second comment came from an anonymous commenter and requested that Executive Order 12898 be reviewed, and that Environmental Justice (EJ) be included in the Ohio SIP process.

Executive Order 12898 (59 FR 7629, February 16, 1994) requires that Federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs Federal agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive Order 14008 (86 FR 7619, February 1, 2021) directs Federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

As the commentator acknowledged, EPA reviewed Ohio's requested rule revisions and determined that due to the editorial nature of the action being taken this action is expected to have a neutral to positive impact on the air quality of the affected area. Since the action is expected to have a neutral to positive impact, consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

Additionally, EPA sets the National Ambient Air Quality Standards at a level to protect the public health, with an adequate margin of safety, including the health of at-risk populations, and protect the public welfare from adverse effects. While EPA recognizes the importance of assessing impacts of our actions on potentially overburdened communities, we believe that our approval of Ohio's request for the revision of OAC Chapter 3745–17 would not exacerbate existing pollution exposure or burdens for populations in Ohio.

We do not consider these comments to be germane or relevant to this action and therefore not adverse to this action. The comments lack the required specificity to the proposed SIP revision and the relevant requirements of CAA section 110. Moreover, none of the comments address a specific regulation or provision in question or recommend a different action on the SIP submission from what EPA proposed. Therefore, we are finalizing our action as proposed. EPA encourages the commenters to remain engaged with stakeholders in the effort to protect human health and the environment.

II. What action is EPA taking?

In response to the NPRM, EPA received two comments which were not relevant to the proposed rulemaking. EPA continues to find that the requested revisions warrant approval for the reasons given in the NPRM. Therefore, EPA is approving the revisions to OAC 3745–17 that Ohio submitted on January 18, 2024, with the exception of selected sections of OAC 3745–17–03 as clarified by Ohio on February 21, 2024. Specifically, EPA is approving Ohio rules 3745–17–01, 3745–17–03 [with the exception of the phrase in 3745–17–03(B)(1)(a) reading “Except as provided in paragraph (B)(1)(b) of this rule” and 3745–17–03(B)(1)(b)], 3745–17–04, 3745–17–07, 3745–17–08, 3745–17–09, 3745–17–10, 3745–17–11, 3745–17–12, 3745–17–13, and 3745–17–14, effective August 25, 2023.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in section II of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov>, and at the EPA Region 5 Office (please contact the

person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

¹ 62 FR 27968 (May 22, 1997).

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and

commercial operations or programs and policies.”

The Ohio did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the editorial nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 10, 2024.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, amend the table in paragraph (c) under “Chapter 3745–17 Particulate Matter Standards” by revising entries “3745–17–01” through “3745–17–14” to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*
Chapter 3745–17 Particulate Matter Standards				
3745–17–01	Definitions and referenced materials.	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
3745–17–03	Measurement methods and procedures.	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	Except for paragraph (B)(1)(b) and the phrase in paragraph (B)(1)(a) reading “Except as provided in paragraph (B)(1)(b) of this rule”.
3745–17–04	Compliance time schedules	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
3745–17–07	Control of visible particulate emissions from stationary sources.	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
3745–17–08	Restriction of emission of fugitive dust.	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
3745–17–09	Restrictions on particulate emissions and odors from incinerators.	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
3745–17–10	Restrictions on particulate emissions from fuel burning equipment.	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	

EPA-APPROVED OHIO REGULATIONS—Continued

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
3745–17–11	Restrictions on particulate emissions from industrial processes.	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
3745–17–12	Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga county.	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
3745–17–13	Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson county.	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
3745–17–14	Contingency plan requirements for Cuyahoga and Jefferson counties.	8/25/2023	7/18/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
*	*	*	*	*

* * * * *

Proposed Rules

Federal Register

Vol. 89, No. 138

Thursday, July 18, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-1887; Project Identifier MCAI-2023-01237-T]

RIN 2120-AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborá Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022-25-07, which applies to all Embraer S.A. Model ERJ 170-100 LR, -100 STD, -100 SE, and -100 SU airplanes; and Model ERJ 170-200 LR, -200 SU, -200 STD, and -200 LL airplanes. AD 2022-25-07 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2022-25-07, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require all actions in AD 2022-25-07 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, and certain structural modifications as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 3, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- **Federal eRulemaking Portal:** Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1887; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For ANAC material, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246-190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203-6600; email pac@anac.gov.br; website anac.gov.br/en/. You may find this material on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

- For Embraer material, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227-901 São José dos Campos—SP—Brasil; telephone +55 12 3927-5852 or +55 12 3309-0732; fax +55 12 3927-7546; email distrib@embraer.com.br; internet flyembraer.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1887.

FOR FURTHER INFORMATION CONTACT: Krista Greer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3221; email Krista.Greer@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2024-1887; Project Identifier MCAI-2023-01237-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Krista Greer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3221; email Krista.Greer@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022-25-07, Amendment 39-22263 (87 FR 77493,

December 19, 2022) (AD 2022–25–07), for all Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and 200 LL airplanes. AD 2022–25–07 was prompted by an MCAI originated by ANAC, which is the aviation authority for Brazil. ANAC issued AD 2022–02–01, dated February 9, 2022 (ANAC AD 2022–02–01) (which corresponds to FAA AD 2022–25–07), to correct an unsafe condition.

AD 2022–25–07 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2022–25–07 to address fatigue cracking of various principal structural elements (PSEs); such cracking could result in reduced structural integrity of the airplane. AD 2022–25–07 addresses safety-significant latent failures; such failures, in combination with one or more other specified failures or events, could result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems. Furthermore, AD 2022–25–07 addresses potential ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions; such failures, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Actions Since AD 2022–25–07 Was Issued

Since the FAA issued AD 2022–25–07, ANAC superseded AD 2022–02–01 and issued ANAC AD 2023–12–01, effective December 15, 2023 (ANAC AD 2023–12–01) (referred to after this as the MCAI), for certain Embraer S.A. Model ERJ 170–100 LR, –100 SE, –100 STD, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 STD, –200 SU, and –200 LL airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed for Part 1—Certification Maintenance Requirements, Part 2—Airworthiness Limitation Inspections (ALI)—Structures, Part 3—Fuel System Limitation Items, and Part 4—Life Limited Items of the EMBRAER 170/175 maintenance review board report (MRBR).

AD 2022–25–07 superseded AD 2019–25–16, Amendment 39–21015 (85 FR 453, January 6, 2020) (AD 2019–25–16). AD 2019–25–16 required incorporating Part 1—Certification Maintenance Requirements, Part 2—Airworthiness Limitation Inspections (ALI)—

Structures, Part 3—Fuel System Limitation Items, and Part 4—Life Limited Items of the EMBRAER 170/175 MRBR.

Since AD 2022–25–07 only required incorporating a new Part 2—Airworthiness Limitation Inspections (ALI)—Structures of the EMBRAER 170/175 MRBR only terminated Part 2—Airworthiness Limitation Inspections (ALI)—Structures of the EMBRAER 170/175 MRBR, as required by AD 2019–25–16.

Therefore, this proposed AD would continue to require the airworthiness limitations specified in paragraphs (g) and (i) of AD 2022–25–07 until the newest airworthiness limitations for Parts 1 through 4 of the EMBRAER 170/175 MRBR are incorporated as specified in paragraph (l) of this proposed AD.

The MCAI also revised the applicability to specify airplanes having only certain serial numbers rather than all serial numbers are affected. The MCAI noted that airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or after July 14, 2023, must comply with the airworthiness limitations specified as part of the airworthiness certification of those airplanes.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address fatigue cracking of various PSEs; such cracking could result in reduced structural integrity of the airplane. The FAA is also proposing this AD to address safety significant latent failures; such failures, in combination with one or more other specified failures or events, could result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems. Furthermore, the FAA is proposing this AD to address potential ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions; such failures, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1887.

Other Relevant Rulemaking

ANAC has also issued ANAC AD 2022–05–02, effective May 13, 2022 (ANAC AD 2022–05–02), which corresponds to FAA AD 2022–11–51, Amendment 39–22074 (87 FR 33623, June 3, 2022) (AD 2022–11–51). AD 2022–11–51 applies to certain Embraer

S.A. Model ERJ 170–200 STD, ERJ 170–200 LR, ERJ 170–200 SU, and ERJ 170–200 LL airplanes. AD 2022–11–51 requires a detailed inspection for cracks of affected wing tip connections, corrective actions if necessary, and revision of the existing maintenance or inspection program. Incorporating MRBR task number 57–30–002–0002, “Enhanced Wingtip to Wing Spar Attachments—Internal” is part of the requirements of paragraph (g) of AD 2022–11–51 and paragraph (h)(6) of AD 2022–11–51 includes exceptions for that task. The FAA issued AD 2022–11–51 to address cracks that could develop on the wing tip connection area that can affect its structural integrity to the point of an in-flight detachment, which, even if sufficient controllability of the airplane is maintained for the safe continuation of the flight, could result in the detached part damaging other airplane parts and affecting controllability, as well as damaging property and injuring persons on the ground.

Since all airplanes affected by AD 2022–11–51 already incorporated MRBR task number 57–30–002–0002, this proposed AD does not require incorporating MRBR task number 57–30–002–0002 as part of the revision of the existing maintenance or inspection program required by paragraphs (i) and (l) of this proposed AD.

Related Material Under 1 CFR Part 51

The FAA reviewed ANAC AD 2023–12–01, effective December 15, 2023. This material specifies new or more restrictive airworthiness limitations for certification maintenance requirements, airplane structures, fuel systems, and safe life limits.

This proposed AD would also require ANAC AD 2022–02–01, effective February 9, 2022, which the Director of the Federal Register approved for incorporation by reference as of January 23, 2023 (87 FR 77493, December 19, 2022).

This proposed AD would also require Appendix A—Airworthiness Limitations of EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 14, dated September 27, 2018; and Embraer Temporary Revision (TR) 14–1, dated November 13, 2018, to Part 4—Life-Limited Items, of Appendix A of EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 14, dated September 27, 2018; which the Director of the Federal Register approved for incorporation by reference as of February 10, 2020 (85 FR 453, January 6, 2020).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2022–25–07. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in ANAC AD 2023–12–01 already described, as proposed for incorporation by reference. Any differences with ANAC AD 2023–12–01 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered,

or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (n)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate ANAC AD 2023–12–01 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2023–12–01 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Material required by ANAC AD 2023–12–01 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2024–1887 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for

accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (e.g., inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under "Additional AD Provisions." This new format includes a "New Provisions for Alternative Actions, Intervals, and CDCCLs" paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, interval, or CDCCL.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 662 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the following costs to comply with the retained actions from AD 2022–25–07:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained structural modifications ...	196 work-hours × \$85 per hour = \$16,660.	\$98,860	\$115,520	Up to \$76,474,240.

* Table does not include estimated costs for revising the existing maintenance or inspection program.

The FAA estimates the total cost per operator for the retained revision of the existing maintenance or inspection program from AD 2022–25–07 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or

inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing

regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive (AD) 2022–25–07, Amendment 39–22263 (87 FR 77493, December 19, 2022); and
 - b. Adding the following new AD:
- Embraer S.A. (Type Certificate Previously Held by Yaborá Indústria Aeronáutica S.A.; Embraer S.A.):** Docket No. FAA–2024–1887; Project Identifier MCAI–2023–01237–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 3, 2024.

(b) Affected ADs

This AD replaces AD 2022–25–07, Amendment 39–22263 (87 FR 77493, December 19, 2022) (AD 2022–25–07).

(c) Applicability

This AD applies to Embraer S.A. Model ERJ 170–100 LR, –100 SE, –100 STD, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 STD, –200 SU, and –200 LL airplanes; certificated in any category, with manufacturer serial numbers 17000002, 17000004 through 17000013 inclusive, and 17000015 through 17000948 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking of various principal structural elements (PSEs); such cracking could result in reduced structural integrity of the airplane. The FAA is also issuing this AD to address safety significant latent failures; such failures, in combination with one or more other specified failures or events, could result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems. Furthermore, the FAA is issuing this AD to address potential ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions; such failures, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program From AD 2019–25–16, Amendment 39–21015 (85 FR 453, January 6, 2020) (AD 2019–25–16), With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2022–25–07, with no changes. For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200LL airplanes; manufacturer serial numbers 17000002, 17000004 through 17000013 inclusive, and 17000015 through 17000761 inclusive: Within 90 days after February 10, 2020 (the effective date of AD 2019–25–16), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Part 1—Certification Maintenance Requirements, Part 2—Airworthiness Limitation Inspections (ALI)—Structures, Part 3—Fuel System Limitation Items, and Part 4—Life Limited Items; and EMBRAER Temporary Revision (TR) 14–1, dated November 13, 2018, to Part 4—Life Limited Items; of Appendix A of the EMBRAER 170/175 MRBR, MRB–1621, Revision 14, dated September 27, 2018 (EMBRAER 170/175 MRB–1621, Revision

14). The initial compliance time for doing the tasks is at the later of the times specified in paragraphs (g)(1) and (2) of this AD.

(1) Within the applicable times specified in EMBRAER 170/175 MRB–1621, Revision 14. For the purposes of this AD, the initial compliance times (identified as “Threshold” or “T” in EMBRAER 170/175 MRB–1621, Revision 14) are expressed in “total flight cycle” or “total flight hours,” as applicable.

(2) Within 90 days or 600 flight cycles after February 10, 2020 (the effective date of AD 2019–25–16), whichever occurs later.

(h) Retained Restrictions on Alternative Actions, Intervals, and CDCCLs, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2022–25–07, with no changes. Except as required by paragraphs (i) and (l) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (n)(1) of this AD.

(i) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2022–25–07, with no changes. For Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes: Except as specified in paragraph (j) of this AD, comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2022–02–01, dated February 9, 2022 (ANAC AD 2022–02–01). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements for Part 2—Airworthiness Limitation Inspections (ALI)—Structures specified in paragraph (g) of this AD only. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (l) of this AD terminates the requirements of this paragraph.

(j) Retained Exceptions to ANAC AD 2022–02–01

(1) Where ANAC AD 2022–02–01 refers to its effective date, this AD requires using January 23, 2023 (the effective date of AD 2022–25–07).

(2) The “Alternative method of compliance (AMOC)” section of ANAC AD 2022–02–01 does not apply to this AD.

(3) Where paragraph (b)(1) of ANAC AD 2022–02–01 specifies incorporating all airworthiness limitations in Part 2 of the material specified in paragraph (b)(1) of ANAC AD 2022–02–01, for this AD, do not incorporate the threshold and interval for maintenance review board report (MRBR) task number 57–30–002–0002, “Enhanced Wingtip to Wing Spar Attachments—Internal.”

Note 1 to paragraph (j)(3): AD 2022–11–51, Amendment 39–22074 (87 FR 33623, June 3, 2022) (AD 2022–11–51), requires, among

other actions, incorporating alternate thresholds and intervals for MRBR task number 57–30–002–0002. The airplanes affected by MRBR task number 57–30–002–0002 are identified in paragraph (c) of AD 2022–11–51.

(k) Retained Provisions for Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2022–25–07, with no changes. Except as required by paragraph (l) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (e.g., inspections), intervals, or CDCCLs are allowed unless they are approved as specified in paragraph (f) of ANAC AD 2022–02–01.

(l) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (m) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Agência Nacional de Aviação Civil (ANAC) AD 2023–12–01, effective December 15, 2023 (ANAC AD 2023–12–01). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements in paragraphs (g) and (i) of this AD.

(m) Exceptions to ANAC AD 2023–12–01

(1) Where ANAC AD 2023–12–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (c) of ANAC AD 2023–12–01 refers to “no alternative inspections or inspection intervals may be used unless the alternative inspection or interval is published in revisions approved by ANAC of the MRB–1621 which are subsequent to Revision 19, dated July 14th, 2023, or approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (d) of this AD,” for this AD, replace that text with “no alternative actions (e.g., inspections), intervals, and CDCCLs may be used unless the alternative action (e.g., inspection), interval, or CDCCL is published in revisions approved by ANAC of the MRB–1621 which are subsequent to Revision 19, dated July 14th, 2023.”

(3) This AD does not adopt paragraph (d) of ANAC AD 2023–12–01.

(4) Where paragraph (b)(1) of ANAC AD 2023–12–01 specifies incorporating all airworthiness limitations in Part 2 of the service information specified in paragraph (b)(1) of ANAC AD 2023–12–01, for this AD, do not incorporate the threshold and interval for MRBR task number 57–30–002–0002, “Enhanced Wingtip to Wing Spar Attachments—Internal.”

Note 2 to paragraph (m)(4): AD 2022–11–51, requires, among other actions, incorporating alternate thresholds and intervals for MRBR task number 57–30–002–0002. The airplanes affected by MRBR task number 57–30–002–0002 are identified in paragraph (c) of AD 2022–11–51.

(n) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (o) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(o) Additional Information

For more information about this AD, contact Krista Greer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3221; email Krista.Greer@faa.gov.

(p) Material Incorporated by Reference

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

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

(3) The following material was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) Agência Nacional de Aviação Civil (ANAC) AD 2023–12–01, effective December 15, 2023.

(ii) [Reserved]

(4) The following material was approved for IBR on January 23, 2023 (87 FR 77493, December 19, 2022).

(i) ANAC AD 2022–02–01, effective February 9, 2022.

(ii) [Reserved]

(5) The following material was approved for IBR on February 10, 2020 (85 FR 453, January 6, 2020).

(i) Appendix A—Airworthiness Limitations of EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 14, dated September 27, 2018.

(ii) Embraer Temporary Revision (TR) 14–1, dated November 13, 2018, to Part 4—Life-Limited Items, of Appendix A of EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 14, dated September 27, 2018.

(6) For ANAC ADs, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email pac@anac.gov.br; website

anac.gov.br/en/. You may find this ANAC AD on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

(7) For Embraer material, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email distrib@embraer.com.br; internet flyembraer.com.

(8) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(9) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations, or email fr.inspection@nara.gov.

Issued on July 9, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–15340 Filed 7–17–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1848; Airspace Docket No. 24–ASO–10]

RIN 2120–AA66

Amendment and Revocation of Domestic Very High Frequency Omnidirectional Range (VOR) Federal Airways; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend domestic Very High Frequency Omnidirectional Range (VOR) Federal Airways V–3, V–35, V–51, V–97, V–157, V–159, V–225, V–437, V–492, V–521, and V–537 and revocation of VOR Federal Airways V–295, V–529, and V–601 in the eastern United States. The FAA is taking this action due to the planned decommissioning of the Cypress, FL (CYY), VOR/Distance Measuring Equipment (VOR/DME); the La Belle, FL (LBV), VOR/Tactical Air Navigation (VORTAC); the Pahokee, FL (PHK), VOR/DME; and the Treasure, FL (TRV), VORTAC. This action is in support of the FAA's VOR Minimum Operational Network (MON) Program.

DATES: Comments must be received on or before September 3, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA-2024-1848 and Airspace Docket No. 24-ASO-10 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493-2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT: Brian Vidis, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the

safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the route structure to maintain the efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

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

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal

business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning to decommission the Cypress, FL (CYY), VOR/DME; the La Belle, FL (LBV), VORTAC; the Pahokee, FL (PHK), VOR/DME; and the Treasure, FL (TRV), VORTAC in April 2025. The Cypress VOR/DME, the La Belle VORTAC, the Pahokee VOR/DME, and the Treasure VORTAC are candidate navigational aids (NAVAID) identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, "Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network)," published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA-2011-1082.

The Air Traffic Service (ATS) routes affected by the planned NAVAID decommissioning are VOR Federal Airways V-3, V-35, V-51, V-97, V-157, V-159, V-225, V-295, V-437, V-492, V-521, V-529, V-537, and V-601. With the planned decommissioning of the Cypress VOR/DME, the La Belle VORTAC, the Pahokee VOR/DME, and the Treasure VORTAC, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected ATS routes. As such, proposed modifications to V-35, V-51, V-97, V-159, V-225, V-437, V-492, V-521, and V-537 would result in the airways being shortened; to V-3 would be redesigned without the decommissioned NAVAID; to V-157 would result in a gap being created; and to V-295, V-529, and V-601 would result in the airways being revoked.

To overcome the proposed modifications to the affected routes, instrument flight rules (IFR) traffic could use adjacent VOR Federal airways or receive air traffic control (ATC) radar vectors to fly through or circumnavigate the affected area. Additionally, IFR pilots operating aircraft equipped with Area Navigation (RNAV) could also use the adjacent RNAV Routes T-208, T-341, T-343, T-345, and T-347; or navigate point-to-point using the existing fixes that will remain in place to support continued operations through the affected area. Visual flight rules (VFR) pilots who elect to navigate via airways through the affected area could also take advantage of ATC services listed previously.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal Airways V-3, V-35, V-51, V-97, V-157, V-159, V-225, V-437, V-492, V-521, and V-537; and revoke VOR Federal Airways V-295, V-529, and V-601 to support the planned decommissioning of the Cypress, FL (CYY), VOR/DME; the La Belle, FL (LBV), VORTAC; the Pahokee, FL (PHK), VOR/DME; and the Treasure, FL (TRV), VORTAC. This action is in support of the FAA's VOR MON Program.

V-3: V-3 currently extends between the Key West, FL (EYW), VORTAC and the intersection of the Savannah, GA (SAV), VORTAC 028° and Allendale, SC (ALD), VOR 116° radials (OWENS Fix); between the Florence, SC (FLO), VORTAC and the Boston, MA (BOS), VOR/DME; and between the Presque Isle, ME (PQI), VOR/DME and the intersection of the Presque Isle VOR/DME 270° and the Millinocket, ME (MLT), VOR/DME 320° radials (LABRE Fix). The FAA proposes to remove the Treasure, FL (TRV), VORTAC from the route and replace it with the intersection of the Palm Beach, FL (PBI), VORTAC 340° True (T)/343° Magnetic (M) and the Lee County, FL (RSW), VORTAC 063°T/065°M radials due to the scheduled decommissioning of the Treasure VORTAC.

Additionally, the FAA proposes to remove the airway segment between the Presque Isle VOR/DME and the LABRE Fix near the United States (U.S.)/Canadian border. The airway structure that connected to the LABRE Fix on the Canadian side of the border has been removed so this airway segment is no longer needed for navigation. As amended, the airway would be changed to extend between the Key West VORTAC and the OWENS Fix; and

between the Florence VORTAC and the Boston VOR/DME.

V-35: V-35 currently extends between the Dolphin, FL (DHP), VORTAC and the Pecan, GA (PZD), VOR/DME; between the intersection of the Dublin, GA (DBN), VORTAC 309° and the Athens, GA (AHN), VOR/DME 195° radials (SINCA Fix) and the Morgantown, WV (MGW), VOR/DME; and between the Philipsburg, PA (PSB), VORTAC and the Stonyfork, PA (SFK), VOR/DME. The FAA proposes to remove the airway segments between the Dolphin VORTAC and the Lee County, FL (RSW), VORTAC due to the scheduled decommissioning of the Cypress, FL (CYY), VOR/DME. As amended, the airway would be changed to extend between the Lee County VORTAC and the Pecan VOR/DME, between the SINCA Fix and the Morgantown VOR/DME, and between the Philipsburg VORTAC and the Stonyfork VOR/DME.

V-51: V-51 currently extends between the Pahokee, FL (PHK), VOR/DME and the Craig, FL (CRG), VORTAC; between the Hinch Mountain, TN (HCH), VOR/DME and the Louisville, KY (IUU), VORTAC; and between the Shelbyville, IN (SHB), VOR/DME and the Chicago Heights, IL (CGT), VORTAC. The FAA proposes to remove the airway segments between the Pahokee VOR/DME and the Ormond Beach, FL (OMN), VORTAC due to the scheduled decommissioning of the Pahokee VOR/DME and the Treasure, FL (TRV), VORTAC. As amended, the airway would be changed to extend between the Ormond Beach VORTAC and the Craig VORTAC; between the Hinch Mountain VOR/DME and the Louisville VORTAC; and between the Shelbyville VOR/DME and the Chicago Heights VORTAC.

V-97: V-97 currently extends between the Dolphin, FL (DHP), VORTAC and the intersection of the Pecan, GA (PZD), VOR/DME 357° and Vienna, GA (VNA), VORTAC 300° radials (PRATZ Fix); between the intersection of the Rome, GA (RMG), VORTAC 060° and the Volunteer, TN (VXV), VORTAC 197° radials (NELLO Fix) and the intersection of the Chicago Heights, IL (CGT), VORTAC 358° and DuPage, IL (DPA), VOR/DME 101° radials (NILES Fix); and between the Nodine, MN (ODI), VORTAC and the Gopher, MN (GEP), VORTAC. The FAA proposes to remove the airway segments between the Dolphin VORTAC and the St. Petersburg, FL (PIE), VORTAC due to the scheduled decommissioning of the La Belle, FL (LBV), VORTAC. As amended, the airway would be changed to extend between the St. Petersburg

VORTAC and the PRATZ Fix; between the NELLO Fix and the NILES Fix; and between the Nodine VORTAC and the Gopher VORTAC. Concurrent changes to other segments of V-97 have been proposed in a separate rulemaking docket.

V-157: V-157 currently extends between the Key West, FL (EYW), VORTAC and the Waycross, GA (AYS), VORTAC; between the Florence, SC (FLO), VORTAC and the Tar River, NC (TYI), VORTAC; and between Robbinsville, NJ (RBV), VORTAC and the Albany, NY (ALB), VORTAC. The FAA proposes to remove the airway segments between the Dolphin, FL (DHP), VORTAC and the Lakeland, FL (LAL), VORTAC due to the scheduled decommissioning of the La Belle, FL (LBV), VORTAC. As amended, the airway would be changed to extend between the Key West VORTAC and the Dolphin VORTAC; between the Lakeland VORTAC and the Waycross VORTAC; between the Florence VORTAC and the Tar River VORTAC; and between the Robbinsville VORTAC and the Albany VORTAC.

V-159: V-159 currently extends between the Virginia Key, FL (VKZ), VOR/DME and the Vulcan, AL (VUZ), VORTAC; and between the Holly Springs, MS (HLI), VORTAC and the Omaha, IA (OVR), VORTAC. The FAA proposes to remove the airway segments between the Virginia Key VOR/DME and the intersection of the Melbourne, FL (MLB), VOR/DME 269° T/276° M and the Orlando, FL (ORL), VORTAC 140° radials (DEARY Fix) due to the scheduled decommissioning of the Treasure, FL (TRV), VORTAC. As amended, the airway would be changed to extend between the DEARY Fix and the Vulcan VORTAC; and between the Holly Springs VORTAC and the Omaha VORTAC.

V-225: V-225 currently extends between the Key West, FL (EYW), VORTAC and the Treasure, FL (TRV), VORTAC. The FAA proposes to remove the airway segments between the Lee County, FL (RSW), VORTAC and the Treasure VORTAC due to the scheduled decommissioning of the La Belle, FL (LBV), VORTAC and the Treasure VORTAC. Additionally, the FAA proposes to remove the specified floor of controlled airspace along the route as it is no longer valid and remove the portion of the description that "The portion of V-225 E alternate outside of the United States has no upper limit", as V-225 E alternate no longer exists. As amended, the airway would be changed to extend between the Key West VORTAC and the Lee County VORTAC.

V-295: V-295 currently extends between the Virginia Key, FL (VKZ), VOR/DME and the Seminole, FL (SZW), VORTAC. The FAA proposes to remove the airway segments between the Virginia Key VOR/DME and the Orlando, FL (ORL), VORTAC due to the scheduled decommissioning of the Treasure, FL (TRV), VORTAC. Additionally, the FAA proposes to remove the airway segments between the Orlando VORTAC and the Seminole VORTAC due to redundant navigation capability provided by VOR Federal Airways V-159 and V-7. Thus, the FAA proposes to remove the route in its entirety.

V-437: V-437 currently extends between the Dolphin, FL (DHP), VORTAC and the Florence, SC (FLO), VORTAC. The FAA proposes to remove the airway segments between the Dolphin VORTAC and the Melbourne, FL (MLB), VOR/DME due to the scheduled decommissioning of the Pahokee, FL (PHK), VOR/DME. As amended, the airway would be changed to extend between the Melbourne VOR/DME and the Florence VORTAC.

V-492: V-492 currently extends between the La Belle, FL (LBV), VORTAC and the Melbourne, FL (MLB), VOR/DME. The FAA proposes to remove the airway segments between the La Belle VORTAC and the Palm Beach, FL (PBI), VORTAC due to the scheduled decommissioning of the La Belle VORTAC and the Pahokee, FL (PHK), VOR/DME. As amended, the airway would be changed to extend between the Palm Beach VORTAC and the Melbourne VOR/DME.

V-521: V-521 currently extends between the Dolphin, FL (DHP), VORTAC and the Vulcan, AL (VUZ), VORTAC. The FAA proposes to remove the airway segments between the Dolphin VORTAC and the Lee County, FL (RSW), VORTAC due to the scheduled decommissioning of the La Belle, FL (LBV), VORTAC. Additionally, the FAA proposes to remove the airway segments between the Lee County VORTAC and the Marianna, FL (MAI), VORTAC due to redundant navigation capability provided by VOR Federal Airways V-7 and V-198. As amended, the airway would be changed to extend between the Marianna VORTAC and the Vulcan VORTAC.

V-529: V-529 currently extends between the intersection of the Miami, FL, VOR 222° and the La Belle, FL (LBV), VORTAC 158° radials (FAMIN Fix) and the La Belle, VORTAC. The FAA proposes to remove the airway in its entirety due to the scheduled decommissioning of the La Belle VORTAC.

V-537: V-537 currently extends between the Palm Beach, FL (PBI), VORTAC and the Greenville, FL (GEF), VORTAC. The FAA proposes to remove the airway segments between the Palm Beach VORTAC and the intersection of the Melbourne, FL (MLB), VOR/DME 269° T/276° M and the Orlando, FL (ORL), VORTAC 140° T/140° M radials (DEARY Fix) due to the scheduled decommissioning of the Treasure, FL (TRV), VORTAC. As amended, the airway would be changed to extend between the DEARY Fix and the Greenville VORTAC.

V-601: V-601 currently extends between the Pahokee, FL (PHK), VOR/DME and the Key West, FL (EYW), VORTAC. The FAA proposes to remove the airway in its entirety due to the scheduled decommissioning of the Pahokee VOR/DME.

The full descriptions of the above routes are set forth below in the proposed amendments to part 71. The NAVAID radials listed in the VOR Federal airway description regulatory text of this final rule are stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V-3 [Amended]

From Key West, FL; INT Key West 083° and Dolphin, FL, 191° radials; Dolphin; Ft. Lauderdale, FL; Palm Beach, FL; INT Palm Beach 340° T/343° M and Lee County, FL 063° T/065° M radials; Melbourne, FL; Ormond Beach, FL; Brunswick, GA; INT Brunswick 014° and Savannah, GA, 177° radials; Savannah; to INT Savannah 028° and Allendale, SC, 116° radials. From Florence, SC; Sandhills, NC; Raleigh-Durham, NC; INT Raleigh-Durham 016° and Flat Rock, VA, 214° radials; Flat Rock; Gordonsville, VA; INT Gordonsville 331° and Martinsburg, WV, 216° radials; Martinsburg; Westminster, MD; INT Westminster 048° and Modena, PA, 258° radials; Modena; Solberg, NJ; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; Hartford, CT; INT Hartford 084° and Boston, MA, 224° radials; to Boston. The airspace within R-2916, R-2934, R-2935, is excluded.

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V-35 [Amended]

From Lee County, FL; INT Lee County 326° and St. Petersburg, FL, 152° radials; St. Petersburg; INT St. Petersburg 350° and Cross City, FL, 168° radials; Cross City; Greenville, FL; to Pecan, GA. From INT Dublin, GA 309° and Athens, GA, 195° radials; Athens; Electric City, SC; Sugarloaf Mountain, NC; Holston Mountain, TN; Glade Spring, VA; Charleston, WV; INT Charleston 051° and Elkins, WV, 264° radials; Clarksburg, WV; to Morgantown, WV. From Philipsburg, PA; to Stonyfork, PA.

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V-51 [Amended]

From Ormond Beach, FL; to Craig, FL. From Hinch Mountain, TN; Livingston, TN; to Louisville, KY. From Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; to Chicago Heights, IL.

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V-97 [Amended]

From St. Petersburg, FL; Seminole, FL; Pecan, GA; to INT Pecan 357° and Vienna,

GA 300° radials. From INT Rome, GA 060° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, KY; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and DuPage, IL, 101° radials. From Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V-157 [Amended]

From Key West, FL; INT Key West 038° and Dolphin, FL, 244° radials; to Dolphin. From Lakeland, FL; Ocala, FL; INT Ocala 346° and Taylor, FL, 170° radials; Taylor; to Waycross, GA. From Florence, SC; Fayetteville, NC; Kinston, NC; to Tar River, NC. From Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 213° radials; LaGuardia; INT LaGuardia 032° and Deer Park, NY, 326° radials; INT Deer Park 326° and Kingston, NY, 191° radials; Kingston; to Albany, NY.

* * * * *

V-159 [Amended]

From Melbourne, FL 269° T/276° M and Orlando, FL, 140° radials; Orlando; Ocala, FL; Cross City, FL; Greenville, FL; Pecan, GA; Eufaula, AL; INT Eufaula 320° and Vulcan, AL 139° radials to Vulcan. From Holly Springs, MS; Gilmore, AR; Walnut Ridge, AR; Dogwood, MO; Springfield, MO; Napoleon, MO; INT Napoleon 005° and St. Joseph, MO, 122° radials; St. Joseph; to Omaha, IA.

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V-225 [Amended]

From Key West, FL; to Lee County, FL.

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V-295 [Removed]

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V-437 [Amended]

From Melbourne, FL; INT Melbourne 322° and Ormond Beach, FL, 211° radials; Ormond Beach; INT Ormond Beach 360° and Savannah, GA, 177° radials; Savannah; INT Savannah 054° and Charleston, SC, 231° radials; Charleston; to Florence, SC. The airspace within R-2935 is excluded.

* * * * *

V-492 [Amended]

From Palm Beach, FL; INT Palm Beach 356° and Melbourne, FL, 146° radials, to Melbourne.

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V-521 [Amended]

From Marianna, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; INT Montgomery 357° and Vulcan, AL, 139° radials; to Vulcan.

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V-529 [Removed]

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V-537 [Amended]

From INT Melbourne, FL, 269° T/276° M and Orlando, FL, 140° T/140° M radials; INT Orlando 140° and Melbourne 298° radials;

INT Melbourne 298° and Ocala, FL 145° radials; Ocala; Gators, FL; to Greenville, FL.

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V-601 [Removed]

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Issued in Washington, DC, on July 11, 2024.

Brian Eric Konie,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2024-15557 Filed 7-17-24; 8:45 am]

BILLING CODE 4910-13-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1215

[Docket No. CPSC-2009-0064]

Notice of Availability and Request for Comment: Revision to the Voluntary Standard for Infant Bath Seats

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission's (Commission or CPSC) mandatory rule, Safety Standard for Infant Bath Seats, incorporates by reference ASTM F1967-19, Standard Consumer Safety Specification for Infant Bath Seats. ASTM notified the Commission that it has revised this incorporated voluntary standard. CPSC seeks comment on whether the revision improves the safety of infant bath seats.

DATES: Comments must be received by August 1, 2024.

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2009-0064, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by email, except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway,

Bethesda, MD 20814; telephone: (301) 504-7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit to this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2009-0064, into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Julia Kerns, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987-2548; email: JKerns@cpsc.gov.

SUPPLEMENTARY INFORMATION: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to adopt mandatory standards for durable infant or toddler products. 15 U.S.C. 2056a(b)(1). Mandatory standards must be "substantially the same as" voluntary standards, or they may be "more stringent" than the applicable voluntary standards, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the products. *Id.* Mandatory standards may be based, in whole or in part, on a voluntary standard.

Section 104(b)(4)(B) of the CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. To reject a revised standard, the Commission must notify the voluntary standards organization

within 90 days of receiving the notice that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. If the Commission does not take this action, the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision (or a later date specified by the Commission in the **Federal Register**). 15 U.S.C. 2056a(b)(4)(B).

In 2010, the Commission adopted a mandatory rule for infant bath seats under section 104(b)(1) of the CPSIA, which was codified in 16 CFR part 1215. The rule incorporated by reference ASTM F1967–08a, *Standard Consumer Safety Specification for Infant Bath Seats*, with modifications to make the standard more stringent. 75 FR 31691 (June 4, 2010). At the time the Commission published the final rule, ASTM F1967–08a was the current version of the voluntary standard. ASTM subsequently revised the voluntary standard five times. ASTM F1967 applies to infant bath seats, which it describes as products used in a bathtub, sink, or similar bathing enclosure and that provide support, at a minimum, to the front and back of a seated infant during bathing by a caregiver. The ASTM standard includes performance requirements, test methods, and labeling requirements to address hazards to infants associated with infant bath seats. After the Commission adopted the mandatory standard in 2010, the Commission updated the standard in 2012, 2013, and 2019 and the mandatory standard currently incorporates by reference ASTM F1967–19. 84 FR 49435 (September 20, 2019).

On July 8, 2024, ASTM notified CPSC that it had approved and published ASTM F1967–24. CPSC staff is assessing the revised voluntary standard to determine, consistent with section 104(b)(4)(B) of the CPSIA, its effect on the safety of consumer products covered by the standard. The Commission invites public comment on that question, to inform staff's assessment and any subsequent Commission consideration of the revisions in ASTM F1967–24.¹

The currently incorporated voluntary standard (ASTM F1967–19) and the revised voluntary standard (ASTM F1967–24) are available for review in several ways. A read-only copy of the existing, incorporated standard (ASTM F1967–19) is available for viewing, at no cost, on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. A read-only copy of the revised standard (ASTM F1967–24), including red-lined versions that identify the changes from the 2019 version to the 2024 version, are available, at no cost, on ASTM's website at: <https://www.astm.org/CPSC.htm>. Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; <https://www.astm.org>. Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479.

Comments must be received by August 1, 2024. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section 104(b)(4) of the CPSIA, CPSC will not consider comments received after this date.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2024–15843 Filed 7–17–24; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2024–C–3229]

Phytolon Ltd.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Phytolon Ltd., proposing that the color additive

regulations be amended to provide for the safe use of prickly pear yellow for the coloring of foods generally in amounts consistent with current good manufacturing practice.

DATES: The color additive petition was filed on July 3, 2024.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this document into the “Search” box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kaiping Deng, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 708–924–0622.

SUPPLEMENTARY INFORMATION: Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act ((21 U.S.C. 379e(d)(1))), we are giving notice that we have filed a color additive petition (CAP 4C0332), submitted by Phytolon Ltd., Ha-Tsmikha St, Yokne'am Illit, Israel. The petition proposes to amend the color additive regulations in 21 CFR part 73, “Listing of Color Additives Exempt From Certification,” to provide for the safe use of prickly pear yellow for the coloring of foods generally in amounts consistent with current good manufacturing practice.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(r), which applies to an action for substances which occur naturally in the environment, and for which the action does not significantly alter the concentration or distribution of the substance, its metabolites, or degradation products in the environment. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: July 15, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–15892 Filed 7–17–24; 8:45 am]

BILLING CODE 4164–01–P

¹ The Commission voted (5–0) to approve this notice.

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1****[REG–119283–23]****RIN 1545–BR17****Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit; Correction****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–119283–23) published in the **Federal Register** on June 3, 2024, containing proposed regulations relating to the clean electricity production credit and the clean electricity investment credit established by the Inflation Reduction Act of 2022.

DATES: Written or electronic comments and requests for a public hearing are still being accepted and must be received by August 2, 2024.

ADDRESSES: Commenters were strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–119283–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section of the notice of proposed rulemaking published on June 3, 2024 (89 FR 47792). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:01:PR (REG–119283–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Chief Counsel (Passthroughs and Special Industries) at (202) 317–6853 (not a toll-free number); concerning submissions of comments or the public hearing, the Publications and Regulations Section, (202) 317–6901

(not toll-free number) or by email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:**Background**

The notice of proposed rulemaking (REG–119283–23) that is the subject of these corrections are under sections 45Y and 45E of the Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–119283–23) contains errors that need to be corrected.

Correction of Publication

■ Accordingly, the notice of proposed rulemaking (REG–119283–23) that is the subject of FR Doc. 2024–11719, published on June 3, 2024, is corrected as follows:

1. On page 47799, the first column, the second sentence of the first paragraph is corrected to read “Proposed § 1.45Y–2(b)(2)(i) would clarify that no provision of this section, § 1.45Y–1, or § 1.45Y–4 through § 1.45Y–5 uses the term “unit” in respect of a qualified facility with any meaning other than that provided in § 1.45Y–2(b)(2)(i)”.

2. On page 47812, the second column, in line thirty-one of the first full paragraph, the language “eligible” is corrected to read “ineligible”.

3. On page 47812, the third column, the second line from the bottom of the column is corrected to read “the calculation of the section 48E credit.”.

4. On page 47813, the third column, under the heading “2. Functionally Interdependent”, the third line is corrected to read “facility includes functionally interdependent”.

5. On page 47814, the third column, under the heading “a. Generally” the fourth line from the bottom of the paragraph is corrected to read “is used as an integral part (as defined in”.

6. On page 47815, the third column, the third line of the column is corrected to read “§ 1.48E–2(f)(7)(i), a qualified facility”.

7. On page 47815, the third column, in the last line of the column the language “paragraph” is removed.

8. On page 47816, the first column, in the seventh line the language “§ 1.48E–3” is corrected to read “§ 1.48E–4”.

9. On page 47818, the first column, in the seventh line from the bottom of the first full paragraph, the language “48E(a)(2)(B)(ii)(I)” is corrected to read “48E(a)(2)(A)(ii)(I)”.

10. On page 47820, the first column, the sixteenth line of the first full

paragraph is corrected to read “value obtained from DOE will be based on an”.

11. On page 47822, the third column, the sixth line of the first full paragraph is corrected to read “necessary definitions and rules regarding the”.

12. On page 47822, the third column, the sixth line from the bottom of the first full paragraph is corrected to read “energy facilities and energy storage technologies. Thus the”.

13. On page 47822, the third column, the sixth and seventh lines of the third full paragraph are corrected to read “investment in clean energy facilities and energy storage technologies. Because the potential credit”.

14. On page 47823, the first column, the seventh line of the column is corrected to read “in facilities that”.

§ 1.45Y–1 [Corrected]

■ 15. On page 47827, the second column, the second line of paragraph (c)(5) is corrected to read “purposes of paragraph (c)(3)(i) of this”.

§ 1.45Y–2 [Corrected]

■ 16. On page 47828, the first column, lines two through six of paragraph (b)(2)(ii) is corrected to read “Components of property are functionally interdependent if the placing in service of each of the components is dependent upon the placing in service of each of the other components to produce electricity.

§ 1.45Y–4 [Corrected]

■ 17. On page 47830, the third column, the second line of paragraph (d)(3)(i) is corrected to read “meets the 80/20 Rule. A owns an”.

§ 1.48E–2 [Corrected]

■ 18. On page 47837, the second column, the twentieth line of paragraph (b)(3)(ii) is corrected to read “generated by a qualified facility and”.

§ 1.48E–5 [Corrected]

■ 19. On page 47845, the second column, the fourteenth line of paragraph (g)(3) is corrected to read “DOE or by using the designated lifecycle analysis (LCA)”.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–15718 Filed 7–17–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 58**

[REG–115710–22]

RIN 1545–BQ59

Excise Tax on Repurchase of Corporate Stock; Hearing**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking; notice of hearing.**SUMMARY:** This document provides a notice of public hearing on proposed regulations that would provide guidance regarding the application of the new excise tax on repurchases of corporate stock made after December 31, 2022.**DATES:** The public hearing on these proposed regulations has been scheduled for August 27, 2024, at 10:00 a.m. ET. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by August 9, 2024. If no outlines are received by August 9, 2024, the public hearing will be cancelled.**ADDRESSES:** The public hearing is being held in the Auditorium, at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.Send submissions electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG–115710–22) or to CC:PA:01:PR (REG–115710–22), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday to CC:PA:01:PR (REG–115710–22), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5205, Washington, DC 20224.**FOR FURTHER INFORMATION CONTACT:** Concerning proposed §§ 58.4501–1 through 58.4501–6, Kailee H. Farrell at (202) 317–6975; concerning proposed § 58.4501–7, Brittany N. Dobi at (202) 317–5469; concerning proposed § 1.1275–6(f)(12)(iii), Jonathan A. LaPlante at (202) 317–3900; concerningthe hearing and/or to be placed on the building access list to attend the public hearing, call the Publications and Regulations Section at (202) 317–6901 (not a toll-free number) or by email to publichearings@irs.gov (preferred).**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed rulemaking (REG–115710–22) that was published in the **Federal Register** on Friday, April 12, 2024 (FR 89 25980).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by August 9, 2024.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing, and via the Federal eRulemaking Portal (www.Regulations.gov) under the title of Supporting & Related Material. If no outline of the topics to be discussed at the hearing is received by August 9, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your legal name added to the building access list. The subject line of the email must contain the regulation number REG–115710–22 and the language “TESTIFY In Person.” For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–115710–22.Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–115710–22 and the language “TESTIFY Telephonically.” For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–115710–22.Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your legal name added to the building access list. The subject line of the email must contain the regulation number REG–115710–22 and the language “ATTEND In Person.” For example, the subject

line may say: Request to ATTEND Hearing In Person for REG–115710–22. Requests to attend the public hearing must be received by 5:00 p.m. ET on August 22, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–115710–22 and the language “ATTEND Hearing Telephonically.” For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–115710–22. Requests to attend the public hearing must be received by 5:00 p.m. ET on August 22, 2024.Any questions regarding speaking at or attending a public hearing may also be emailed to publichearings@irs.gov.**Oluwafunmilayo A. Taylor,***Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2024–15717 Filed 7–17–24; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R02–OAR–2024–0110, FRL–12093–01–R2]

Air Plan Approval; New Jersey; NO_x SIP Call and Removal of CAIR**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the removal of the New Jersey Clean Air Interstate Rule (CAIR nitrogen oxides (NO_x) Trading Program regulations from the New Jersey State Implementation Plan (SIP) and is proposing to conditionally approve the removal of the New Jersey NO_x Budget Program regulations from the New Jersey SIP. On August 23, 2018, the New Jersey Department of Environmental Protection (NJDEP) submitted a SIP revision requesting the removal of the State's CAIR NO_x Trading Program and NO_x Budget Program regulations from the New Jersey SIP. NJDEP submitted a supplement to the revision on May 31, 2024, that commits NJDEP to develop a Memorandum of Agreement with the EPA that indicates how the State of New Jersey will maintain compliance with the State's NO_x SIP Call obligations for

the types of large non-electricity generating units (non-EGUs) that were previously regulated under the New Jersey NO_x Budget Program.

DATES: Written comments must be received on or before August 19, 2024.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2024–0110, at <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, *e.g.*, Controlled Unclassified Information (CUI) (formally referred to as Confidential Business Information (CBI)) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be CUI or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CUI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/submitting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Fausto Taveras, Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007–1866, at (212) 637–3378, or by email at Taveras.Fausto@epa.gov.

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. Background
- II. EPA's Evaluation and Proposed Action
- III. Environmental Justice Considerations
- IV. Statutory and Executive Order Reviews

I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), also called the good neighbor provision, States are

required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that will significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that will interfere with maintenance of the NAAQS, in any other state. In October 1998 (63 FR 57356), the EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone" (NO_x SIP Call).¹ The NO_x SIP Call required Eastern States, including New Jersey, to submit SIPs that prohibit excessive emissions of ozone season NO_x by implementing statewide emissions budgets. The NO_x SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NO_x emissions, one of the precursors of ozone.² To help implement the NO_x SIP Call, EPA developed the NO_x Budget Trading Program, a regional allowance trading program. States could meet most of their obligations under the NO_x SIP Call by requiring certain types of sources to participate in this trading program: generally, EGUs with capacity greater than 25 megawatts (MW)³ and large non-EGUs, such as industrial boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr).

NJDEP submitted a SIP revision including amendments to the regulation N.J.A.C. 7:27–31 (otherwise known as subchapter 31), "NO_x Budget Program", on December 10, 1999,⁴ to comply with the NO_x SIP Call requirements. The EPA approved the revision as meeting the requirements of the NO_x SIP Call in 2001. See 66 FR 28063 (May 22, 2001). The approved revision required EGUs with capacity greater than 15 MW and large non-EGUs in the State to participate in the State's NO_x Budget Program beginning in 2003.

In 2005, EPA published CAIR, which required Eastern States, including New

Jersey, to submit SIPs that prohibited emissions consistent with revised ozone season (and annual) NO_x budgets. See 70 FR 25162 (May 12, 2005); see also 71 FR 25328 (April 28, 2006). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and the 1997 fine particulate matter (PM_{2.5}) NAAQS and was designed to mitigate the impact of transported NO_x emissions with respect to ozone and PM_{2.5}. CAIR established several trading programs that States could join through SIPs or that EPA would implement through Federal implementation plans (FIPs) for EGUs greater than 25 MW in each affected state; States also retained the option to submit SIPs that achieved the required emission reductions from other types of sources.⁵ When the CAIR trading program for ozone season NO_x was implemented beginning on January 1, 2009, the EPA discontinued administration of the NO_x Budget Trading Program; however, the requirements of the NO_x SIP Call continued to apply. For large non-EGUs that would have been covered under the NO_x Budget Trading Program, States were allowed, but not obligated, to achieve the required emissions reductions from these types of units by including the units in the CAIR trading program for ozone season NO_x.

On October 1, 2007, the EPA approved revisions to New Jersey's SIP that used the CAIR FIP trading program for ozone season NO_x to address the State's obligations under the NO_x SIP Call related to EGUs. Consistent with CAIR's requirements, EPA approved a SIP revision in which New Jersey regulations: (1) adopted State rule provisions modifying the allowance allocation provisions of the CAIR FIP applicable to New Jersey, and (2) sunset New Jersey's NO_x Budget Program requirements. See 72 FR 55672. Specifically, New Jersey adopted under N.J.A.C. 7:27–30 (otherwise known as subchapter 30), the CAIR NO_x Trading Program, provisions for allocating allowances under the CAIR FIP NO_x annual and ozone season trading programs.⁶ Additionally, New Jersey adopted at N.J.A.C. 7:27–31.23, a sunset provision, which established that the Federal CAIR NO_x Ozone Season Trading Program as modified by New Jersey's SIP revision would replace New Jersey's NO_x Budget Program (Subchapter 31) starting in 2009.

¹ The EPA issued subsequent technical amendments to the NO_x SIP Call in May 1999 (64 FR 26298) and March 2000 (65 FR 11222).

² As originally promulgated, the NO_x SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. See 65 FR 56245 (September 18, 2000); 84 FR 8422 (March 8, 2019).

³ In some States, EGUs smaller than 25 MW were also part of EPA's NO_x Budget Trading Program.

⁴ The SIP revision was further supplemented by New Jersey on July 31, 2000.

⁵ CAIR had separate trading programs for annual sulfur dioxide emissions, seasonal NO_x emissions, and annual NO_x emissions.

⁶ New Jersey's rule did not modify the CAIR FIP regarding SO₂.

Participation of New Jersey's EGUs in CAIR's ozone season NO_x trading program pursuant to a FIP achieved the emissions reductions necessary to address the State's obligation under the NO_x SIP Call for those units. However, consistent with the flexibility given to States in the CAIR FIP, New Jersey chose not to expand the applicability provisions of CAIR's NO_x ozone season trading program to include the types of non-EGUs that had been included in the State's NO_x Budget program.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. See *North Carolina v. EPA*, 531 F.3d 896, modified on rehearing, 550 F.3d 1176 (D.C. Cir. 2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued to be implemented with the NO_x annual and ozone season trading programs beginning in 2009, and the SO₂ annual trading program beginning in 2010.

In response to the D.C. Circuit's remand of CAIR, the EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and address good neighbor obligations for the 1997 ozone NAAQS, the 1997 PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS. See 76 FR 48208 (August 8, 2011). Through FIPs, CSAPR required EGUs in Eastern States, including New Jersey, to meet annual and ozone season NO_x emission budgets and annual SO₂ emission budgets implemented through new trading programs. CSAPR also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. Following litigation-related delays, EPA stopped administering the CAIR trading programs with respect to emissions occurring after December 31, 2014, and began implementing the CSAPR trading programs with respect to emissions occurring on and after January 1, 2015.

In July 2015, the D.C. Circuit generally upheld CSAPR but remanded several state budgets, including New Jersey's ozone season NO_x budget, to EPA for reconsideration. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 129–30 (D.C. Cir. 2015). EPA addressed the remanded ozone season NO_x budgets in the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), which also partially addressed Eastern States'

good neighbor obligations for the 2008 ozone NAAQS. See 81 FR 74504 (October 26, 2016). The CSAPR Update implemented the budgets through FIPs requiring sources to participate in a revised CSAPR NO_x ozone season trading program beginning with the 2017 ozone season.

The CSAPR Update was subject to legal challenge in the D.C. Circuit. *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019); see also *New York v. EPA*, 781 Fed. App'x 4 (D.C. Cir. 2019). In response to the *Wisconsin* remand of the CSAPR Update, the EPA promulgated the Revised CSAPR Update, which established new or amended FIPs for 12 States, including New Jersey. See 86 FR 23054 (April 30, 2021). The FIPs required the implementation of revised emissions budgets for EGUs beginning with the 2021 ozone season.

In 2023, the EPA published the Federal Good Neighbor Plan (GNP), which established requirements to address 23 States' good neighbor obligations for the 2015 ozone NAAQS. See 88 FR 36654 (June 5, 2023). Under the FIP requirements for the GNP, EGUs in 22 States, including New Jersey, were required to participate in a revised version of the CSAPR NO_x Ozone Season Group 3 Trading Program beginning in the 2023 ozone season.⁷

States have options to replace the FIPs promulgated under CSAPR, the CSAPR Update, the Revised CSAPR Update, and the GNP with SIP revisions, including but not limited to SIP revisions that adopt state trading programs substantively identical to and integrated with the Federal trading programs established under the FIPs for other States. New Jersey has not chosen to submit SIP revisions to replace the FIPs issued under these rules, and instead its EGUs have remained subject to the respective FIPs.

Participation by a state's EGUs in the trading programs for ozone season NO_x under CSAPR, the CSAPR Update, the Revised CSAPR Update, or the GNP generally addresses the state's obligation under the NO_x SIP Call for EGUs, but these trading programs no longer include an option specifically designed

to allow States to address their obligations under the NO_x SIP Call for non-EGUs by requiring the non-EGUs to participate in the trading programs.⁸ The GNP required that certain types of non-EGUs⁹ in 20 States, including New Jersey, reduce NO_x emissions through emissions limitations and associated requirements beginning in the 2026 ozone season. However, it is important to note that the types of non-EGUs regulated under the NO_x SIP Call and under the GNP do not fully overlap, and the forms of the requirements are different. EPA has not made any finding that compliance with the GNP's requirements by the types of non-EGUs in a state subject to that rule addresses the state's obligations with respect to the types of non-EGUs in the state affected under the NO_x SIP Call.

New Jersey provided a SIP submittal on August 23, 2018, to EPA requesting removal of the State's CAIR NO_x Trading Program (Subchapter 30) and the State's NO_x Budget Program (Subchapter 31) from the New Jersey SIP. As previously mentioned in this section, EPA has already approved into the SIP a sunset provision of Subchapter 31. The approved sunset provision ended New Jersey's NO_x Budget Program for all sources that were previously covered sources, beginning in 2009.

Since New Jersey's large non-EGUs no longer participate in a NO_x ozone season trading program, the NO_x SIP Call regulations at 40 CFR 51.121(r)(2) as well as anti-backsliding provisions at 40 CFR 51.905(f) and 40 CFR 51.1105(e) require the State to meet its ongoing obligations under the NO_x SIP Call with respect to these types of non-EGUs in some other way.

Under 40 CFR 51.121(f)(2) of the NO_x SIP Call regulations, where a state's SIP

⁸ While some NO_x SIP Call States elected to use the specifically designed SIP revision option of this nature provided under CAIR, other States (including New Jersey) did not, and the option was removed under CSAPR. A similar specifically designed SIP revision option was provided under the CSAPR Update and the Revised CSAPR Update, but no States elected to use it, and it was removed under the GNP. Any future SIP revision seeking to address a state's NO_x SIP Call obligations for non-EGUs by requiring the non-EGUs to participate in one of these trading programs will be evaluated on a case-by-case basis. See 88 FR at 36844.

⁹ These industrial source types are: reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; kilns in Cement and Concrete Product Manufacturing; reheat furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; furnaces in Glass and Glass Product Manufacturing; boilers in Iron and Steel Mills and Ferroalloy Manufacturing; Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills; and combustors and incinerators in Solid Waste Combustors and Incinerators.

⁷ In response to judicial orders partially staying a separate EPA action (88 FR 9336, February 13, 2023) as to 12 States, the EPA has issued two interim final rules staying implementation of the Good Neighbor Plan's requirements as to the sources in those States. See 88 FR 49295 (July 31, 2023); 88 FR 67102 (September 29, 2023). On June 27, 2024, the Supreme Court of the United States granted stay applications of the Good Neighbor Plan, *Ohio et al. v. EPA*, Nos. 23A349, 23A350, 23A351, and 23A384, 603 U.S. (2024). This does not affect the EPA's analysis of New Jersey's NO_x SIP Call obligations as to non-EGUs discussed in this document.

contains control measures for EGUs and large non-EGU boilers and combustion turbines, the SIP must contain enforceable limits on the ozone season NO_x mass emissions from these sources. In addition, under 40 CFR 51.121(i)(4) of the NO_x SIP Call regulations as originally promulgated, the SIP also had to require these sources to monitor emissions according to the provisions of 40 CFR part 75, which generally entails the use of continuous emission monitoring systems (CEMS). New Jersey triggered these requirements by including control measures in its SIP for these types of sources, and the requirements have remained in effect despite the discontinuation of the NO_x Budget Trading Program after the 2009 ozone season.

On March 8, 2019, EPA revised some of the regulations that were originally promulgated in 1998 to implement the NO_x SIP Call.¹⁰ The revision gave States covered by the NO_x SIP Call greater flexibility concerning the form of the NO_x emissions monitoring requirements that the States must include in their SIPs for certain emissions sources. The revision amended 40 CFR 51.121(i)(4) to make 40 CFR part 75 monitoring, recordkeeping, and reporting optional, such that SIPs may establish alternative monitoring requirements for NO_x SIP Call units that meet the general requirements of 40 CFR 51.121(f)(1) and (i)(1). Under the updated provision, a state's implementation plan still needs to include some form of emissions monitoring requirements for these types of sources, consistent with the NO_x SIP Call's general enforceability and monitoring requirements at § 51.121(f)(1) and (i)(1), respectively, but States are no longer required to satisfy these general NO_x SIP Call requirements specifically through the adoption of 40 CFR part 75 monitoring requirements.

On March 7, 2024, New Jersey submitted a letter to the EPA committing to develop a Memorandum of Agreement (MOA) between the EPA and the NJDEP that outlines how NJDEP will comply with the NO_x SIP Call, specifically for the types of non-EGUs that were previously regulated by the New Jersey NO_x Budget Program and were not included in the subsequent CAIR FIP trading program. Subsequently, on May 31, 2024, New Jersey submitted an updated commitment letter to revise and replace the previous March 7, 2024, letter. The need for this revision arose because NJDEP conducted an analysis to

determine what units would have been classified as a non-EGU under the applicability criteria of the New Jersey NO_x Budget Program (N.J.A.C. 7:27–31), as in effect as of September 30, 2008. As a result of this analysis, the value of the non-EGU budget was adjusted.¹¹ The revised letter adjusted the non-EGU budgets for the affected units' aggregated emissions during the ozone season and revised the date by which the State will submit the MOA to the EPA. Both of the NJDEP commitment letters are included in the docket for this rulemaking.

In the May 31, 2024, letter, NJDEP commits to submitting the MOA to the EPA by no later than March 7, 2025. New Jersey provided a date certain for purposes of CAA 110(k)(4), which authorizes the EPA to conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval. In their letter to the EPA, NJDEP indicated that it was their understanding that the EPA would approve the MOA as an enforceable SIP revision by no later than one year from the date the EPA conditionally approves the New Jersey SIP Revision—Removal of CAIR and NO_x Budget Programs, which was submitted on August 23, 2018.

NJDEP indicated in their commitment letters that the non-EGUs no longer in the NO_x trading program will not be subject to the monitoring, recordkeeping, and reporting requirements in 40 CFR part 75, and instead will rely on the emission statement reporting (7:27 Subchapter-21) and emissions limits in their NO_x RACT rules (7:27 Subchapter-19) as reflected in sources' air permits to continue to meet and demonstrate compliance with the non-EGU portion of the budget set under the State's former NO_x Budget Program. The MOA will serve to memorialize an aggregate state-wide budget and monitoring and reporting requirements for the affected non-EGU units, as well as official annual ozone season NO_x reporting by the state to the EPA.

Specifically, NJDEP indicated in their commitment letter to the EPA that the MOA will specify how the emission limits and monitoring, recordkeeping, and reporting requirements for sources covered by the SIP are sufficient to meet the NO_x SIP Call requirements for these

types of sources. The MOA would specify that NO_x emissions in tons will be determined from non-EGUs during the ozone season via CEMS or stack testing already required pursuant to N.J.A.C. 7:27–19.17, “Source emission testing,” and reported via NJ's Emission Statement Program (N.J.A.C. 7:27–21). The stack testing frequency, which is specified in the operating permit, shall require a new stack test at least every five years. The MOA would provide that annual and ozone-season emissions data will be collected each year, and NJDEP will report that information to EPA for each year in a format that allows for EPA to verify compliance with the NO_x SIP Call. The MOA would specify that the types of non-EGUs subject to the MOA are existing, modified, and new fossil fuel-fired boilers and combustion turbines with maximum design heat input greater than 250 mmBtu/hr, except electricity generating units required to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program (40 CFR part 97, subpart GGGGG) or a successor trading program for seasonal NO_x emissions. The MOA would specify that the affected units' aggregated emissions will not exceed a non-EGU emissions budget of 745 tons per ozone season (May 1–September 30 of each year).¹²

The commitment letter indicated that the MOA will be made available for public comment and will be submitted as a SIP revision to the EPA. Once the MOA is signed by both NJDEP and the EPA, and the approval of the MOA as a part of New Jersey's SIP is finalized, the MOA will become an enforceable part of the SIP, and the EPA and the NJDEP will have authority to enforce the conditions in the MOA (along with corresponding SIP-approved requirements applicable to the relevant sources). The MOA will establish the mechanism by which New Jersey will report to EPA consistent with its own obligations under the NO_x SIP Call, and to ensure compliance with the budget per 40 CFR 51.121(r).

II. EPA's Evaluation and Proposed Action

On August 23, 2018, NJDEP submitted a SIP revision requesting that EPA update the New Jersey SIP to reflect the removal of New Jersey's CAIR NO_x Trading Program establishing the State's allowance allocations under the Federal CAIR trading programs (Subchapter 30)

¹⁰ See “Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_x SIP Call,” 84 FR 8422 (March 8, 2019).

¹¹ NJDEP analysis determined that the natural gas turbine unit located at cogeneration facility, EF Kenilworth, was subject to the NO_x Budget Program as a small EGU (*i.e.*, an EGU serving an electricity generator with nameplate capacity of at least 15 MW but not greater than 25 MW).

¹² The 745 tons of NO_x per ozone season limit corresponds to the portion of the State's trading budget assigned to non-EGUs of the types previously regulated under the New Jersey NO_x Budget Program (N.J.A.C. 7:27–31) as in effect as of September 30, 2008.

and New Jersey's NO_x Budget Program (Subchapter 31) from the SIP. The State rule provision sunsetting the State's NO_x Budget Program was already approved into the SIP by EPA in 2007, and the State's CAIR allowance allocation rules have had no effect since EPA discontinued administration of the Federal CAIR trading programs after 2014. NJDEP repealed Subchapter 30 and Subchapter 31 on December 14, 2017.

As discussed previously in Section I, NJDEP provided commitment letters to the EPA on March 7, 2024, and May 31, 2024, committing to develop a MOA between the EPA and the NJDEP that outlines how NJDEP will comply with the State's obligations under the NO_x SIP Call for the types of non-EGUs that were previously regulated by the New Jersey NO_x Budget Program and that were not included in the subsequent CAIR FIP trading program. Once approved into the New Jersey SIP, the MOA will ensure compliance with the New Jersey non-EGU budget per 40 CFR 51.121(r). Specifically, the MOA will serve as the enforceable mechanism for ensuring the New Jersey SIP contains enforceable limits and monitoring, recordkeeping, and reporting requirements to ensure the affected New Jersey non-EGU units' aggregated emissions will not exceed a budget of 745 tons per ozone season on an annual basis for existing and new units.

First, the EPA proposes to approve the removal of the New Jersey CAIR NO_x Trading Program (Subchapter 30) from the New Jersey SIP. The State rule only established allowance allocations for use under the Federal CAIR trading programs. Because the EPA no longer administers the Federal CAIR trading programs, the removal of Subchapter 30 from the SIP will have no consequences for any sources' operations or emissions or for the attainment or maintenance of the NAAQS in any area, now or in the future.

Second, the EPA is proposing to conditionally approve the removal of the New Jersey NO_x Budget Program (Subchapter 31) from the New Jersey SIP. Although EPA no longer administers the NO_x Budget Trading Program and approved the sunset provision of the New Jersey NO_x Budget program in a previous action (*see* 72 FR 55672), New Jersey has outstanding obligations under the NO_x SIP Call. Accordingly, on May 31, 2024, NJDEP submitted a letter committing NJDEP to submit an MOA that will outline how NJDEP will comply with the NO_x SIP Call for the types of non-EGUs previously regulated by the New Jersey NO_x Budget Program by March 7, 2025.

Under CAA section 110(k)(4), conditional approval is an option for EPA SIP approvals based on a commitment to adopt specific enforceable measures by a date certain, but no later than one year from the date of approval. If the state fails to meet its commitment within the specified date, the approval is treated as a disapproval.

Since the MOA between NJDEP and the EPA will be enforceable only when approved by the EPA and codified through incorporating by reference in the EPA-approved statutes and regulations in the New Jersey SIP at 40 CFR 52.1570, it will be necessary for the EPA to take this action no later than one year from the date of the conditional approval.

Based on the State's May 31, 2024, commitment to submit a SIP revision by March 7, 2025, addressing the identified deficiency and the EPA taking action to approve the MOA as an enforceable SIP revision no later than one year from the date the EPA finalizes a conditional approval, EPA is proposing to conditionally approve the portion of the August 23, 2018, SIP revision requesting the removal of the New Jersey NO_x Budget Program (Subchapter 31) from the New Jersey SIP. EPA will take action to approve or disapprove the MOA into the New Jersey SIP when it is submitted to the EPA as a SIP revision.

However, if the State fails to submit this revision, or if EPA does not approve the MOA as an enforceable SIP revision on or before 12 months from the date of final approval of this action, the conditional approval will become a disapproval and the EPA will issue a notice to that effect. If the conditional approval becomes a disapproval, the disapproval triggers the requirement for EPA to issue a Federal implementation plan (FIP) under CAA section 110(c) to correct the deficiency.

Section 110(l) Demonstration

As stated in New Jersey's May 2024 commitment letter, the State commits to enter a Memorandum of Agreement between the USEPA and the NJDEP that outlines how NJDEP will comply with the NO_x SIP Call, specifically for the types of non-electric generating units (non-EGUs) that were previously regulated by the New Jersey NO_x Budget Program (N.J.A.C. 7:27-Subchapter 31) and that were not included in the subsequent CAIR FIP trading program. On June 19, 2007, New Jersey adopted rules establishing allowance allocations for the State's EGUs participating in the ozone season NO_x trading program established under the CAIR FIP but excluded non-EGU industrial units from its rulemaking. Under both the NO_x

Budget Program and CAIR, the affected units were required to monitor pursuant to 40 CFR part 75. The EGUs that remained in the CAIR trading program continued to comply with the monitoring requirements. However, because the EPA approved the sunset of the State's NO_x Budget Program requirements in the SIP and the non-EGUs were not brought into the CAIR FIP trading program, the non-EGUs did not retain those monitoring requirements. Instead, applicable non-EGUs relied on monitoring requirements under New Jersey's emission statement program (N.J.A.C. 7:27-21), the State's various NO_x RACT regulations (N.J.A.C. 7:27-19), and associated air permits to continue to demonstrate compliance with the 745 tons per ozone season budget set under the NO_x Budget Program.

The MOA will serve to memorialize an aggregate state-wide budget and monitoring and reporting requirements for the affected non-EGU units as well as official annual ozone season NO_x reporting by the State to the EPA. Specifically, the MOA will specify that the non-EGU budget for the affected units' aggregated emission will not exceed 745 tons per ozone season (May 1–September 30 of each year). To ensure that non-EGUs satisfy the requirements under the NO_x SIP Call, the MOA will specify how the emission limits and monitoring, recordkeeping, and reporting requirements contained in New Jersey's SIP address the requirements under 40 CFR 51.121(r)(2). Specifically, the MOA will include a demonstration that the total permitted NO_x emission limits for existing applicable New Jersey non-EGUs does not exceed 745 tons per ozone season (May 1–September 30 of each year). The MOA will also include demonstrations that outline actual NO_x emissions from recent ozone seasons (tons/year) and calendar years (tons/year) that were gathered from the State's Emission Statement Program. Also, the MOA will outline New Jersey's SIP-approved regulations and associated permit requirements for non-EGU facilities regarding continuous emission monitoring and source emission testing. These demonstrations will be incorporated within the MOA, and the MOA also provides for New Jersey to continue to provide similar reports on ozone season emissions to EPA for each ozone season in perpetuity and to take corrective measures should permitted emissions limits be exceeded. Taken as a whole, EPA believes that in concept, the MOA as described (and if signed and made effective) will address New

Jersey's outstanding obligations under the NO_x SIP Call and demonstrates that the removal of New Jersey's NO_x Budget Program (7:27–31) from the SIP will have no consequences for any sources' operations or emissions or for the attainment or maintenance of the NAAQS in any area, now or in the future. Furthermore, on October 1, 2007, the EPA had approved a sunset provision of New Jersey NO_x Budget Program. See 72 FR 55666. This federally-approved sunset provision ended New Jersey's NO_x Budget Program for all sources that were previously covered sources, beginning in 2009. The EPA will take final action to incorporate by reference New Jersey's MOA in a future rulemaking action.

III. Environmental Justice Considerations

New Jersey provided a supplement to the SIP submission being proposed for approval with this rulemaking on May 16, 2023. The supplemental submission briefed the EPA on Environmental Justice (EJ) considerations within New Jersey by detailing the State's programs and initiatives addressing the needs of communities with EJ concerns that have been ongoing since 1998. Although New Jersey included environmental justice considerations as part of its SIP submittal, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation.

In its supplement, New Jersey discussed how the State has been addressing the needs of communities with EJ concerns since 1998, including assisting in the creation of the Environmental Equity Task Force, which later evolved into the Environmental Justice Advisory Council (EJAC). EJAC and its predecessor have held regular meetings that include EJ advocates and the New Jersey Department of Environmental Protection (NJDEP) to discuss and address issues of concern.

New Jersey has also noted that the State has implemented numerous initiatives, collaborations, Administrative Orders and Executive Orders to address the needs and concerns of overburdened communities. New Jersey provided a timeline of the EJ actions implemented by the State, both prior to the SIP submittal on August 23, 2018, and subsequent to it, to note its continued attention to environmental justice in the State.

New Jersey's Administrative Orders (AO) and Executive Orders (E.O.) include the State's first EJ E.O. issued by Governor James E. McGreevey in 2004 (E.O. No. 96), an EJ E.O. issued by Governor Jon Corzine in 2009 (E.O. No.

131), an EJ AO issued by NJDEP Commissioner Bob Martin in 2016 (AO 2016–08) and an EJ E.O. issued by Governor Phil Murphy in 2018 (E.O. No. 23). Notably, U.S. Senator for New Jersey, Cory Booker, introduced the first Federal EJ bill in 2017 (S.1996–Environmental Justice Act of 2017).

Additionally, New Jersey also created the “What’s In My Community?”¹³ tool, a GIS-mapping web application that allows a user to see the air permits issued in their community. The tool also identifies overburdened communities, schools, hospitals, and emergency services. The public users can also see measurements from air monitors and generate a report when using the tool.

The EPA has reviewed this material but has determined that conducting a comprehensive EJ analysis is not necessary in the context of this SIP submission for the removal from the SIP of New Jersey's CAIR NO_x Trading Program and the State's NO_x Budget Program, as the CAA and its applicable implementing regulations neither prohibit nor require such an evaluation of EJ in relation to the relevant requirements. Additionally, there is no evidence suggesting that this action contradicts the goals of E.O. 12898 or that it will disproportionately harm any specific group or have severe health or environmental impacts.

However, the EPA expects that this action, which assesses whether New Jersey's SIP adequately addresses requirements under the NO_x SIP Call for affected non-EGUs, will generally have a neutral impact on all populations, including communities of color and low-income groups. At the very least, it will not worsen existing air quality.

In summary, the EPA concludes, for informational purposes only, that this proposed rule will not disproportionately harm communities with environmental justice concerns. New Jersey did evaluate EJ considerations voluntarily in its SIP submission, but the EPA's assessment of these considerations is provided for context, not as the basis for the action. The EPA is taking action under the CAA independently of the State's EJ assessment.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, this proposed rulemaking action pertaining to New Jersey's submissions, is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations

¹³ Access the mapping application for locating facilities with an air permit registered with NJDEP's Division of Air Quality from their website at <https://njdep.maps.arcgis.com/app4s/webappviewer/index.html?id=76194937cbbe46b1ab9a9ec37c7d709b>.

and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The NJDEP evaluated environmental justice as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA’s evaluation of the NJDEP’s environmental justice considerations is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on bases independent of New Jersey’s evaluation of environmental justice. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2024–15705 Filed 7–17–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[PS Docket No. 23–239; DA 24–617; FR ID 229959]

Public Safety and Homeland Security Bureau Requests Comment on Implementation of the Cybersecurity Labeling for Internet of Things Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) seeks comment on additional items to further the efficient and timely rollout of the IoT Labeling program. These items include the format of Cybersecurity Label Administrator (CLA) and Lead Administrator applications; filing fees for CLA applications; criteria for selecting CLAs and the Lead Administrator; CLA sharing of Lead Administrator expenses; Lead Administrator neutrality; processes for withdrawal of CLA and Lead Administrator approvals; recognition of CyberLABs outside the United States; complaint processes; confidentiality and security requirements; and the IoT registry.

DATES: Comments are due on or before August 19, 2024; reply comments are due on or before September 3, 2024. Comments on section II.B are due on or before August 19, 2024.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). You may submit comments, identified by PS Docket No. 23–239, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.

- Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the

FCC’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- **Commercial courier deliveries** (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

- **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

FOR FURTHER INFORMATION CONTACT: Tara B. Shostek, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–8130, or by email to Tara.Shostek@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Nicole Ongele, Office of Managing Director, Performance and Program Management, 202–418–2991, or by email to PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s document in PS Docket No. 23–239, DA 24–617; released on June 27, 2024. The full text of this document is available at <https://docs.fcc.gov/public/attachments/DA-24-617A1.pdf>.

Paperwork Reduction Act. The document may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995. All such new or modified information collection requirements will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

Providing Accountability Through Transparency Act. Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

Ex Parte Rules—Permit but Disclose. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Confidential Treatment. Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in § 0.459 of the Commission’s rules. Casual claims of confidentiality are not accepted. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary’s Office following the procedures set forth in 47 CFR 0.459. Redacted versions of confidential submissions may be filed via ECFS. Parties are advised that the FCC looks with disfavor on claims of confidentiality for entire documents. When a claim of confidentiality is made,

a public, redacted version of the document should also be filed.

Digital Equity and Inclusion. The Commission, as part of its continuing effort to advance digital equity for all,¹ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations² and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

Synopsis

1. In March 2024, the Federal Communications Commission (FCC or Commission) adopted a *Report and Order and Further Notice of Proposed Rulemaking* (IoT Labeling Order) establishing the framework for the Commission’s voluntary cybersecurity labeling program for consumer wireless Internet of Things (IoT) products (IoT Labeling Program). Recognizing the additional work that would need to be done to implement the framework, the Commission delegated authority to the Public Safety and Homeland Security Bureau (PSHSB or Bureau), in coordination with the Office of the Managing Director (OMD), to seek comment on certain additional items to further the efficient and timely rollout of the program. Accordingly, with this document, the PSHSB and OMD request comment on: the format of Cybersecurity Label Administrator (CLA) and Lead Administrator applications; filing fees for CLA

¹ Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. 151.

² The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 FR 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

applications; criteria for selecting CLAs and the Lead Administrator; CLA sharing of Lead Administrator expenses; Lead Administrator neutrality; processes for withdrawal of CLA and Lead Administrator approvals; recognition of CyberLABs outside the United States; complaint processes; confidentiality and security requirements; and the IoT registry.³

Discussion

A. Format of CLA and Lead Administrator Applications

2. The IoT Labeling Order provides that the Commission will accept applications for entities seeking to qualify as CLAs and those applicants seeking the position of Lead Administrator, but did not specify the format these applications should take. The Bureau believes that CLA/Lead Administrator applications should be submitted in narrative format via email and seeks comment on this tentative determination and any alternative methods or formats for submission. While the Bureau recognizes the organizational value of a fillable form, the information to be submitted by entities seeking to be a CLA/Lead Administrator seemingly lends itself to a narrative discussion of the qualifications and strengths the applicant possesses to support the FCC’s IoT Labeling Program. The Bureau still could re-evaluate the need for a fillable form after it has processed and reviewed the initial CLA/Lead Administrator applications and seek comment on a proposed format for such a form. We seek comment on these issues.

B. FCC Filing Fees for CLA and Lead Administrator Applications

3. The IoT Labeling Order directs the Bureau, in conjunction with OMD, to adopt procedures and take additional steps, including applicable fees (pursuant to any required public notice and comment), as necessary to ensure compliance with the Communications Act with respect to any rules adopted therein that contemplate the filing of applications directly with the Commission.⁴ Section 8 of the Communications Act requires the Commission to assess and collect

³ We note that this document is not meant to address all outstanding implementation issues in connection with the IoT Labeling Program; there are additional implementation matters and specific delegations of authority from the IoT Labeling Order that the Bureau will be addressing in subsequent documents.

⁴ The IoT Labeling Order directs manufacturers to file applications directly with CLAs to use the U.S. Cyber Trust Mark and, as such, those fees are not contemplated in this inquiry.

application fees to cover the costs of the Commission to process applications. Although the Commission has assessed and collected application fees pursuant to section 8 of the Communications Act since 1986,⁵ in 2018, Congress modified section 8 of the Communications Act to change the application fee program from a statutory schedule of application fees to a requirement that the Commission update and amend the existing schedule of application fees by rule to recover the costs of the Commission to process applications.⁶ Section 8(c) of the Act also requires the Commission to, by rule, amend the application fee schedule if the Commission determines that the schedule requires amendment to ensure that: (1) such fees reflect increases or decreases in the costs of processing applications at the Commission or (2) such schedule reflects the consolidation or addition of new categories of applications.

4. In the 2020 Application Fee Order, the Commission explained that in accordance with the RAY BAUM'S Act, application fees are based on the "costs of the Commission to process applications." Specifically, the Commission establishes an application fee based on direct labor costs of processing a particular application, which are calculated "by multiplying an estimate of the number of hours needed for each task, up through first-level supervisory tasks required to process the application, by an estimate of the labor cost per hour for the employee performing the task and by an estimate of the probability that the task needed to be performed." In the 2020 *Application Fee Order*, the Commission adopted five functional categories of

fees: Wireless Licensing Fees, Media Licensing Fees, Equipment Approval Fees, Domestic Service Fees, and International Service Fees.

5. The Bureau seeks comment on whether applications filed with the Commission by entities seeking qualification as a CLA or seeking the position of Lead Administrator constitute an application under section 8 of the Act. If so, is there an existing fee category that would cover such applications? If there are no existing fee categories that are applicable, should new application fee categories, "Cybersecurity Label Administrator" and "Lead Administrator," be established? We seek comment on the legal and factual basis for assessing a fee pursuant to section 8 of the Communications Act on these applications.

6. If we conclude that a filing with the Commission seeking to be a CLA or to be the Lead Administrator constitutes an application under section 8 of the Act, then we must consider the cost of processing such a filing to inform what fee the Commission would charge in connection with such a filing. We note that the agency has narrowly construed the scope of what constitutes processing for applications subject to fees. Applying the Commission's framework for the costs of processing applications adopted in the 2020 *Application Fee Order*, we believe that the processing of CLA applications, including the initial conditional approval and subsequent review required after the CLA notifies the Commission that it has obtained the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) 17065 accreditation, consists of engineer and engineer supervisory review, and attorney and attorney supervisory review.

7. As detailed below, the Bureau estimates that the time it will take to process each CLA application will be 15 hours and the time it will take to process each Lead Administrator application will be 8 hours. We estimate the labor cost per hour for the various 2024 general schedule pay grades of the employees that process applications based on the current pay table for Washington, DC, at the step 5 level, we estimate overhead costs as 20% of the salary level also per that rule, and we estimate each employee works 2,087 hours in one year. We also round the fee to the nearest \$5.00 increment as required by section 8 as amended. We seek comment on this approach.

8. The Bureau estimates that each CLA application will require 10 hours of engineering review at the GS-15 level,

2 hours of engineering supervisory review at the GS-15 level; 2 hours of attorney application review at the GS-12 level, and 1 hour of attorney supervisory review at the GS-15 level. The estimated total labor costs (including 20% overhead) for the engineering review (GS-15, step 5) of each CLA application is \$1,282.20 (12 engineering hours * 106.85 = 1,282.20).⁷ The estimated labor costs (including 20% overhead) for the attorney application review (GS-12, step 5) for each CLA application is \$129.28 (2 hours * \$64.64 = \$129.28).⁸ The estimated total labor costs (including 20% overhead) for the attorney supervisory review (GS-15, step 5) for each CLA application is \$106.85 (1 hour * 106.85 = 106.85).⁹ The total labor costs per CLA application is \$1,518.33 (1,282.20 + 129.28 + 106.85). Based on these hourly rates and the estimated time for processing each CLA application, the Bureau proposes that the filing fee for a CLA application is \$1,520 and we seek comment on this proposal.

9. Some entities seeking to qualify as a CLA may include additional information in their application seeking the position of Lead Administrator, which will similarly require additional engineering and engineering supervisory review, and attorney application and attorney supervisory review. The Bureau estimates that each Lead Administrator application, which occurs after the CLA application has already been reviewed, will require 4 hours of engineering review at the GS-15 level, 1 hour of supervisory engineering review at the GS-15 level, 2 hours of attorney application review at the GS-12 level, and 1 hour of attorney supervisory review at the GS-15 level.

⁷ The annual pay for a GS-15, step 5 in the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA Locality Pay area is \$185,824. Overhead costs are \$37,164.80 (20% * 185,824 = 37,164.80). The hourly rate of a GS-15, Step 5 including overhead costs based on 2,087 annual hours is \$106.85 (185,824 + 37,164.80 = 222,988.80; 222,988.80/2,087 hours = 106.85). The Bureau estimates that each CLA application will require 12 hours of engineering review at the GS-15, step 5 level.

⁸ The annual pay for a GS-12, step 5 in the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA Locality Pay area is \$112,425. Overhead costs are \$22,485.00 (20% * 112,425 = 22,485). The hourly rate of a GS-12, step 5 including overhead costs based on 2,087 annual hours is \$64.64 (112,425 + 22,485 = 134,910; 134,910/2,087 64.64). The Bureau estimates that each CLA application will require 2 hours of attorney review at the GS-12, step 5 level.

⁹ The hourly rate of a GS-15, step 5 attorney is the same as the hourly rate of a GS-15, step 5 engineer, which is \$106.85. The Bureau estimates that each CLA application will require 1 hour of attorney review at the GS-15, step 5 level.

⁵ While the 1986 schedule adopted by Congress was accurate at the time adopted because it was based on cost information provided by the Commission to Congress, the framework did not allow the fee schedule to change as a result of advancements in technology and corresponding changes in Commission procedures and rules. Notably, the Commission was constrained from adding, removing, or otherwise changing the structure or levels of application fees prior to the RAY BAUM'S Act, outside of a ministerial biannual order adopting without notice and comment changes to fees based on the Consumer Price Index.

⁶ The Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, or the RAY BAUM'S Act of 2018, amended sections 8 and 9 and added section 9A to the Communications Act of 1934, as amended and provided that such provisions would become effective on October 1, 2018. Consolidated Appropriations Act, 2018, Public Law 115-141, 132 Stat. 1084, Division P—RAY BAUM'S Act of 2018, Title I, section 103 (2018). 47 U.S.C. 158. Congress provided, however, that application fees in effect prior to the effective date of the new section 8 would remain in effect until the Commission adjusts or amends such fee. RAY BAUM'S Act of 2018, Title I, section 103(d) (unmodified provisions entitled "Transitional Rules").

10. We propose that applications for Lead Administrator must include an additional fee of \$770 to cover the FCC's costs of processing Lead Administrator applications. The Bureau seeks comment on this determination. The Bureau estimates that each Lead Administrator application will require 5 hours of engineering application review at the GS-15, step 5 level at an hourly rate of \$106.85 ($5 * 106.85 = 534.25$), 2 hours of attorney application review at the GS-12, step 5 level at an hour rate of \$64.64 ($2 * 64.64 = 129.28$) and 1 hour of attorney supervisor review at the GS-15, step 5 level at an hourly rate of \$106.85 ($1 * 106.85 = 106.85$) for a total of \$770.38 ($534.25 + 129.28 + 106.85$). The Bureau seeks comment on the estimation of time to process the Lead Administrator applications and the proposed fee for processing the application. Our proposals for processing fees are based on averages. Given that these are new categories of applications, at this time, we do not believe we have a factual basis to assess fees for administrative updates, minor changes or updates to a CLA application, or for entities seeking to withdraw as a CLA. We also do not believe we have a factual basis to assess fees for administrative updates, minor changes, or updates to a Lead Administrator application, or for an entity seeking to withdraw a Lead Administrator. Until we have experience with processing these new types of applications, it would be difficult to calculate identifiable direct costs beyond those included in the calculation of the initial application fee. For both the CLA and Lead Administrator applications, we seek comment on whether we have included in our estimates the appropriate steps under the Commission's 2020 *Application Fee Order* framework to determine processing costs. If commenters view our estimates to be over or under inclusive, to the extent practicable, commenters should explain their views by including reference to any application fees adopted in the 2020 proceeding that the commenter considers analogous to the CLA and/or Lead Administrator application.

C. Bureau Selection of Cybersecurity Label Administrators and the Lead Administrator

11. The IoT Labeling Order provides that the Bureau will release a public notice opening a filing window for the acceptance of CLA applications, which will include an option for CLA applicants to indicate they also seek the

role of Lead Administrator.¹⁰ The IoT Labeling Order specifies the expertise and qualifications each applicant for CLA and Lead Administrator must demonstrate and delegates to the Bureau the authority to adopt additional criteria and administrative procedures necessary to efficiently select one or more independent, non-governmental entities to act as CLA(s) and Lead Administrator. The Bureau seeks comment on whether there are additional areas of expertise or specific requirements a CLA applicant should be required to demonstrate in addition to those listed in the Order.¹¹ The Bureau seeks comment on what additional criteria, if any, the Bureau should take into consideration during the Lead Administrator selection process. What additional criteria would help us ensure that CLA(s) and the Lead Administrator are able to advance the Commission's policy objective to raise consumer confidence with regard to the cybersecurity of consumer wireless IoT products while strengthening the nation's cybersecurity posture? How should the Bureau differentiate between Lead Administrator candidates for selection? Should all selection criteria be weighted the same? If not, which criteria should carry more?

D. Lead Administrator Expenses Shared Among CLAs

12. The IoT Labeling Order "expect[ed]" that the Lead Administrator's expenses "in performing its duties on behalf of the program as a whole" will be "shared among CLAs as a whole," but does not provide a mechanism or details for such sharing. The Bureau seeks comment on the most effective mechanism for CLAs to share the Lead Administrator's expenses, including whether and how to distinguish costs associated with identified Lead Administrator responsibilities, potential changes in the Lead Administrator, and the timing of reimbursement for such expenses. Commenters should also consider whether and how any cost sharing mechanism might change after the initial rollout of the program, including any rationale for doing so. Alternatively, we seek comment on whether the Lead Administrator is in the best position to

¹⁰ The Bureau, in coordination with OMD and OGC will review these applications and determine which applications meet the CLA requirements and which CLA applicant best meets the requirements of Lead Administrator.

¹¹ The IoT Labeling Order contemplates the acceptance of applications for CLAs located outside the United States after appropriate international agreements or other appropriate prerequisites are in place.

propose how costs should be shared among CLAs. To the extent commenters have estimates of the Lead Administrator's expenses, we invite them to share such estimates. In addition, we seek comment on the categories of expenses that should be attributable to the Lead Administrator's responsibilities under this program. What auditing requirements should be required of the Lead Administrator? Are there financial controls, or other controls, the Commission has adopted in the case of other program administrators that it relies on that would be appropriate in this context? We note that the IoT Labeling Order does not contemplate other funding sources for the Lead Administrator's expenses, beyond sharing "among CLAs as a whole."

E. Lead Administrator Neutrality

13. The Commission recognized the competitive implications of an entity being both the Lead Administrator and a CLA and, as such, delegated authority to the Bureau to review, seek public comment on, and approve/disapprove the Lead Administrator recommendations. We seek comment on whether there are safeguards the Bureau might adopt to ensure the stakeholder process remains competitively neutral and the recommendations the Lead Administrator makes to the Commission (e.g., standards and testing criteria and label design) are stakeholder consensus-based and competitively neutral. For example, are there additional or different safeguards the Commission has adopted in the case of other program administrators that it relies on that would be appropriate in this context? We seek comment on whether the Bureau should adopt additional safeguards to ensure fulsome and broad stakeholder engagement in this process. Are there other safeguards the Bureau should adopt to ensure the Lead Administrator, who is potentially a competitor of other CLAs, does not have an unfair economic, or other, competitive advantage?

F. Withdrawal of CLA and Lead Administrator Approval

14. The IoT Labeling Order provides that the Commission will withdraw its approval of a CLA if the CLA's designation or accreditation is withdrawn, if there is just cause for withdrawing approval, or upon request of the CLA. The Commission will notify a CLA in writing of its intention to withdraw or limit the scope of the CLA's approval and provide at least 60 days for the CLA to respond. The Bureau will announce the withdrawal of

a CLA approval by public notice. The IoT Labeling Order also delegates authority to the Bureau to “manage changes in the Lead Administrator.” We believe the same processes should be applied to the withdrawal of the Lead Administrator. We seek comment on this tentative determination. The Bureau also seeks comment on steps that should be taken to replace the Lead Administrator. Should a replacement Lead Administrator be chosen by the Bureau from among the remaining accredited and recognized CLAs based on the same criteria and procedures used to select the original Lead Administrator? Should the Commission open a new filing window for CLAs seeking to be Lead Administrator? What other procedures, if any, should the Commission adopt to ensure the efficient replacement of a Lead Administrator? Should the Bureau set a term for the Lead Administrator and at the end of this term open the position up to new applications? If yes, what term is appropriate? Commenters may provide any other additional information that is pertinent to this inquiry.

G. Recognition of CyberLABs by Lead Administrator Located Outside the United States

15. The IoT Labeling Order provides that CyberLABs may be located outside the United States provided they are accredited to ISO/IEC 17025 and the FCC’s program scope and delegates authority to the Bureau to adopt any additional criteria or procedures necessary with respect to their use. We seek comment on whether there are additional procedures or criteria that should be considered when the Lead Administrator recognizes labs located outside the United States. Are there existing international frameworks in other areas that might provide an appropriate model to allow for recognition of a lab located outside of the United States?

H. Complaints

16. The Commission is the ultimate arbiter of complaints submitted, whether directly to the Commission, CLAs, the Lead Administrator, CyberLABs, or any other third-party entity, alleging improper, nonconforming, and/or unauthorized use of the U.S. Cyber Trust Mark. The Commission will actively and diligently enforce the IoT Labeling Program’s requirements to maintain the integrity of the FCC IoT Label, the U.S. Cyber Trust Mark, and the program. The IoT Labeling Order emphasized that deceptive or misleading use of the FCC

IoT Label or U.S. Cyber Trust Mark are prohibited, and set out a 20-day cure period for grantees to investigate complaints of non-compliance and report the results to the Bureau. The IoT Labeling Order also determined that the Commission and CLAs will receive complaints of noncompliant displays of the Cyber Trust Mark and delegated authority to the Bureau, in coordination with the Consumer and Governmental Affairs Bureau, to determine the process for receiving and responding to complaints. The Lead Administrator will receive complaints about the registry and coordinate with manufacturers to resolve any associated technical problems, and the Lead Administrator is also responsible for interfacing with the Commission on behalf of CLAs, including as it relates to complaints. We seek comment on the specific processes for receiving and responding to complaints associated with the IoT Labeling Program. Should entities file complaints with the Bureau, in addition to submitting them directly to a CLA, including the Lead Administrator? If complaints are filed with the Commission, should complaints associated with grantees that applied for authorization to use the FCC IoT Label be initially referred to the CLA that reviewed the original application for investigation and a determination of whether the application was approved or denied? Should these processes be different if the complaint involves a CyberLAB located outside of the United States? If so, what is the legal basis for these differences? In situations where there is no associated CLA, such as when a product displays the mark without permission, we believe that complaints of fraudulent or deceptive use of the Cyber Trust Mark by those entities that never applied for authorization (*i.e.*, where there is no applicable CLA) should be filed directly with the Commission. We seek comment on this belief. The Commission determined in the IoT Labeling Order that a grant of authorization to use the FCC IoT Label is automatically terminated upon notice by the Bureau following submission of a complaint of non-compliance, if that non-compliance has not been adequately corrected or addressed in a report describing actions taken to correct the deficiencies within 20 days. We seek comment on what requirements should follow from such a termination of authority. Should the Commission adopt disqualification procedures similar to ENERGY STAR’s, which include ceasing shipments of units displaying the label, ceasing the labeling

of associated units, removing references to the label from marketing materials, covering or removing labels on noncompliant units within the brand owner’s control, and conducting retail store level assessments to identify mislabeled products?

I. Confidentiality and Security Requirements

17. The Bureau anticipates that the manufacturer applications submitted to CLAs will contain commercially sensitive and proprietary information that the manufacturers customarily treat as confidential, including, but not limited to, test reports. The Bureau proposes that these applications should be treated as presumptively confidential and CLAs should be required to maintain this confidentiality. The Bureau seeks comment on this tentative determination. We also seek comment on whether CLA applications submitted to the Commission will likewise contain commercially sensitive and proprietary information that is routinely treated as confidential and thus should be treated as presumptively confidential.¹² Are certain aspects of either of these applications not appropriately treated as presumptively confidential? Are there public interest and/or transparency reasons to make CLA applications and/or Lead Administrator applications publicly available? Should only those CLA applications that are approved be publicly available, while CLA applications that are denied be kept confidential?

18. Information submitted by manufacturers to CLAs, the Lead Administrator, or CyberLABs, in the course of seeking authority to use the FCC IoT Label, including but not limited to applications and test reports, and information submitted to the Lead Administrator by a lab seeking recognition as a CyberLAB (*i.e.*, authorized to conduct conformance testing under the Commission’s IoT Labeling Program) are not agency records of the Commission. Only information submitted to the Commission, such as submissions in furtherance of applications by entities seeking authority from the Commission to be a CLA and/or Lead Administrator, are records of the Commission.

19. The Federal Information Security Modernization Act of 2014 (FISMA) requires, among other things, that each Federal agency provide protections commensurate with the risk and

¹² The Bureau has an obligation to publish data maintained by the Commission that would be subject to disclosure under the Freedom of Information Act (FOIA).

magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of “information collected or maintained by or on behalf of the agency” and “information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency.” We tentatively conclude that these requirements attach to the Lead Administrator and CLAs, who both collect and maintain information and operate information systems on behalf of the FCC. We seek comment on this tentative conclusion. We note that in the IoT Labeling Order, the Commission described that each entity seeking authority to act as a CLA should demonstrate expertise in, among other things, “[f]ederal law and guidance governing the security and privacy of agency information systems,” which we believe encompasses FISMA and related guidance from the Office of Management and Budget and publications from the National Institute of Standards and Technology (NIST). If these requirements are applicable to the Lead Administrator and CLAs, would they incur additional costs, and if so, what are they? What benefits would attach to FISMA compliance with respect to the confidentiality, integrity, and availability of information and information systems if FISMA and related requirements are applicable to the Lead Administrator and CLAs? Are there additional security requirements the Commission should require of the databases that are used in support of the IoT Labeling Program?

J. Registry

20. The Commission determined in the IoT Labeling Order that the FCC IoT Label must include the Cyber Trust Mark and a QR Code that links to a dynamic, decentralized, publicly available registry containing information supplied by entities authorized to use the FCC IoT Label (e.g., manufacturers) through a common Application Programming Interface (API).¹³ The Commission agreed that it should use a third-party to host and manage the registry due to the resources required to establish the registry; determined that the Lead Administrator is in the best position to interface with manufacturers to ensure the smooth operation of the registry; and directed the Lead Administrator to receive and address any technical issues that arise in connection with the registry’s API

and displaying information from the registry to the consumer when they present the QR Code. Further, as detailed below, the IoT Labeling Order envisioned a registry that supports different presentation options.

21. We seek comment on what, if any, registry disclosure fields, in addition to those already required by the IoT Labeling Order, would be beneficial to consumers.¹⁴ Should manufacturers be required to list the sensors contained in the complying product, such as cameras, microphones, and location tracking devices? Should manufacturers be required to disclose what data is collected by those sensors, and whether that data is shared with third parties?¹⁵ The Commission also recognizes some products/product classes may benefit from additional data elements being disclosed in the registry. For example, the Commission observed that “the information contained in the registry for a particular IoT product or product class may also depend on the standards and testing procedures adopted for each particular IoT product.” The Commission also recognized “that some of the information recommended by NIST in its consumer education recommendations . . . may be valuable for consumers to see in the registry.” Other possible candidates for inclusion identified in the IoT Labeling Order included, “manufacturer’s access control protections (e.g., information about passwords, multi-factor authentication), whether or not the data is encrypted while in motion and at rest (including in the home, app, and cloud), patch policies, and security or privacy information.” Are there particular registry data elements that would support the product’s security features for those using assistive technologies? Are there additional registry disclosure fields that are necessary for specific products/product classes, based on

¹⁴ The Commission delegated authority to the Bureau to seek comment on the need for additional data fields beyond the baseline of necessary information that must be displayed for an IoT product in the registry which includes: disclosure of product name, manufacturer name, date of authorization, contact information for the CLA and CyberLAB, instructions on how to change the default password, information on how to configure the device securely, information as to whether software updates are automatic and how to access updates if not, the minimum support period, and whether the manufacturer maintains a Hardware Bill of Materials (HBOM) and/or a Software Bill of Materials (SBOM).

¹⁵ Regarding whether to disclose whether data is shared with third parties, commenters should consider security/privacy issues and if data should be replicated; and if the data should be replicated in multiple repositories—by the relevant CLA(s) or vendors, for example—and publicly accessible via a single query point?

those or other considerations and if so, what they should be?

22. The Commission also delegated authority to the Bureau to establish the structure of the registry; and identify the common API and how the API should be structured and used. To this end, we seek comment generally on the structure, format, and maintenance of the registry, and how the queried registry data will be displayed to the consumer. The Bureau believes that the manufacturer would be responsible for their own product data and keeping the data current. We also believe that the data would be hosted by the manufacturers or in partnership with their selected third party and made available through the common API that is secure by design and seek comment on these tentative determinations. How should the API access be best secured to ensure its integrity and availability? What controls (e.g., rate limits for use of the API) should be required or allowed, and where would those controls best be implemented? How should manufacturers maintain and implement interactions with their product’s data in connection with the API? Should manufacturers be responsible for maintaining and implementing the API in connection with its interactions with the registry data, and if so, how? How should the Commission reduce burdens on manufacturers in supporting the decentralized registry? We seek comment on how often the registry data should be updated and on how costs involved in maintaining the registry should be handled. We invite commenters to provide any other technical information to be considered in establishing the registry.

23. The Bureau seeks comment on its tentative determination that at least three different registry display options may be supported:

- Product specific data hosted by the manufacturer or their selected third party;
- Vendor data provided for presentation by a commercial retailer; and
- Aggregated data provided for presentation of multiple products.

Are these presentation options consistent with the goals of the IoT Labeling Order that the registry should enable the display to the consumer of required information about individual products, while providing the flexibility to support the envisioned use cases? Are there other presentation options that we should consider for the display or consumption of registry information in determining the structure and technical details involved with the operation of the registry? Should the registry meet

¹³ The goal of the registry is to assist the public in understanding security-related information about the products that bear the Cyber Trust Mark.

certain performance metrics so that poor user experience does not discourage use? Who is in the best position to manage access to the distributed registry as well as access to the API and the level of access available?

24. The Bureau seeks comment on its tentative determination that there should be a specific aggregated data “landing page”¹⁶ for the registry, which should be a “.gov” domain to bring the consumer additional trust and validity to the IoT Labeling Program. The Bureau also seeks comment on the party that should be responsible for hosting this landing page. Is the Lead Administrator in the best position to host the landing page? What additional costs are involved with this responsibility? What security procedures must be adopted by that third party? Should the landing page meet certain performance metrics so that poor user experience does not discourage use? Are there additional security or privacy requirements arising from Federal law that are applicable to the registry? Should the registry operator(s), as appropriate, be required to implement adequate security, privacy, and availability controls to meet FISMA low/moderate standards, or a commercial equivalent?

Procedural Matters

25. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, we have prepared a Supplemental Regulatory Flexibility Analysis (Supplemental IRFA) concerning the possible impact of the rulemaking and policy changes contained in this document. The Supplemental IRFA concerning the possible impact of the rulemaking and policy changes contained in this document can be found as Exhibit A of the Public Safety and Homeland Security Bureau’s Public Notice, DA 24–617, released June 27, 2024, at this link: <https://docs.fcc.gov/public/attachments/DA-24-617A1.pdf>. Written public comments are requested on the Supplemental IRFA. Comments must have a separate and distinct heading designating them as responses to the Supplemental IRFA and must be filed

by the deadlines for comments on the first page of this document.

26. *Supplemental Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Bureau has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules discussed in the document to supplement the Commission’s Initial and Final Regulatory Flexibility Analyses completed in the *IoT Labeling NPRM* released in August 2023, and the IoT Labeling Order released in March 2024. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same deadline for comments specified in the **DATES** section of this document. The Bureau will send a copy of the document, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the document and Supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

27. *Need for, and Objectives of, the Proposed Rules.* The IoT Labeling Order adopted a voluntary cybersecurity labeling program for consumer Internet of Things (IoT) products that will provide consumers with an easy-to-understand indicator of a product’s relative cybersecurity and improve consumer confidence and understanding of IoT product cybersecurity. The IoT Labeling Program will authorize qualifying IoT products to display the FCC IoT Label, which includes the U.S. Cyber Trust Mark and a QR Code that links to a registry with product-specific consumer-friendly information. The program will adopt standards and testing procedures based on the National Institute of Standards and Technology (NIST) Core Baseline for Consumer IoT Products, and it will be supported by Cybersecurity Label Administrators (CLAs) and recognized Cybersecurity Testing Laboratories (CyberLABs). A Lead Administrator will be chosen by the Commission from among the CLAs and will be responsible for collaborating with stakeholders to make recommendations including technical cybersecurity standards and testing procedures with which IoT products must comply to be authorized to use the FCC IoT Label, the label design, and a consumer education campaign, to be reviewed by the Commission.

28. In the IoT Labeling Order, the Commission delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to seek comment on certain additional items to further the efficient and timely rollout of the program. This document seeks comment on a number of those items, including the format of CLA and Lead Administrator applications; filing fees for CLA applications; criteria for selecting CLAs and the Lead Administrator; CLA sharing of Lead Administrator expenses; extensions of time to become accredited; Lead Administrator neutrality; complaint processes; and the IoT registry. The proposals considered in this document will contribute to the voluntary IoT Labeling Program and further the Commission’s objective to provide better information to consumers about the cybersecurity of the IoT products they use, and bolster the cybersecurity of the nationwide IoT ecosystem.

29. *Legal Basis.* The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(n), 302, 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended.

30. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁷ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

31. As noted above, Regulatory Flexibility Analyses were incorporated into the IoT Labeling NPRM and the IoT Labeling Order. In those analyses, the Commission described in detail the small entities that might be significantly affected. Accordingly, in this document, for the Supplemental IRFA, we incorporate by reference the

¹⁶ The “landing page” is envisioned to be a web page/site that provides search capabilities to aggregate data pulled from the distributed registry and presents data for individual products or multiple products in a common format as prescribed by the IoT Labeling Order.

¹⁷ Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.”

descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the IoT Labeling NPRM and the IoT Labeling Order.

32. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The IoT Labeling Program will be voluntary, so small entities who do not participate in the program will not be subject to any new or modified reporting, recordkeeping, or other compliance obligations. Small entities that choose to participate in the program will incur recordkeeping, reporting, and other compliance obligations necessary to test their IoT products to demonstrate compliance with the program requirements. Small entities that choose to participate by applying to be a CLA or CyberLAB will also incur recordkeeping, reporting, and other compliance obligations. We note that obligations for small entities and other applicants were detailed and adopted by the Commission in the IoT Labeling Order. The proposals and discussions in this document seek comment on additional details to the program, including application, selection, and replacement for CLAs and the Lead Administrator as needed, the complaints process, and the registry.

33. Small entities will need to keep the records necessary to demonstrate initial and continued compliance with program requirements, as an IoT product manufacturer or a CLA, including test reports, records related to potential complaint investigations, and data disclosures for the registry, among others. More specifically, small and other grantees of authority to use the FCC IoT Label may also be subject to additional reporting, recordkeeping, and/or other compliance requirements related to the IoT registry in light of the our inquiry and request for comments in the document on (1) what, if any additional registry disclosure fields would benefit consumers, and (2) whether to require manufacturers to list the sensors contained a complying product, identify what data is collected by those sensors, and disclose whether that data is shared with third parties.

34. The document calculates and proposes that small and other CLA and Lead Administrator applicants be subject to an application filing fee of \$1,520 for CLA Applicants and an additional \$770 for CLA applicants that apply to be a Lead Administrator, to cover the Commission's costs of processing these applications. With regard to other costs that could result from this proceeding, at this time the record does not include sufficient cost

information to allow the Bureau to quantify the costs of compliance for small entities, including whether it will be necessary for small entities to hire professionals to comply with the proposals and other matters upon which we seek comment, if adopted. To help the Bureau more fully evaluate the cost of compliance for small entities should its proposals be adopted, in this document, we request comments on the implications of our proposals and whether there are more efficient and less burdensome alternatives (including cost estimates) for the Bureau to consider. We expect the information we received in comments to help the Bureau identify and evaluate relevant matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the document.

35. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small businesses, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

36. For the IoT Labeling Program to be meaningful to consumers, the requirements for an IoT product to be granted authority to use the FCC IoT Label must be uniform for small businesses and other entities. The Bureau maintains the view expressed in the IoT Labeling Order that the significance of mark integrity, and building confidence among consumers that devices and products bearing the FCC IoT Label can be trusted to be cyber secure, necessitates adherence by all entities participating in the program to the same rules, regardless of size.

37. In the document, steps taken by the Bureau which should minimize the economic impact for small entities include our decision not to assess fees for administrative updates, minor changes or updates to a CLA application, or for entities seeking to withdraw as a CLA. The Bureau sought comment on the format of CLA and Lead Administrator applications, as

well as the fees associated with those applications, and additional areas of expertise or specific requirements a CLA applicant should be required to demonstrate. We also considered and sought comment on other aspects of the Lead Administrator's roles and responsibilities, including the most effective mechanism for CLAs to share in funding the Lead Administrator's expenses, safeguards the Bureau might adopt to ensure Lead Administrator neutrality, and steps to replace the Lead Administrator as needed. Following our conclusion that CLA and Lead Administrator applications are not covered by any existing Commission fee categories and therefore new categories should be established, we alternatively inquired and sought comment on whether, and which existing Commission fee category do CLA and Lead Administrator applications fall within, if any. Additionally, the Bureau considered whether there are additional procedures or criteria that should be considered when recognizing CyberLABs located outside the United States. As stated in the IoT Labeling Order, declining to require CyberLABs to be physically located in the U.S. provides more testing lab options for small and other entities. In comments, small entities can identify other requirements or criteria that could minimize the economic impact as IoT product manufacturers submitting applications to a CLA or CyberLAB, or as a prospective CLA or CyberLAB themselves.

38. The Bureau also sought comment on the process for receiving and responding to complaints associated with the program, as well as what requirements should follow from a termination of authority to use the FCC IoT Label due to noncompliance. We asked whether complaints associated with grantees that applied for authorization to use the FCC IoT Label should be initially referred back to the CLA that reviewed the original application. We believe this would be less costly to small entities than going through a separate entity for investigation of complaints. Small entities can also address in comments whether the termination requirements presented would create significant economic impacts and identify alternatives that may reduce those costs.

39. Additionally, the Bureau considered and sought comment in the document on details related to the publicly accessible IoT registry, including additional data disclosure fields, structure and format of the registry, and the Bureau's determination that the registry landing page should be

a “.gov” domain. We considered and asked what additional fields would be beneficial to consumers, such as information related to sensors contained in the product and elements that would support users of assistive technologies. We also considered and asked how the common application programming interface (API) that makes manufacturer data available to consumers should be funded and what responsibilities manufacturers should have for maintaining and implementing it. Small entities can specify in comments whether additional aspects of the registry would create significant economic impacts and identify alternatives that may reduce those costs. Regarding the landing page, we asked what additional costs would be associated with hosting such a page. While small entities choosing to participate in the program would have to make required registry data available through the common API, allowing grantees to report information through the API alleviates the need for additional notification requirements

which would increase costs for small entities.

40. The Bureau also proposed in the document that manufacturer applications submitted to CLAs, including but not limited to test reports, are presumptively confidential which should benefit small manufacturers, and sought comment on this approach. We tentatively concluded the Lead Administrator and CLAs are required to comply with the Federal Information Security Management Act of 2002 (FISMA),¹⁸ and we sought comment on whether there are additional costs associated with such compliance. In comments, small entities can identify which of these proposals raised in this document are particularly difficult or costly for them and how different, simplified, or consolidated requirements would address those burdens. They can also propose any modifications to the proposals that would their minimize anticipated economic impact. The Bureau expects to consider more fully the economic impact on small entities following its review of any comments filed in

response to the document, including any costs and benefits information we receive. The Bureau’s evaluation of the comments filed in this proceeding will shape the final alternatives we consider, the final conclusions we reach, and any final actions we ultimately take in this proceeding to minimize any significant economic impact that may occur on small entities.

41. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

Ordering Clauses

42. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(n), 302, 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended that this document *is hereby adopted*.

43. *It is further ordered* that the Commission’s Office of the Secretary, *shall send* a copy of this document, including the Supplemental Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

APPLICATION FOR CYBERSECURITY LABELING ADMINISTRATOR AND LEAD ADMINISTRATOR
CYBERSECURITY LABEL ADMINISTRATOR (CLA)

1. Applicant

Name:		Address		
		Street	City	Zip
Point of Contact:	Name	Title	Email	Phone Number

2. Describe Applicant’s organization structure and how this structure supports the Commission’s CLA requirements.

3. Describe the processes Applicant will use to review applications seeking authority to use the FCC IoT Label (based on type testing as identified in ISO/IEC 17065).

4. Describe the safeguards Applicant will implement (or already has in place) to avoid personal and organization conflict when processing applications.

5. Describe in detail Applicant’s expertise in all of the following areas:
(a) Cybersecurity expertise and capabilities. Include a description of Applicant’s knowledge of IoT and FCC IoT Labeling requirements.

¹⁸ 44 U.S.C. 3541, *et seq.*

(b) Expert knowledge of NIST's cybersecurity guidance, including but not limited to NIST's recommended criteria and labeling program approaches for cybersecurity labeling of consumer IoT products.

(c) Expert knowledge of FCC rules and procedures associated with product compliance testing and certification.

(d) Knowledge of Federal law and guidance governing the security and privacy of agency information systems.

(e) Explain how Applicant will securely handle large volumes of information and include Applicant's related internal security practices.

(f) Explain how Applicant will securely handle large volumes of information and include Applicant's related internal security practices.

(g) Status of accreditation pursuant to all the requirements associated with ISO/IEC 17065 and the FCC scope.

(h) Describe the controls Applicant has implemented to eliminate actual or potential conflicts of interests (both personal and organizational), particularly with regard to commercially sensitive information, to include but not limited to, remaining impartial and unbiased and prevent them from giving preferential treatment to certain applications (e.g., application line jumping) and from implementing heightened scrutiny of applications from entities not members or otherwise aligned with the CLA.

Check all that apply:

6. Applicant is not owned or controlled by or affiliated ¹⁹ with any entity identified on the Commission's Covered List	☐
7. Applicant is not owned or controlled by or affiliated with any listed sources of prohibition under 47 CFR 8.204	☐
8. Applicant, its affiliate(s), or subsidiary(ies) are not owned or controlled by a foreign adversary country defined by the Department of Commerce in 15 CFR 7.4	☐
9. Applicant is not owned or controlled by or affiliated with any person or entity that has been suspended or debarred from receiving federal procurements or financial awards	☐
10. Applicant is not otherwise prohibited from participating in the IoT Labeling Program	☐

¹⁹For purposes of the Commission's IoT labeling program an "affiliate" is defined as "a person that (directly or indirectly) owns or controls, is owned

or controlled by, or is under common ownership or control with, another person. For purposes of this

part the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent."

If any of the boxes in this section do not apply to Applicant, attach an exhibit explaining the circumstances and demonstrating why Applicant is qualified to be Lead Administrator.

LEAD ADMINISTRATOR

Applicants seeking the role of Lead Administrator must provide all of the information requested below.

(Leave the following information blank if not applying for role of Lead Administrator.)

In the following section, provide a detailed description of how Applicant will execute the duties of the Lead Administrator and include all of the following:

1. Describe Applicant's previous experience in IoT cybersecurity.

2. Describe Applicant's previous roles, if any, in IoT labeling.

3. Describe Applicant's capacity to execute the Lead Administrator duties.

4. Describe Applicant's plan/approach to interfacing with the Commission on the behalf of CLAs.

5. Describe in detail Applicant's plan for engaging and collaborating with stakeholders (including other CLAs) to identify or develop FCC recommendations as required by 47 CFR 8.221.

6. Describe in detail Applicant's proposed consumer education campaign.

7. Any additional information Applicant believes demonstrates why they should be on how the applicant's qualifications align with the role of Lead Administrator.

Information Current and Complete

Information filed with the FCC must be kept current and complete. The Applicant must notify the FCC regarding any substantial and significant changes in the information furnished in the application(s). See 47 CFR 1.65.

Certification Statements

By signing this application, the Applicant certifies that all statements and information provided in this application and in any exhibits or attachments are part of this application and are true, complete, correct, and made in good faith.

The Applicant certifies that neither the Applicant nor any other party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, because of a conviction for possession or distribution of a controlled substance. This certification does not apply to applications filed in services exempted under § 1.2002(c) of the Commission's rules, 47 CFR 1.2002(c). See 47 CFR 1.2002(b) for the definition of "party to the application" as used in this certification.

The Applicant certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.

The Applicant certifies that the Applicant and all of the related individuals and entities required to be disclosed on this application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from federal procurement.

Signature

Typed or printed name of Party Authorized to Sign

First Name:	MI:	Last Name	Suffix	Title

Signature	Date

FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.

Federal Communications Commission.

David Furth,Deputy Bureau Chief, Public Safety and
Homeland Security Bureau.

[FR Doc. 2024–15379 Filed 7–17–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 22 and 52****[FAR Case 2024–004, Docket No. FAR–
2024–0004, Sequence No. 1]****RIN 9000–AO72****Federal Acquisition Regulation:
Combating Trafficking in Persons—
Definition and Agency Responsibilities****AGENCY:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Proposed rule.**SUMMARY:** DoD, GSA, and NASA are
proposing to amend the Federal
Acquisition Regulation (FAR) to
implement statutory updates to a
definition and to agency responsibilities
associated with combating trafficking in
persons in Federal contracts.**DATES:** Interested parties should submit
written comments to the Regulatory
Secretariat Division at the address
shown below on or before September
16, 2024 to be considered in the
formation of the final rule.**ADDRESSES:** Submit comments in
response to FAR Case 2024–004 to the
Federal eRulemaking portal at <https://www.regulations.gov> by searching for
“FAR Case 2024–004”. Select the link
“Comment Now” that corresponds with
“FAR Case 2024–004”. Follow the
instructions provided on the “Comment
Now” screen. Please include your name,
company name (if any), and “FAR Case
2024–004” on your attached document.
If your comment cannot be submittedusing <https://www.regulations.gov>, call
or email the point of contact in the **FOR
FURTHER INFORMATION CONTACT** section of
this document for alternate instructions.*Instructions:* Please submit comments
only and cite “FAR Case 2024–004” in
all correspondence related to this case.
Comments received generally will be
posted without change to <https://www.regulations.gov>, including any
personal and/or business confidential
information provided. Public comments
may be submitted as an individual, as
an organization, or anonymously (see
frequently asked questions at <https://www.regulations.gov/faq>). To confirm
receipt of your comment(s), please
check <https://www.regulations.gov>,
approximately two to three days after
submission to verify posting.**FOR FURTHER INFORMATION CONTACT:** For
clarification of content, contact Ms.
Jennifer Hawes, Procurement Analyst, at
202–969–7386 or by email at
jennifer.hawes@gsa.gov. For information
pertaining to status, publication
schedules, or alternate instructions for
submitting comments if <https://www.regulations.gov> cannot be used,
contact the Regulatory Secretariat
Division at 202–501–4755 or
GSARegSec@gsa.gov. Please cite FAR
Case 2024–004.**SUPPLEMENTARY INFORMATION:****I. Background**DoD, GSA, and NASA are proposing
to revise the FAR to implement the
following statutory amendments to a
definition and to agency responsibilities
associated with combating trafficking in
persons in Federal contracts:

- Section 108 of the Justice for
Victims of Trafficking Act of 2015 (Pub.
L. 114–22) amended the definition of
“sex trafficking” at 22 U.S.C. 7102 to
clarify the range of conduct considered
sex trafficking.

- Section 2 of the End Human
Trafficking in Government Contracts
Act of 2022 (Pub. L. 117–211) amended
22 U.S.C. 7104b(c)(1) to require that,
upon receipt of an Inspector General’s
report substantiating an allegation of
violations by a contractor or
subcontractor, the agency head refer the

matter to the agency suspending and
debaring official.**II. Discussion and Analysis****A. Definition**DoD, GSA, and NASA are proposing
amendments to FAR subpart 22.17,
Combating Trafficking in Persons, and
the clause at FAR 52.222–50, Combating
Trafficking in Persons, to align the
definition of “sex trafficking” with the
statutory definition of this term at 22
U.S.C. 7102. This proposed rule would
clarify the definition of “sex trafficking”
at FAR 22.1702 and paragraph (a) of the
clause at FAR 52.222–50 to also include
“patronizing” or “soliciting” a person
for the purpose of a commercial sex act,
in accordance with Federal law.The term “sex trafficking” is used in
the definition of “severe forms of
trafficking in persons” in the same FAR
section and clause; therefore, the
proposed revisions to the definition of
“sex trafficking” in the section and
clause will affect the definition of
“severe forms of trafficking in persons.”
The proposed revisions have the effect
of clarifying that patronizing or
soliciting a person for the purpose of a
commercial sex act, where the
commercial sex act is induced by force,
fraud, or coercion, or in which the
person induced to perform such act has
not attained 18 years of age, is a “severe
form of trafficking in persons.”Conforming changes are also
proposed to update the date of FAR
clause 52.222–50 where it is referenced
in the clauses at FAR 52.212–5, Contract
Terms and Conditions Required To
Implement Statutes or Executive
Orders—Commercial Products and
Commercial Services; FAR 52.213–4,
Terms and Conditions—Simplified
Acquisitions (Other Than Commercial
Products and Commercial Services); and
FAR 52.244–6, Subcontracts for
Commercial Products and Commercial
Services.**B. Agency Responsibilities**DoD, GSA, and NASA are also
proposing to update agency
responsibilities to align with the
statutory requirements at 22 U.S.C.
7104b(c)(1). Currently, FAR

22.1704(c)(2)(i) requires that, upon receipt of a report from an agency Inspector General that provides support for allegations of a violation of the trafficking in persons prohibitions, the head of the Executive agency delegate to an authorized agency official, such as the agency suspending or debarring official, the responsibility to conduct an administrative proceeding and make a final determination regarding whether the allegations have been substantiated. DoD, GSA, and NASA are proposing to update FAR 22.1704(c)(2)(i) by adding to the agency head's responsibilities the requirement to refer the matter to their agency suspending and debarring official, as required by 22 U.S.C. 7104b(c)(1).

Conforming amendments are proposed at FAR 22.1704(d) to clarify that the contracting officer procedures in the subordinate paragraphs apply when a final determination is made in accordance with FAR 22.1704(c)(2)(i)(B), instead of FAR 22.1704(c)(2)(ii). This proposed rule would also update FAR 22.1704(d)(2) to clarify that the remedies that may be taken by the contracting officer after such a determination are limited to those listed in paragraphs (e)(1) through (6) of the clause at FAR 52.222–50; the remedy at paragraph (e)(7) of the clause to suspend or debar a contractor is available to the suspending and debarring official.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule amends the clause at FAR 52.222–50 to update the definition of “sex trafficking.” However, this rule does not impose any new requirements on contracts or subcontracts valued at or below the SAT or for commercial products and commercial services, including COTS items. The clause continues to apply to contracts and subcontracts valued at or below the SAT and to acquisitions for commercial products and commercial services, including COTS items.

IV. Expected Impact of the Rule

A. Definition

Paragraph (b) of the clause at FAR 52.222–50, Combating Trafficking in Persons, prohibits a contractor and its employees and agents from engaging in severe forms of trafficking in persons during the period of performance of the contract. “Severe forms of trafficking in persons,” as defined in 22 U.S.C. 7102

and paragraph (a) of the FAR clause, includes “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.” Paragraph (c) of the FAR clause requires the contractor to notify their employees, subcontractors, and agents of this prohibition and take appropriate actions against employees, subcontractors, and agents who violate this prohibition. Paragraph (d) of the FAR clause requires the contractor to inform the contracting officer and Inspector General immediately of any credible information they receive that alleges an employee, subcontractor, subcontractor employee, or agent has violated the prohibition. Contractors are required to flow the substance of the clause down to their subcontractors, to ensure subcontractors at all tiers are subject to the same prohibition and compliance requirements (see FAR 52.222–50(i)(1)).

This proposed rule, if finalized, would not change these existing notification or compliance requirements, except to clarify (pursuant to 22 U.S.C. 7102) that “patronizing” or “soliciting” of a person for the purpose of a commercial sex act, where such act is induced by force, fraud, or coercion or the person induced to perform such act has not attained 18 years of age, is a “severe form of trafficking in persons.” When notifying their employees, subcontractors, and agents of the Government’s prohibition on engaging in “severe forms of trafficking in persons” during performance of the contract, contractors and subcontractors will need to ensure their notification reflects the revised definition of “sex trafficking.” In addition, the proposed changes to the definition of “sex trafficking” to add “patronizing” and “soliciting” are not expected to have a substantial impact on the interpretation of what constitutes “sex trafficking” since the definition already includes “recruitment. . . of a person for the purpose of a commercial sex act.”

B. Agency Responsibilities

FAR 22.1704(c)(2)(i) requires the agency head to delegate to an authorized official, such as the agency suspending and debarring official, the responsibility to conduct an administrative proceeding and make a final determination regarding whether the allegations of a violation of trafficking in persons in the agency Inspector General report are substantiated. This proposed rule, if finalized, will not have a significant impact on agencies that already delegate the responsibility to conduct

administrative proceedings to their agency suspending and debarring official, as currently suggested at FAR 22.1704(c)(2)(i). Those agencies that do not currently delegate to their suspending and debarring official will need to adjust their internal procedures to also refer the matter to the agency suspending and debarring official. This change will ensure that the agency suspending and debarring official is made aware of the Inspector General report while the agency is conducting the administrative proceeding. Paragraph (e) of FAR clause 52.222–50 already puts the contractor on notice that suspension or debarment is a potential remedy for violations under the contract, so this change to Government procedures is not anticipated to have a significant impact on contractors; however, it is expected that contractors will take note of the direct referral to the suspending and debarring official and may choose to validate procedures they already have in place to combat trafficking in persons.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule, if finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because the updates to the statutory definitions and clarification of agency procedures are not substantive. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to revise the FAR to implement the following statutory amendments to a definition and agency responsibilities associated with combating trafficking in persons in Federal contracts:

- Section 108 of the Justice for Victims of Trafficking Act of 2015 (Pub. L. 114–22) amended the definition of “sex trafficking” at 22 U.S.C. 7102 to clarify the range of conduct considered sex trafficking.

- Section 2 of the End Human Trafficking in Government Contracts Act of 2022 (Pub. L. 117–211) amended 22 U.S.C. 7104b(c)(1) to require that, upon receipt of an Inspector General’s report substantiating an allegation of violations by a contractor or subcontractor, the agency head refer the matter to the agency suspending and debarbing official.

Requirements for combating trafficking in persons on Government contracts are implemented in FAR subpart 22.17, Combating Trafficking in Persons, and the clause at FAR 52.222–50, Combating Trafficking in Persons. This proposed rule, if finalized, would amend FAR 22.1702 and paragraph (a) of FAR clause 52.222–50 to revise the definition of “sex trafficking.” This proposed rule, if finalized, would also revise FAR 22.1704(c)(2) to require that, upon receipt of an agency Inspector General report that provides support for allegations of violations of trafficking in persons prohibitions, the agency head refer the matter to the agency suspending or debarbing official. Promulgation of the FAR is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

The clause at FAR 52.222–50 continues to be prescribed for use in all solicitations and contracts. Therefore, this rule will apply to any small business competing on Government contracts. As of November 2023, there were approximately 362,000 entities registered in the System for Award Management who reported that they are a small business for at least one North American Industry Classification System code.

Paragraph (b) of the clause at FAR 52.222–50 prohibits a contractor and its employees and agents from engaging in severe forms of trafficking in persons during the period of performance of the contract. “Severe form of trafficking in persons,” as defined in 22 U.S.C. 7102 and paragraph (a) of the FAR clause, includes “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.” Contractors and their subcontractors are required to notify their employees and agents of the prohibition in paragraph (b) of the FAR clause and to take appropriate actions against employees or agents who violate the prohibition (see FAR 52.222–50(c) and (i)(1)). They are also required to inform the contracting officer and Inspector General immediately of any credible information they receive that alleges an employee, subcontractor, subcontractor employee, or agent has violated the prohibition (see FAR 52.222–50(d) and (i)(1)).

This proposed rule does not propose any changes to these existing notification or compliance requirements for small businesses, except to clarify (pursuant to 22 U.S.C. 7102) that “patronizing” or “soliciting” of a person for the purpose of a commercial sex act, where such act is induced by force, fraud, or coercion or the

person induced to perform such act has not attained 18 years of age, is a “severe form of trafficking in persons.” When notifying their employees, subcontractors, and agents of the Government’s prohibition on engaging in “severe forms of trafficking in persons” during performance of the contract, contractors and subcontractors will need to ensure their notification reflects the revised definition of “sex trafficking.” In addition, the proposed changes to the definition of “sex trafficking” to add “patronizing” and “soliciting” are not expected to have a substantial impact on the interpretation of what constitutes “sex trafficking” since the definition already includes “recruitment . . . of a person for the purpose of a commercial sex act.”

The proposed amendments to require referral to the agency suspending and debarbing official do not create any additional reporting or compliance requirements for small businesses. Paragraph (e)(7) of the clause at FAR 52.222–50 already puts contractors and subcontractors on notice that suspension and debarment are potential remedies for substantiated violations.

The proposed rule, if finalized, would not duplicate, overlap, or conflict with other Federal rules.

There are no significant alternatives to the rule. This rule will not have a significant economic impact on small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2024–004), in correspondence.

VII. Paperwork Reduction Act

This rule affects the information collection requirements in the clause at FAR 52.222–50, currently approved under Office of Management and Budget (OMB) Control Number 9000–0188, Combating Trafficking in Persons, in accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3521). The impact, however, is negligible, because the changes to the definition are not expected to impact the number of respondents, responses, or burden per response.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 22 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1702 [Amended]

■ 2. Amend section 22.1702 in the definition of “Sex trafficking” by removing “or obtaining” and adding “obtaining, patronizing, or soliciting” in its place.

■ 3. Amend section 22.1704 by—

■ a. Revising paragraph (c)(2);

■ b. Removing from paragraph (d) introductory text “(c)(2)(ii)” and adding “(c)(2)(i)(B)” in its place;

■ c. Removing from paragraph (d)(2) introductory text “paragraph (e)” and adding “paragraphs (e)(1) through (6)” in its place.

The revision reads as follows:

22.1704 Violations and remedies.

* * * * *

(c) * * *

(2) (i) Upon receipt of a report from the agency Inspector General that provides support for the allegations, the head of the executive agency shall—

(A) Refer the matter to the agency suspending and debarbing official; and

(B) In accordance with agency procedures, delegate to an authorized agency official, who may also be the agency suspending or debarbing official, the responsibility to—

(1) Expeditiously conduct an administrative proceeding, allowing the contractor the opportunity to respond to the report;

(2) Make a final determination as to whether the allegations are substantiated; and

(3) Notify the contracting officer of the determination.

(ii) Whether or not the official authorized to conduct the administrative proceeding described in paragraph (c)(2)(i)(B) of this section is the suspending and debarbing official, the suspending and debarbing official

has the authority, at any time before or after the final determination as to whether the allegations are substantiated, to use the suspension and debarment procedures in subpart 9.4 to suspend, propose for debarment, or debar the contractor, if appropriate, also considering the factors in paragraph (d)(2) of this section.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Amend section 52.212–5 by—
 - a. Revising the date of the clause;
 - b. Removing from paragraph (b)(39)(i) “(NOV 2021)” and adding “(DATE)” in its place;
 - c. Removing from paragraph (e)(1)(xvi)(A) “(NOV 2021)” and adding “(DATE)” in its place;
 - d. In Alternate II:
 - i. Revising the date of the Alternate;
 - ii. Removing from paragraph (e)(1) introductory text “(c),” and adding “(c)” in its place;
 - iii. Removing from paragraph (e)(1)(ii)(O)(1) “(NOV 2021)” and adding “(DATE)” in its place; and
 - iv. Removing from paragraph (e)(1)(ii)(O)(2) “(Mar 2015)” and adding “(MAR 2015)” in its place.
- The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (DATE)

- Alternate II (DATE).* * * *
- 5. Amend section 52.213–4 by—
 - a. Revising the date of the clause;
 - b. Removing from paragraph (a)(2)(vii) “(FEB 2024)” and adding “(DATE)” in its place; and
 - c. Removing from paragraph (b)(1)(ix)(A) “(NOV 2021)” and adding “(DATE)” in its place.
- The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (DATE)

* * * * *

- 6. Amend section 52.222–50 by—
 - a. Revising the date of the clause; and
 - b. In paragraph (a) in the definition of “Sex trafficking” by removing “or obtaining” and adding “obtaining, patronizing, or soliciting” in its place.
- The revision reads as follows:

52.222–50 Combating Trafficking in Persons.

* * * * *

Combating Trafficking in Persons (DATE)

* * * * *

- 7. Amend section 52.244–6 by—
 - a. Revising the date of the clause; and
 - b. Removing from paragraph (c)(1)(xvii)(A) “(NOV 2021)” and adding “(DATE)” in its place.
- The revision reads as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (DATE)

* * * * *

Notices

Federal Register

Vol. 89, No. 138

Thursday, July 18, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FGIS–24–0029]

Opportunities for United States Grain Standards Act Designation in the Lower Northwest Texas Area; the Southeast Texas Area; the Keokuk, Iowa Area; and the Fargo, North Dakota Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for comments and applications for designation.

SUMMARY: The Agricultural Marketing Service (AMS) requests comments on the need for U.S. Grain Standards Act (USGSA) services in the newly formed Lower Northwest Texas and Southeast Texas geographic areas described below in the **SUPPLEMENTARY INFORMATION** section. AMS is also asking persons, entities, or governmental agencies interested in providing official inspection and weighing services, in those areas, to apply for designation. The designated USGSA authority for two official agencies, Keokuk Grain Inspection (Keokuk) and North Dakota Grain Inspection, Inc. (NDGI), will end on the prescribed dates listed in the **SUPPLEMENTARY INFORMATION** section below. AMS is requesting designation applications from interested persons, entities, or governmental agencies that would like to provide official inspection and weighing services for the areas presently served by these two agencies. In addition to this request for applications, AMS seeks comments on the quality of services provided by Keokuk and NDGI.

DATES: Comments expressing the need for and applications to provide USGSA services for the Lower Northwest Texas and Southeast Texas geographic must be received by August 19, 2024.

Applications and comments for the areas of designation terminating on

March 31, 2025, currently serviced by Keokuk, must be received between November 1 and November 30, 2024.

Applications and comments for the areas of designation terminating on December 31, 2025, currently serviced by NDGI, must be received between August 1 and August 31, 2025.

ADDRESSES: Submit applications and comments concerning this Notice using the following methods:

To apply for USGSA Designation: New applicants (not currently designated) seeking designation or currently designated applicants seeking to apply for designation in a new geographic area can find detailed instructions at https://www.ams.usda.gov/sites/default/files/media/FGIS_ApplyingforDesignation_NewApplicants.pdf. Applicants will need to obtain a Login.gov account, a MyFGIS number, and to request access to FGISonline Delegations/Designations and Export Registrations (DDR) prior to applying. Applicants are encouraged to begin the application process early to allow time for system authentication.

To submit Comments Regarding Currently Designated Official Agencies: Go to [Regulations.gov](https://www.regulations.gov) (<https://www.regulations.gov>). Instructions for submitting and reading comments are detailed on the website. All comments must be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov> and reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

Read Applications and Comments: If you would like to view the applications submitted, please contact FGISQACD@usda.gov. All comments will be available for public viewing online at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jennifer Weiland, Grain Marketing Specialist, Telephone 202–720–8598; Email: Jennifer.j.weiland@usda.gov or FGISQACD@usda.gov.

SUPPLEMENTARY INFORMATION: Section 7(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified private entity or

state governmental agency to provide official services in a specified area after determining the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)). A designated agency works under the supervision of the Federal Grain Inspection Service (FGIS) and are authorized to provide official inspection service and/or Class X or Class Y weighing services at locations other than export port locations. Under section 7(g) of the USGSA, designations of official agencies may be awarded for no longer than five years, unless terminated by the Secretary, and may be renewed according to the criteria and procedures prescribed in section 7(f) of the USGSA. See also 7 CFR part 800.196 for further information and guidance.

AMS encourages application submissions from traditionally underrepresented individuals, organizations, and businesses to reflect the diversity of this industry. The Agency welcomes submissions from qualified applicants, regardless of race, color, age, sex, sexual orientation, gender identity, national origin, religion, disability status, protected veteran status, or any other characteristic protected by law.

Description of New Geographic Areas

The following describes the new geographic areas about which AMS requests comments on the need for USGSA services and designation applications: Applicants may apply for all or part of the Lower Northwest Texas or Southeast Texas geographic areas.

Lower Northwest Texas: The Texas counties of Bailey, Cochran, Hockley, Parmer and sections of Deaf Smith and Lamb Counties. In Deaf Smith County: The area north and west of TX–214. In Lamb County: The area south of CR FM 37 to US–84, south of US–84 to CR FM 303, west of CR FM 303 to US–70, south of US–70.

Southeast Texas: The Texas counties of Aransas, Bee, Brazoria, Brooks, Calhoun, Cameron, Chambers, Colorado, Dimmit, Duval, Fort Bend, Galveston, Goliad, Harris, Hidalgo, Jackson, Jefferson, Jim Hogg, Jim Wells, Kennedy, Kleberg, La Salle, Live Oak, Matagorda, McMullen, Nueces, Refugio, San Patricio, Starr, Victoria, Waller, Webb, Wharton, Willacy, Zapata.

Existing Designation Application Locations

Below are the currently operating designated official agencies and the specific areas of operation for designation applications. These are listed in order of anticipated designation termination date.
Keokuk: Areas of designation includes parts of Illinois and Iowa. See the April

28, 2016, issue of the **Federal Register** (81 FR 17428) for descriptions of the areas open for designation.
North Dakota Grain Inspection Service, Inc. (NDGI): Areas of designation include parts of Illinois, Indiana, Michigan, Minnesota, North Dakota, and Ohio. Please see the November 10, 2022, issue of the **Federal Register** (87 FR 67855) reference to

NDGI and the December 12, 2016, **Federal Register** (81 FR 89428) reference to Decatur, Indiana, for descriptions of the areas open for designation.
The designated USGSA authority for these two official agencies will end on the prescribed dates listed in the table below:

Official agency	Headquarters location and telephone	Designation end	Applications/comments open period
Keokuk Grain Inspection	Keokuk, IA, 319–524–6482	3/31/2025	11/01/2024–11/30/2024
North Dakota Grain Inspection Service, Inc.	Fargo, ND, 701–293–7420	12/31/2025	08/01/2025–08/31/2025

Designation Timelines

Interested persons, entities or governmental agencies may apply for designation to provide official services in the geographic area noted below under the provisions of section 7(f) of the USGSA and 7 CFR part 800.196. The designation time frame for Lower Northwest Texas and Southeast Texas territories will be determined as part of the application analysis. In the event multiple applicants are deemed qualified, AMS may issue an additional notice requesting public comment about the applicant(s) and their ability to provide quality official services.
Designations in the specified geographic areas for Keokuk will occur no sooner than April 1, 2025. Designations in the specified geographic areas for NDGI will occur no sooner than January 1, 2026. To apply for designation or to request more information on the geographic areas serviced by these official agencies contact *FGISQACD@usda.gov*.

Melissa Bailey,
Associate Administrator, Agricultural Marketing Service.
[FR Doc. 2024–15815 Filed 7–17–24; 8:45 am]
BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0067]

Notice of Availability of a Pest Risk Analysis for the Importation of Leaves and Stems of Fresh Sage for Consumption From Ethiopia Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Notice of availability.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of leaves and stems of fresh sage from Ethiopia into the continental United States. Based on the analysis, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of leaves and stems of fresh sage from Ethiopia. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 16, 2024.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Enter APHIS–2023–0067 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2023–0067, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Stiltner, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River

Road Unit 133, Riverdale, MD 20737–1231; (518) 760–2468.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart L–Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of fruits and vegetables that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the five designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the national plant protection organization of Ethiopia to allow the importation of leaves and stems of fresh sage (*Salvia officinalis*) from Ethiopia into the continental United States. As part of our evaluation of Ethiopia’s request, we have prepared a pest risk assessment to identify the pests of quarantine significance that could follow the pathway of the importation of leaves and stems of fresh sage into the continental United States from Ethiopia. Based on the pest risk assessment, a risk management document (RMD) was prepared to identify phytosanitary measures that could be applied to the leaves and stems of fresh sage to mitigate the pest risk.

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk assessment and RMD for public review and comment. Those documents, as well as a description of the economic considerations associated with the importation of leaves and stems of fresh

sage from Ethiopia, may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the pest risk assessment and RMD by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of leaves and stems of fresh sage from Ethiopia in a subsequent notice. If the overall conclusions of our analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of leaves and stems of fresh sage from Ethiopia into the continental United States subject to the requirements specified in the RMD.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of July 2024.

Donna Lalli,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–15842 Filed 7–17–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Commercial Floriculture Survey. A revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by September 16, 2024 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0093, by any of the following methods:

- *Email:* ombofficer@nass.usda.gov. Include docket number above in the subject line of the message.

- *efax:* (855) 838–6382.

- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT:

Joseph J. Prusacki, Acting Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS—OMB Clearance Officer, at (202) 720–2206 or at ombofficer@nass.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Commercial Floriculture Survey.

OMB Control Number: 0535–0093.

Expiration Date of Approval: November 30, 2024.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Commercial Floriculture Survey is conducted in all States. The target population for this survey is all operations with production and sales of at least \$10,000 of floriculture products. The retail and wholesale quantity and value of sales are collected for fresh cut flowers, potted flowering plants, foliage plants, annual bedding/garden plants, herbaceous perennials, cut cultivated florist greens, propagative floriculture material, and unfinished plants. Additional detail on area in production, operation value of sales, and agricultural workers is included. Content changes are minimal year to year, with the goal of avoiding significant changes to the survey length and respondent burden associated with each questionnaire.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to

afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, title III of Public Law 115–435, codified in 44 U.S.C. ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA. NASS uses the information only for statistical purposes and publishes only tabulated total data.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average between 10 and 60 minutes per respondent. In all states except Hawaii, operations with less than \$100,000 in sales of floriculture products respond to a reduced number of questions related to operation characteristics while operations with sales greater than \$100,000 complete the entire questionnaire. In Hawaii, all operations with sales of at least \$10,000 will complete the full questionnaire.

Respondents: Farms and businesses.

Estimated Number of Respondents: 13,500.

Estimated Total Annual Burden on Respondents: 6,700 hours.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection techniques.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 11, 2024.

Joseph J. Prusacki,

Acting Associate Administrator.

[FR Doc. 2024–15804 Filed 7–17–24; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Services Surveys: BE–29, Annual Survey of Foreign Ocean Carriers' Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 16, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Christopher Stein, Chief, Services Surveys Branch, Bureau of Economic Analysis, by email to christopher.stein@bea.gov or PRAComments@bea.gov. Please reference OMB Control Number 0608–0012 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Christopher Stein, Chief, Services Surveys Branch, Bureau of Economic Analysis; 301–278–9189; or via email at christopher.stein@bea.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Survey of Foreign Ocean Carriers' Expenses in the United States (BE–29) collects data from U.S. agents of foreign ocean carriers that handled 40 or more foreign ocean carrier port calls

during the year or had total covered expenses of \$250,000 or more during the year, for all foreign ocean vessels handled by the U.S. agent.

The data are needed to monitor U.S. trade in transport services, to analyze the impact of these cross-border services on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in transport services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities. The data are used in estimating the trade in transport services component of the U.S. international transactions accounts (ITAs) and national income and product accounts (NIPAs).

The Bureau of Economic Analysis (BEA) is proposing one change to the data items collected on the survey. BEA proposes to modify how the data are reported for U.S. expenses of foreign liner (including passenger/cruise) ocean carriers in Part III. Currently, for each carrier, the reporting agent is required to combine all port call activities and report the carrier's combined expenses and shipping weights. BEA has found that consolidating the expenses and shipping weights by liner is difficult for reporters. Importantly, it is not uncommon for reporters to omit some unknown shipping weights during consolidation by carrier, which ultimately yields per-ton rates of expenses that are artificially too high. In contrast, more complete data, including shipping weights, are typically reported for tramp (dry bulk) and tanker (liquid bulk) vessel activities in Part II of the survey.

BEA proposes to collect 15 individual sets of port call expenses and shipping weights in lieu of consolidated reporting of these data for each foreign liner carrier, similar to how data are collected for tramp and tanker vessel activity. The information for foreign liner carriers would be collected on a new Schedule C of the survey that replaces Part III. Additionally, Part II of the survey would be broken out into Schedule A (for tramp vessels) and Schedule B (for tanker vessels), to collect tramp and tanker separately, but the instructions for these responses will not change.

BEA estimates there will be no change in the average number of burden hours per response because the data are already collected as a consolidation of port calls, for all liners represented by the reporting agent. Reporters would only be required to provide 15 individual port calls across all carriers they represent, which would simplify

the reporting in this section of the survey.

BEA does not plan to change the exemption levels used for the current annual survey. BEA estimates there will be no change in the average number of burden hours per response. The language in the instructions and definitions will be reviewed and adjusted as necessary to clarify survey requirements.

II. Method of Collection

BEA contacts potential respondents by mail at the end of each year. Respondents would be required to file the completed BE–29 forms within 45 days after the end of each calendar year. Reports would be required from U.S. agents of foreign ocean carriers that handled 40 or more foreign ocean carrier port calls during the year or had covered expenses of \$250,000 or more during the year for all foreign ocean vessels handled by the U.S. agent. Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

BEA offers its electronic filing option, the eFile system, for use in reporting on Form BE–29. For more information about eFile, go to www.bea.gov/efile. In addition, BEA posts all its survey forms and reporting instructions on its website, www.bea.gov/ssb. These may be downloaded, completed, printed, and submitted via fax or mail.

III. Data

OMB Control Number: 0608–0012.

Form Number(s): BE–29.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 80 annually (70 reporting mandatory data, and 10 that would file exemption claims or voluntary responses).

Estimated Time per Response: 3 hours is the average for those reporting mandatory data and one hour is the average for those filing an exemption claim or voluntary responses. Hours may vary considerably among respondents because of differences in company size and complexity.

Estimated Total Annual Burden Hours: 220.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–15755 Filed 7–17–24; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a virtual public meeting on August 1, 2024. This will be the current NACIE members' sixth meeting since their appointments in 2022. During this meeting, NACIE expects to discuss strategies to unlock sources of capital to leverage federal investments and designations, including current and future Tech Hubs, aligned with the U.S. Department of Commerce's existing work in this area.

DATES: August 1, 2024, 2 p.m.–3 p.m. eastern time (ET).

ADDRESSES: The meeting will be held virtually with no in-person component. Please note that pre-clearance is required to make a statement during the public comment portion of the meeting. Please limit comments to five minutes or less and submit a brief statement summarizing your comments to Eric Smith (see contact information below) no later than 11:59pm ET on Friday, July 26, 2024. Virtual meeting connection information will be published prior to the meeting along with the agenda on the NACIE website at <https://www.eda.gov/strategic-initiatives/national-advisory-council-on-innovation-and-entrepreneurship/meetings>.

FOR FURTHER INFORMATION, CONTACT: Eric Smith, Office of the Assistant Secretary, 1401 Constitution Avenue NW, Room 72021, Washington, DC 20230; email: nacie@doc.gov; telephone: +1 202 482 8001. Please reference "NACIE August 2024 Meeting" in the subject line of your correspondence.

SUPPLEMENTARY INFORMATION: NACIE, established pursuant to section 25(c) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3720(c)), is a Federal Advisory Committee Act committee that provides advice directly to the Secretary of Commerce.

NACIE has been charged with developing a national entrepreneurship strategy that strengthens America's ability to compete and win as the world's leading startup nation and as the world's leading innovator in critical emerging technologies. NACIE also has been charged with identifying and recommending solutions to drive the innovation economy, including growing a skilled STEM workforce and removing barriers for entrepreneurs ushering innovative technologies into the market. The Council facilitates federal dialogue with the innovation, entrepreneurship, and workforce development communities. Throughout its history, NACIE has presented recommendations to the Secretary of Commerce along the research-to-jobs continuum, such as increasing access to capital, growing and connecting entrepreneurial communities, fostering small business-driven research and development, supporting the commercialization of key technologies, and developing the workforce of the future.

The final agenda for the meeting will be posted on the NACIE website at <https://www.eda.gov/strategic-initiatives/national-advisory-council-on-innovation-and-entrepreneurship/meetings> prior to the meeting. Any member of the public may submit

pertinent questions and comments concerning NACIE's affairs at any time before or after the meeting to Eric Smith (see contact information above). Those wishing to listen to the proceedings can do so via teleconference or web conference (see above). Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Dated: July 12, 2024.

Eric Smith,

Tech Hubs Program Director.

[FR Doc. 2024–15753 Filed 7–17–24; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–153, C–533–918]

Certain Paper Shopping Bags From the People's Republic of China and India: Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing countervailing duty orders on certain paper shopping bags (paper bags) from the People's Republic of China (China) and India.

DATES: Applicable July 18, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Copyak (China) or Paul Kebker (India), AD/CVD Operations, Offices IX and IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3642 and (202) 482–2254, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on May 24, 2024, Commerce published its affirmative final determinations that countervailable subsidies are being provided to producers and exporters of paper bags from China and India.¹ On July 5, 2024, the ITC notified Commerce of its final

¹ See *Certain Paper Shopping Bags from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 89 FR 45829 (May 24, 2024); see also *Certain Paper Shopping Bags from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, in part, 89 FR 45834 (May 24, 2024).

affirmative determinations that an industry in the United States is materially injured by reason of subsidized imports of paper bags from China and India, within the meaning of section 705(b)(1)(A)(i) of the Act.² Further, the ITC determined that critical circumstances do not exist with respect to imports of paper bags from China and India.

Scope of the Orders

The products covered by these orders are paper bags from China and India. For a complete description of the scope of the orders, *see* the appendix to this notice.

Orders

As stated above, on July 5, 2024, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of paper bags from China and India. Therefore, in accordance with section 705(c)(2) of the Act, Commerce is issuing these countervailing duty orders. Moreover, because the ITC determined that imports of paper bags from China and India are materially injuring a U.S. industry, unliquidated entries of such merchandise from China and India, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce intends to direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties on unliquidated entries of paper bags from China and India entered, or withdrawn from warehouse, for consumption on or after November 6, 2023, the date of the publication of the *Preliminary Determinations*,³ but will not include entries occurring after the expiration of the provisional measures and before the

² See ITC's Letter, "Notification of ITC Final Determinations," dated July 5, 2024; *see also Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam*, 89 FR 56776 (July 10, 2024).

³ See *Certain Paper Shopping Bags from the People's Republic of China: Preliminary Affirmative Determination of Countervailable Subsidies, Preliminary Affirmative Determination of Critical Circumstances, and Alignment of Final Determination with Final Antidumping Duty Determination*, 88 FR 76180 (November 6, 2023); *see also Certain Paper Shopping Bags from India: Preliminary Affirmative Determination of Countervailable Subsidies, Preliminary Affirmative Determination of Critical Circumstances in Part, and Alignment of Final Determination with the Final Antidumping Duty Determination*, 88 FR 76185 (November 6, 2023) (collectively, *Preliminary Determinations*).

publication in the **Federal Register** of the ITC's final injury determination under section 705(b) of the Act, as further described in the "Provisional Measures" section of this notice.

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce intends to instruct CBP to reinstitute the suspension of liquidation on all entries of paper bags from China and India, effective on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of subject merchandise in an amount based on the net countervailable subsidy rates below. On or after the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, we will also instruct CBP to require cash deposits on entries of subject merchandise as indicated below. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Estimated Countervailable Subsidy Rates

The estimated countervailable subsidy rates are as follows:

CHINA	
Exporter/producer	Subsidy rate (percent <i>ad valorem</i>)
Bagitan Packaging	172.36
Changzhou Anjucheng	172.36
Courage Packaging	172.36
Dongzheng PaperBag (DaLian) Factory	40.76
Evertrust Packaging	172.36
Fujian Nanwang Environment Protection Scien-tech Co., Ltd. ⁴	42.36
Geotegrity EcoPack	172.36
GrandIntelligent	172.36
Li & Fung	172.36
Qingdao Chenyu Packaging Co., Ltd.	172.36
Shanghai Macolink Supply Chain Management Co., Ltd.	172.36
Shanghai Sanxi Paper Co., Ltd.	172.36
Xiamen C&D Pulp & Paper Co., Ltd.	172.36
Xiamen Champion FMCG	172.36
Xiamen New Idea Packaging Co., Ltd.	172.36
Xiamen Wonderful Bag Import and Export Co., Ltd.	172.36
All Others	41.46

INDIA

Exporter/producer	Subsidy rate (percent <i>ad valorem</i>)
Aeroplast Packaging Solution Private Limited ⁵	4.81
Velvin Paper Products ⁶	2.38
All Others	3.39

Provisional Measures ^{4 5 6}

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published the *Preliminary Determinations* on November 6, 2023.⁷ As such, the four-month period beginning on the date of the publication of the *Preliminary Determinations* ended on March 4, 2024.

Therefore, in accordance with section 703(d) of the Act, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of paper bags from China and India entered, or withdrawn from warehouse, for consumption, on or after March 5, 2024, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

Regarding the ITC's negative critical circumstances determination on imports of paper bags from China and India, we intend to instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 8, 2023 (*i.e.*, 90 days prior to the date of the publication of the *Preliminary*

⁴ Fujian Nanwang is cross-owned with the following companies: Zhuhai Zhongyue Paper Cup Container Co., Ltd.; Anhui Nanwang Environmental Protection Technology Co., Ltd.; Xianghe Nanwang Environmental Protection Technology Co., Ltd.; and Hubei Nanwang Environmental Protection Technology Co., Ltd.

⁵ Aeroplast Packaging Solution Private Limited is cross-owned with the following companies: Aero Business Solutions Private Limited; and Aero Plast Limited.

⁶ Velvin Paper Products is cross-owned with Velvin Packaging Solutions Private Limited.

⁷ See *Preliminary Determinations*.

Determinations), but before November 6, 2023 (*i.e.*, the date of publication of the *Preliminary Determinations*).

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the *Final Rule* in the **Federal Register**.⁸ On September 27, 2021, Commerce also published the *Procedural Guidance* in the **Federal Register**.⁹ The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at <https://access.trade.gov>, within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called "AISL-Annual Inquiry Service List."¹⁰

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be

included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance*,¹¹ the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website.

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule*, Commerce stated that, "after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow."¹² Accordingly, as stated above, the petitioner and the Governments of China and India should submit their initial entries of appearance after publication of this notice in order to appear in the first annual inquiry service lists for these orders. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Governments of China and India will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Governments of China and India are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the countervailing duty orders with respect to paper bags from China and India pursuant to section 706(d) of the Act. Interested parties can find a list of countervailing duty orders at <https://enforcement.trade.gov/stats/iastats1.html>.

These orders are issued and published in accordance with section 706(a) and 19 CFR 351.211(b).

Dated: July 11, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The products within the scope of these orders are paper shopping bags with handles of any type, regardless of whether there is any printing, regardless of how the top edges are finished (*e.g.*, folded, serrated, or otherwise finished), regardless of color, and regardless of whether the top edges contain adhesive or other material for sealing closed. Subject paper shopping bags have a width of at least 4.5 inches and depth of at least 2.5 inches.

Paper shopping bags typically are made of kraft paper but can be made from any type of cellulose fiber, paperboard, or pressboard with a basis weight less than 300 grams per square meter (GSM).

A non-exhaustive illustrative list of the types of handles on shopping bags covered by the scope include handles made from any materials such as twisted paper, flat paper, yarn, ribbon, rope, string, or plastic, as well as die-cut handles (whether the punchout is fully removed or partially attached as a flap).

Excluded from the scope are:

- Paper sacks or bags that are of a 1/6 or 1/7 barrel size (*i.e.*, 11.5–12.5 inches in width, 6.5–7.5 inches in depth, and 13.5–17.5 inches in height) with flat paper handles or die-cut handles;
- Paper sacks or bags with die-cut handles, a grams per square meter paper weight of less than 86 GSM, and a height of less than 11.5 inches; and
- Paper sacks or bags (i) with non-paper handles made wholly of woven ribbon or other similar woven fabric²⁰ and (ii) that are finished with folded tops or for which tied knots or t-bar aglets (made of wood, metal, or plastic) are used to secure the handles to the bags.

The above-referenced dimensions are provided for paper bags in the opened position. The height of the bag is the distance from the bottom fold edge to the top edge (*i.e.*, excluding the height of handles that extend above the top edge). The depth of the bag is the distance from the front of the bag edge to the back of the bag edge (typically measured at the bottom of the bag). The width of the bag is measured from the left to the right edges of the front and back panels (upon which the handles typically are located).

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4819.30.0040 and 4819.40.0040. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

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⁸ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

⁹ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

¹⁰ This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as "AISL-January Anniversary." Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

¹¹ See *Procedural Guidance*, 86 FR 53206.

¹² See *Final Rule*, 86 FR 52335.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-555-002, A-301-805, A-533-917, A-557-825, A-471-808, A-583-872, A-570-152, A-552-836]

Certain Paper Shopping Bags From Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, the People's Republic of China, and the Socialist Republic of Vietnam: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing antidumping duty (AD) orders on certain paper shopping bags (paper bags) from Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, the People's Republic of China (China), and the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable July 18, 2024.

FOR FURTHER INFORMATION CONTACT:

Charles Doss or Kyle Clahane at (202) 482-4474 or (202) 482-5449, respectively (Cambodia); Jinny Ahn or Tyler Weinhold at (202) 482-0339 or (202) 482-1121, respectively (China); Laurel LaCivita at (202) 482-4243 (Colombia); Nathan Araya or Gordon Struck at (202) 482-3401 or (202) 482-8151, respectively (India); Daniel Alexander at (202) 482-4313 (Malaysia); Colin Thrasher at (202) 482-3004 (Portugal); Nathan James at (202) 482-5305 (Taiwan); Myrna Lobo at (202) 482-2371 (Vietnam), AD/CVD Operations, Offices II, III, IV, V, VI, and VII Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2024, Commerce published in the **Federal Register** its affirmative final determinations in the less-than-fair-value (LTFV) investigations of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam in accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended (the Act).¹ On July 5,

2024, the ITC notified Commerce of its affirmative final determinations, pursuant to section 735(d) of the Act, that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam.² On July 10, 2024, in accordance with section 735(d) of the Act, the ITC published in the **Federal Register** its affirmative final injury determination in these investigations in which it found that an industry in the United States is materially injured by reason of imports of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam.³

Scope of the Orders

The products covered by these orders are paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam. For a complete description of the scope of these orders, see the appendix to this notice.

Determination), and accompanying Issues and Decision Memorandum (IDM); see also *Certain Paper Shopping Bags from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 89 FR 45823 (May 24, 2024) (*China Final Determination*), and accompanying IDM; *Certain Paper Shopping Bags from Colombia: Final Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 45843 (May 24, 2024) (*Colombia Final Determination*), and accompanying IDM; *Certain Paper Shopping Bags from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 89 FR 45826 (May 24, 2024) (*India Final Determination*), and accompanying IDM; *Certain Paper Shopping Bags from Malaysia: Final Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 45821 (May 24, 2024) (*Malaysia Final Determination*), and accompanying IDM; *Certain Paper Shopping Bags from Portugal: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 89 FR 45845 (May 24, 2024) (*Portugal Final Determination*), and accompanying IDM; *Certain Paper Shopping Bags from Taiwan: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 89 FR 45832 (May 24, 2024) (*Taiwan Final Determination*), and accompanying IDM; and *Certain Paper Shopping Bags from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 89 FR 45839 (May 24, 2024) (*Vietnam Final Determination*), and accompanying IDM (collectively, *Final Determinations*).

² See ITC's Letter, Investigation Nos. 701-TA-690-691, 731-TA-1619-1625, and 731-TA-1627 (Final), dated July 10, 2024.

³ See *Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam*, 89 FR 56776 (July 10, 2024) (*ITC Final Determination*).

Antidumping Duty Orders

Based on the above-referenced affirmative final determinations, in accordance with section 735(c)(2) and 736 of the Act, Commerce is issuing these AD orders. Because the ITC determined that imports of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam are materially injuring a U.S. industry, unliquidated entries of such merchandise entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam. With the exception of entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below, antidumping duties will be assessed on unliquidated entries of paper bags entered, or withdrawn from warehouse, for consumption, on or after January 3, 2024, the date of publication of the *Preliminary Determinations*.⁴ Because Commerce

⁴ See *Certain Paper Shopping Bags from Cambodia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 325 (January 3, 2024) (*Cambodia Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM); see also *Certain Paper Shopping Bags from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 344 (January 3, 2024) (*China Preliminary Determination*), and accompanying PDM; *Certain Paper Shopping Bags from Colombia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 319 (January 3, 2024) (*Colombia Preliminary Determination*), and accompanying PDM; *Certain Paper Shopping Bags from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 336 (January 3, 2024) (*India Preliminary Determination*), and accompanying PDM; *Certain Paper Shopping Bags from Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 333 (January 3, 2024) (*Malaysia Preliminary Determination*), and accompanying PDM; *Certain Paper Shopping Bags*

¹ See *Certain Paper Shopping Bags from Cambodia: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 89 FR 45841 (May 24, 2024) (*Cambodia Final*

made final affirmative determinations of sales at LTFV. Commerce directed CBP to continue suspension of liquidation of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam entered or withdrawn from warehouse for consumption, on or after May 24, 2024, the date of publication of the *Final Determinations*.⁵

Critical Circumstances

With respect to the ITC's negative critical circumstances determination on imports of paper bags from Cambodia, China, India, Taiwan, and Vietnam, we will instruct CBP to lift the suspension of liquidation and to refund all cash deposits for estimated antidumping duties with respect to entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after October 5, 2023 (i.e., 90 days prior to the date of the publication of the *Cambodia Preliminary Determination*, *China Preliminary Determination*, *India Preliminary Determination*, *Taiwan Preliminary Determination*, and *Vietnam Preliminary Determination*), but before January 3, 2024, the date of publication of the *Preliminary Determinations*.

from Portugal: *Preliminary Affirmative Determination of Sales at Less Than Fair Value*, *Preliminary Negative Determination of Critical Circumstances*, and *Postponement of Final Determination*, and *Extension of Provisional Measures*, 89 FR 341 (January 3, 2024) (*Portugal Preliminary Determination*), and accompanying PDM; *Certain Paper Shopping Bags from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, *Preliminary Affirmative Determination of Critical Circumstances*, *Postponement of Final Determination*, and *Extension of Provisional Measures*, 89 FR 331 (January 3, 2024) (*Taiwan Preliminary Determination*), and accompanying PDM; and *Certain Paper Shopping Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, *Preliminary Affirmative Critical Circumstances Determination*, *Postponement of Final Determination*, and *Extension of Provisional Measures*, 89 FR 321 (January 3, 2024) (*Vietnam Preliminary Determination*), and accompanying PDM (collectively, *Preliminary Determinations*).

⁵ See *Cambodia Final Determination*, 89 FR 45841; see also *China Final Determination*, 89 FR 45823; *Colombia Final Determination*, 89 FR 45843; *India Final Determination*, 89 FR 45826; *Malaysia Final Determination*, 89 FR 45821; *Portugal Final Determination*, 89 FR 45845; *Taiwan Final Determination*, 89 FR 45832; and *Vietnam Final Determination*, 89 FR 45839.

Continuation of Suspension of Liquidation and Cash Deposits

Except as noted in the "Provisional Measures" section of this notice, in accordance with section 736 of the Act, Commerce intends to instruct CBP to continue to suspend liquidation on all relevant entries of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam, effective July 10, 2024, the date of publication of the *ITC Final Determination*. These instructions suspending liquidation will remain in effect until further notice.

Further, Commerce intends to instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins, with offsets for export subsidies where appropriate, as indicated in the tables below. Accordingly, effective July 10, 2024, the date of publication of the *ITC Final Determination*, CBP will suspend the liquidation of entries of subject merchandise, and require, at the same time that importers would normally deposit estimated duties on the merchandise, a cash deposit equal to the rates listed below. The relevant all-others rates apply to all producers or exporters not specifically listed, as appropriate.

Provisional Measures

Section 733(d) of the Act states that instructions issued under section 733(d)(1) and (2) of the Act pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of exports of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam, Commerce extended the four-month period to six months in these investigations. Commerce published the *Preliminary Determinations* on January 3, 2024.⁶

⁶ See *Cambodia Preliminary Determination*, 89 FR 325; see also *China Preliminary Determination*, 89 FR 344; *Colombia Preliminary Determination*, 89 FR 319; *India Preliminary Determination*, 89 FR 336; *Malaysia Preliminary Determination*, 89 FR 333; *Portugal Preliminary Determination*, 89 FR 341;

The extended provisional measures period, beginning on the date of publication of the *Preliminary Determinations*, ended on June 30, 2024. Therefore, in accordance with section 733(d) of the Act, Commerce intends to instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, certain ⁷ unliquidated entries of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam entered, or withdrawn from warehouse, for consumption after June 30, 2024, the final day on which the provisional measures were in effect, through the day preceding the date of publication of the *ITC Final Determination*. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the *ITC Final Determination*.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins as published in Commerce's *Final Determinations* are as follows:

CAMBODIA

Producer or exporter	Estimated weighted-average dumping margin (percent)
Nice Packaging (Cambodia) Co., Ltd	7.07
UUPak Company Limited	7.07
Pan Pacific Plastics Manufacturing, Inc	* 248.81
All Others	7.07

* Rate based on facts available with adverse inferences.

Taiwan Preliminary Determination, 89 FR 331; and *Vietnam Preliminary Determination*, 89 FR 321.

⁷ In the investigation of paper bags from Taiwan, Commerce's preliminary determination was negative with respect to Haur Tyi Paper Bag Co., Ltd., but Commerce's final determination for the company was affirmative. Accordingly, we directed CBP to suspend liquidation for Haur Tyi Paper Bag Co., Ltd.'s entries from the date of publication of the *Taiwan Final Determination* and, at the time of publication of this order, we have not issued instructions pertaining to the expiration of provisional measures for Haur Tyi Paper Bag Co., Ltd.

CHINA

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for export subsidy offset(s) (percent)
UUPAK Co., Ltd	Tianjin Haishun Printing & Packing Co., Ltd	73.05	62.07
Fujian Eco Packaging Co., Ltd	Fujian Hongkai Packaging Co., Ltd	73.05	62.07
Fujian Eco Packaging Co., Ltd	Fujian Yihe Packaging Co., Ltd	73.05	62.07
Fujian Eco Packaging Co., Ltd	Guangdong Union Eco-Packaging Scien-Tech Co., Ltd.	73.05	62.07
Fujian Eco Packaging Co., Ltd	Xiamen Huide Eco-friendly Paper Bags Co., Ltd	73.05	62.07
Fujian Eco Packaging Co., Ltd	Xiamen Jihong Technology Co., Ltd	73.05	62.07
Fujian Nanwang Environment Protection Scien-tech Co., Ltd.	Anhui Nanwang Environmental Protection Technology Co., Ltd.	73.05	61.65
Fujian Nanwang Environment Protection Scien-tech Co., Ltd.	Fujian Nanwang Environment Protection Scien-tech CO., LTD.	73.05	61.65
Fujian Nanwang Environment Protection Scien-tech Co., Ltd.	Hubei Nanwang Environmental Protection Scien-tech Co., Ltd.	73.05	61.65
Fujian Nanwang Environment Protection Scien-tech Co., Ltd.	Xianghe Nanwang Environmental Protection Technology Co., Ltd.	73.05	61.65
Fujian Nanwang Environment Protection Scien-tech Co., Ltd.	Zhuhai Zhongyue Paper CUP Container Co., Ltd	73.05	61.65
Grand Intelligent Limited	Ruichuang Limited	73.05	62.07
Max Fortune Industrial Ltd	Winner Printing and Packaging (He Yuan) Ltd	73.05	62.07
Ningbo Beiheng Import & Export Company Limited	Wenzhou Weijie Packing Co., Ltd	73.05	62.07
Shanghai Miho Package & Product Co., Ltd	Zhejiang Shengxiang Industrial Co., Ltd	73.05	62.07
Union Packaging Group Limited	Guangdong Union Eco-Packaging Scien-Tech Co., Ltd.	73.05	62.07
Wuxi Hualite Metal Plastic Products Co., Ltd	Wuxi Hualite Paper Products Co., Ltd	73.05	62.07
Xiamen Bag Imp. & Exp. Co., Ltd	Xiamen CYR Green-Tech Co., Ltd	73.05	62.07
Xiamen Huide Xiesheng Packaging Co., Ltd	Xiamen Huide Eco-Friendly Paper Bags Co., Ltd	73.05	62.07
Xiamen Jihong Technology Co., Ltd	Xiamen Jihong Technology Co., Ltd	73.05	62.07
Xiamen Joy Supply Chain Co., Ltd	Fujian Huian Nice Paper Products Co., Ltd	73.05	62.07
Xiamen Joy Supply Chain Co., Ltd	Xiamen THINKER Packaging Products Co., Ltd	73.05	62.07
Xiamen Nice Packaging Products Co., Ltd	Fujian Huian Nice Paper Products Co., Ltd	73.05	62.07
Xiamen Nice Packaging Products Co., Ltd	Xiamen THINKER Packaging Products Co., Ltd	73.05	62.07
China-wide Entity		* 146.32	135.77

* Rate based on facts available with adverse inferences.

COLOMBIA

Producer or exporter	Estimated weighted-average dumping margin (percent)
Ditar, S.A	11.06
Industria Colombiana de Papeles	* 56.14
Fábrica de Bolsas de Papel	* 56.14
All Others	11.06

* Rate based on facts available with adverse inferences.

INDIA

Producer or exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for export subsidy offset(s) (percent)
Aeroplast Packaging Solution Private Limited; Aero Plast Limited; Aero Business Solutions Private Limited	0.00	Not Applicable
Kuloday Plastomers Pvt. Ltd	4.59	1.20
Adeera Packaging Pvt. Ltd	4.59	1.20
Amate Products Pvt. Ltd	4.59	1.20
Apex Paper and Plastic and Film	* 53.05	49.66
Archies Limited	4.59	1.20

INDIA—Continued

Producer or exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for export subsidy offset(s) (percent)
Asha Overseas	* 53.05	49.66
Carrywell Packaging Pvt. Ltd	4.59	1.20
Colorbox	4.59	1.20
Dynaflex Private Limited	4.59	1.20
Godhani Exports	* 53.05	49.66
Pack Easy Paper Products	* 53.05	49.66
Pack Planet Pvt. Ltd	4.59	1.20
Poonam	4.59	1.20
Shrinivas Enterprises	4.59	1.20
Tejaswi Plastic Pvt. Ltd	4.59	1.20
The Velvin Group (DBA Velvin Packaging Solutions Pvt. Ltd. and Velvin Paper Products)	4.59	2.21
Vama Packaging	4.59	1.20
All Others	4.59	1.20

* Rate based on facts available with adverse inferences.

MALAYSIA

Producer or exporter	Estimated weighted-average dumping margin (percent)
Hexachase Packaging Sdn. Bhd	3.18
Nanwang Pack (M) Sdn. Bhd	* 112.22
Kooka Paper Manufacturing Sdn. Bhd	* 112.22
All Others	3.18

* Rate based on facts available with adverse inferences.

PORTUGAL

Producer or exporter	Estimated weighted-average dumping margin (percent)
Finieco Indústria e Comércio de Embalagens, S.A	6.14
All Others	6.14

TAIWAN

Producer or exporter	Estimated weighted-average dumping margin (percent)
Haur Tyi Paper Bag Co., Ltd	4.74
Juang Jia Guoo Co., Ltd	* 65.81
All Others	4.74

* Rate based on facts available with adverse inferences.

VIETNAM⁸

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Goldsun Packaging and Printing Joint Stock Company	Goldsun Packaging and Printing Joint Stock Company	36.51
Dong Sung Printing Co., Ltd	Dong Sung Vina Printing Co., Ltd	36.51
Khang Thanh Manufacturing Company Limited	Khang Thanh Manufacturing Company Limited	36.51
Vietnam Red Star Industry Company Limited	Vietnam Red Star Industry Company Limited	36.51
Vietnam-Wide Entity		* 92.34

* Rate based on facts available with adverse inferences.

Establishment of the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled “*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*” in the **Federal Register**.⁹ On September 27, 2021, Commerce also published the notice titled “*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*” in the **Federal Register**.¹⁰ The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.¹¹

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce’s online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at <https://access.trade.gov>, within five business days of publication of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a

specific segment type called “AISL-Annual Inquiry Service List.”¹²

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance*, the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties’ amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at <https://access.trade.gov>.

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule*, Commerce stated that, “after an initial request and placement on the annual inquiry service list, both petitioners and foreign

governments will automatically be placed on the annual inquiry service list in the years that follow.”¹³

Accordingly, as stated above, the petitioners and foreign governments should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list for those orders for which they qualify as an interested party. Pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notifications to Interested Parties

This notice constitutes the AD orders with respect to paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam pursuant to section 736(a) of the Act. Interested parties can find a list of AD orders currently in effect at <https://www.trade.gov/data-visualization/adcvd-proceedings>.

These AD orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: July 11, 2024.

Abdelali Elouaradia,
Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by these orders consists of paper shopping bags with handles of any type, regardless of whether there is any printing, regardless of how the top edges are finished (e.g., folded, serrated, or otherwise finished), regardless of color, and

⁸ Regarding Dong Sung Printing Co., Ltd., and Dong Sung Vina Printing Co., Ltd., Dong Sung is sometimes translated as one word “Dongsung.”

⁹ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

¹⁰ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

¹¹ *Id.*

¹² This segment will be combined with the ACCESS Segment Specific Information (SSI) field, which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A-000-000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as “AISL-January Anniversary.” Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

¹³ See *Final Rule*, 86 FR 52335.

regardless of whether the top edges contain adhesive or other material for sealing closed. Subject paper shopping bags have a width of at least 4.5 inches and depth of at least 2.5 inches.

Paper shopping bags typically are made of kraft paper but can be made from any type of cellulose fiber, paperboard, or pressboard with a basis weight less than 300 grams per square meter (GSM).

A non-exhaustive illustrative list of the types of handles on shopping bags covered by the scope include handles made from any materials such as twisted paper, flat paper, yarn, ribbon, rope, string, or plastic, as well as die-cut handles (whether the punchout is fully removed or partially attached as a flap).

Excluded from the scope are:

- Paper sacks or bags that are of a $\frac{1}{8}$ or $\frac{1}{4}$ barrel size (*i.e.*, 11.5–12.5 inches in width, 6.5–7.5 inches in depth, and 13.5–17.5 inches in height) with flat paper handles or die-cut handles;
- Paper sacks or bags with die-cut handles, a grams per square meter paper weight of less than 86 GSM, and a height of less than 11.5 inches; and
- Paper sacks or bags (i) with non-paper handles made wholly of woven ribbon or other similar woven fabric¹⁴ and (ii) that are finished with folded tops or for which tied knots or t-bar aglets (made of wood, metal, or plastic) are used to secure the handles to the bags.

The above-referenced dimensions are provided for paper bags in the opened position. The height of the bag is the distance from the bottom fold edge to the top edge (*i.e.*, excluding the height of handles that extend above the top edge). The depth of the bag is the distance from the front of the bag edge to the back of the bag edge (typically measured at the bottom of the bag). The width of the bag is measured from the left to the right edges of the front and back panels (upon which the handles typically are located).

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4819.30.0040 and 4819.40.0040. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

[FR Doc. 2024–15746 Filed 7–17–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; A Coastal Management Needs Assessment and Market Analysis for Financing Resilience

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 27, 2024 (89 FR 14447) during a 60-day comment period. No comments were received. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: A Coastal Management Needs Assessment and Market Analysis for Financing Resilience.

OMB Control Number: 0648–0796.

Form Number(s): None.

Type of Request: Regular submission [extension of an approved information collection].

Number of Respondents: 36.

Average Hours per Response: 1.5 hours.

Total Annual Burden Hours: 54.

Needs and Uses: This is a request for extension to an approved collection of information under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and implementing regulations at 5 CFR, part 1320. This previously-approved information collection assists NOAA in the development of funding and financing coastal resilience learning products and tools in support of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.* NOAA's Office for Coastal Management (OCM) and its regional, State, Federal, and non-profit partners have worked closely with coastal managers across the country to increase the resilience of our coastal communities, economies and ecosystems. Under the CZMA, OCM provides financial and technical assistance to states and territories,

including that which helps its customers (coastal managers) develop hazard mitigation and climate adaptation plans that include strategies for short-term responses to immediate threats (*e.g.*, flooding, hurricanes) as well as long-term responses to gradual changes (*e.g.*, sea level rise, drought). Services are provided through outreach, training, funding, resource, and tool development.

Solutions to these resilience challenges are often complex and cross-sectoral. Therefore, coastal decision-makers regularly point to the need for more substantial, coordinated, sustained and creative funding opportunities to support these efforts. The results of an initial review of more than 200 resources that NOAA conducted in support of this effort, and informal conversations with NOAA customers and other stakeholders indicate that there is no comprehensive inventory or guide to understanding and selecting appropriate funding options or financing strategies. These findings have been further confirmed in subsequent informal discussions with coastal resilience and finance practitioners at national venues such as the National Adaptation Forum and Social Coast Forum, as well as through the original needs assessment using this information collection instrument. NOAA's coastal management partners continue to request support on this topic.

The financing world is one that is constantly evolving new products and retiring others. The range of funding and financing options, from grants and low-interest loans to more innovative private-public partnerships and emerging bonds, presents an ever-changing and complex array of choices. In initial internal communications and informal discussions conducted between June 2018 and February 2020, NOAA customers indicated that these opportunities and mechanisms are not well understood, and are generally inaccessible to coastal managers, particularly in small to mid-sized communities, rural areas, and tribal communities. The initial information gathered via this collection supported this.

In many coastal communities, investment in mitigation and resilience measures remains either limited or reactive in response to a catastrophic event. While there are no data on the number of adaptation plans that have been implemented, lack of funding is a frequently cited barrier to implementation. At the same time, it has been estimated that investing in mitigation can save communities \$6 for every \$1 spent through mitigation grants

¹⁴ Paper sacks or bags with handles made of braided or twisted materials, such as rope or cord, do not qualify for this exclusion.

from agencies including the Federal Emergency Management Agency, Department of Housing and Urban Development, and Economic Development Administration (according to the National Institute of Building Sciences' October 2018 report, *Natural Hazard Mitigation Saves: Utilities and Transportation Infrastructure*). Understanding the suite of funding and financing options available at the time resilience planning is undertaken, and then incorporating financial strategies into the planning process and recommendations, will help ensure that these plans are implemented. Section 310 of the Coastal Zone Management Act allows for technical assistance and management-oriented research to develop and implement state coastal management program amendments.

NOAA uses the information collected to develop needs assessments defining the types of funding, financing mechanisms, and associated resources that its state and local coastal manager customers need for coastal resilience activities and a market analysis of existing funding and financing programs and mechanisms. Simultaneously, NOAA is identifying existing resources and partnership opportunities for State and local coastal managers and NOAA's non-profit, academic, and other customers. Information collected to date has helped inform the development of new NOAA funding and financing products and services and future collection efforts will help NOAA better understand the impacts these products and services have had on coastal managers' barriers.

This request for extension to an approved collection of information is for a set of related interviews to facilitate this research. NOAA will perform interviews with state and local coastal managers, as well as representatives from non-profit organizations, academia, the Federal Government, and the finance industry. The interviews will collect relevant information from interviewees on their experiences with coastal resilience funding and financing mechanisms, challenges and opportunities related to funding and financing coastal resilience, and technical support needs and opportunities that NOAA can address.

The information provided by interviewees will be synthesized into the needs assessment, which will address needs and information gaps partitioned by region, financial scale, time scale, and scope/sector. The information provided by interviewees will also be used to help inform an inventory of existing entities providing resources for resilience funding, as well

as a summary of existing and emerging funding sources and financial tools and mechanisms for coastal resilience. Finally, the interviews will inform recommendations on NOAA's potential niche in addressing the identified needs and gaps.

The resulting research (and any subsequent resources or tools developed by NOAA to address identified gaps) will provide much needed information to NOAA's customers on funding and financing coastal resilience efforts, including available resources and mechanisms, best practices and strategies, real world success stories, and opportunities for technical and financial partnerships with private and public entities.

Affected Public: State and local government, Federal Government, non-profit organizations, academic institutions, business or other for-profit enterprises.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

Legal Authority: None.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the collection or the OMB Control Number 0648-0796.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024-15785 Filed 7-17-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting of the National Sea Grant Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a

forthcoming meeting of the National Sea Grant Advisory Board (Board), a Federal advisory committee. Board members will discuss and provide advice on the National Sea Grant College Program (Sea Grant) in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the Sea Grant website. For more information on this Federal Advisory Committee please visit the Federal Advisory Committee database: <https://www.faca.database.gov/FACA/FACAPublicPage>.

DATES: The announced meeting is scheduled for Sunday August 18, 2024 from 8:30 a.m.–5:15 p.m. (EST).

ADDRESSES: The meeting will be held at the Marriott Savannah Riverfront in Savannah, Georgia. For more information about the public meeting see below in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the meeting, please contact Ms. Donna Brown, National Sea Grant College Program. Email: oar.sg-feedback@noaa.gov. Phone Number: 301-734-1088.

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to public participation with a public comment period on Sunday, August 18 at 8:30 a.m. The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Ms. Donna Brown by Monday, August 12, 2024 to provide sufficient time for Board review. Written comments received after the deadline will be distributed to the Board, but may not be reviewed prior to the meeting date.

Special Accommodations: The Board meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Donna Brown by Monday, August 12, 2024.

The Board, which consists of a balanced representation from academia, industry, State government and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94-461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters

as the Secretary refers to them for review and advice.

Matters To Be Considered: Board members will discuss updates and recommendations on the “State of Sea Grant” Report to Congress as well as other topics that need Board feedback, Board participation of Sea Grant Network Groups, as well as discuss and vote on the external reviewer for the Evaluation Committee: <https://seagrant.noaa.gov/About/Advisory-Board>.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–15802 Filed 7–17–24; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE121]

Marine Mammals; File No. 27858

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Maine Department of Marine Resources, 194 McKown Point Road, West Boothbay Harbor, ME 04575 (Sarah Leiter, Responsible Party), has applied in due form for a permit to conduct research on marine mammals.

DATES: Written comments must be received on or before August 19, 2024.

ADDRESSES: The application and related documents are available for review by selecting “Records Open for Public Comment” from the “Features” box on the Applications and Permits for Protected Species home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 27858 from the list of available applications. These documents are also available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 27858 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D., or Carrie Hubbard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 through 226).

The applicant requests a 5-year research permit to study North Atlantic right whale (*Eubalaena glacialis*) distribution, seasonality, density, abundance, and habitat use in the Gulf of Maine. An additional 19 species of marine mammals may be harassed and opportunistically studied including the following ESA-listed species: blue (*Balaenoptera musculus*), fin (*B. physalus*), sei (*B. borealis*), and sperm (*Physeter macrocephalus*) whales. Research may occur year-round during vessel or manned aircraft surveys for counts, photography, video recording, observations, and passive acoustic recordings. See the application for complete numbers of animals requested by species, age-class, and procedure.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 15, 2024.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–15862 Filed 7–17–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE090]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 95 Atlantic Migratory Cobia Removals Webinar II.

SUMMARY: The SEDAR 95 assessment of the Atlantic stock of cobia will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 95 Atlantic Migratory Cobia Removals Webinar II is scheduled for August 1, 2024, from 9 a.m. to 12 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; www.sedarweb.org.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report, which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data.

Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and State and Federal agencies.

The items of discussion at the SEDAR 95 Atlantic Migratory Cobia Removals Webinar II are as follows: Discuss and review available removals data streams and provide recommendations for their use in the assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-15865 Filed 7-17-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC964]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to San Mateo County Harbor District to incidentally harass marine mammals during activities associated with the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California. There are no changes from the proposed authorization in this final authorization.

DATES: This Authorization is effective from December 1, 2024 through November 30, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-san-mateo-county-harbor-districts-pillar-point-harbor-johnson>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to

harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring, and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On August 10, 2022, NMFS received a request from the San Mateo County Harbor District (SMCHD) for an IHA to take marine mammals incidental to the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California. Following NMFS’ review of the application and in response to our comments, SMCHD submitted revised versions on October 4, 2022, and December 6, 2022. The application was deemed adequate and complete on December 13, 2022. The notice of the proposed IHA and request for comments was published on February 27, 2023 (88 FR 12334). SMCHD’s request is for take of harbor seals (*Phoca vitulina*) and California sea lions (*Zalophus californianus*) by Level A and Level B harassment. This IHA will cover 1 year of a larger project for which SMCHD intends to request take authorization for subsequent facets of the project. The larger 2-year project involves the expansion of the Johnson Pier commercial docks and fuel pier. Neither SMCHD nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of the Specified Activity

The SMCHD plans to demolish and replace/expand the Johnson Pier at Pillar Point Harbor in San Mateo County, California. Demolition of the North Timber Pier and the commercial floating docks and fuel dock will be followed by expansion of the pier and replacement of the commercial and fuel docks. The project includes impact and

vibratory pile driving and vibratory pile removal. Sounds resulting from pile driving and removal may result in the incidental take of marine mammals by Level A and Level B harassment in the form of auditory injury or behavioral harassment. Underwater sound will be constrained to the inner harbor area by solid rubble-mound breakwaters. The project period includes up to 130 days of pile installation and extraction activities for which incidental take is authorized.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (88 FR 12334, February 27, 2023). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the detailed description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to SMCHD was published in the **Federal Register** on February 27, 2023 (88 FR 12334). That notice described, in detail, SMCHD's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment

period. NMFS received no substantive comments on the proposed IHA.

Changes From the Proposed IHA to Final IHA

Changes were made between publication of the notice of the proposed IHA and this notice of the final IHA. The effective dates of the authorization have been changed from January 1, 2024 through December 31, 2024 to December 1, 2024 through November 30, 2025 at the applicant's request. Additionally, the Monitoring and Reporting section was updated to include a requirement that all PSO data will be submitted electronically with the draft marine mammal report in a format that can be queried, such as a spreadsheet or database.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species or stocks for which take is expected for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Pacific SARs (e.g., Caretta *et al.*, 2023). All values presented in Table 1 are the most recent available at the time of publication (including from the draft 2024 SARs) and are available online at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, Nmin, most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	<i>Zalophus californianus</i>	United States	-/-, N	257,606 (N/A, 233,515, 2014)	14,011	>321
Family Phocidae (earless seals):						
Harbor Seal	<i>Phoca vitulina</i>	California	-/-, N	30,968 (N/A, 27,348, 2012)	1,641	43

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

A detailed description of the of the species likely to be affected by the Johnson Pier project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (88 FR 12334, February 27, 2023); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS’ website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential

techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS
(NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (i.e., all species within the group), where individual species’ hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from SMCHD’s construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the construction area. The notice of proposed IHA (88 FR 12334, February 27, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from impact and vibratory pile driving on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here;

please refer to the notice of proposed IHA (88 FR 12334, February 27, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through this IHA, which informs both NMFS’ consideration of “small numbers,” and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines “harassment” as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will primarily be by Level B harassment, as noise generated during construction activities (i.e., impact and vibratory pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some

potential for auditory injury (Level A harassment) to result. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals would be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that would be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (e.g., frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (e.g., bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (e.g., Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic

threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous non-impulsive (e.g., vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (e.g., impact pile driving) or intermittent (e.g., scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

SMCHD's planned activity includes the use of continuous non-impulsive (vibratory pile installation and extraction) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μ Pa are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). SMCHD's planned activity includes the use of non-impulsive (vibratory pile installation and extraction) and impulsive (impact pile driving) sources.

These thresholds are provided in Table 3. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (Received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_E,LF,24h$: 183 dB	Cell 2: $L_E,LF,24h$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_E,MF,24h$: 185 dB	Cell 4: $L_E,MF,24h$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_E,HF,24h$: 155 dB	Cell 6: $L_E,HF,24h$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_E,PW,24h$: 185 dB	Cell 8: $L_E,PW,24h$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_E,OW,24h$: 203 dB	Cell 10: $L_E,OW,24h$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the planned project. Pile driving generates underwater noise that can potentially

result in disturbance to marine mammals in the project area. The maximum (underwater) area ensonified is determined by the topography of the Pillar Point inner harbor, including hard structure breakwaters that bound the inner harbor and preclude sound from transmitting into the outer harbor. Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels, which

may mask sounds produced by the project.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10} (R_1/R_2)$, where

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source ($20 * \log[\text{range}]$). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for

each doubling of distance from the source ($10 * \log[\text{range}]$). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods (Table 4). Generally, we choose source levels from similar pile types from locations (e.g., geology, bathymetry) similar to the project. At this time, NMFS is not aware of reliable source levels available for

fiberglass piles using vibratory pile installation; therefore, source levels for timber pile driving were used as a proxy. While vibratory extraction of concrete piles has been measured only for 20-in piles, NMFS has conservatively applied this source level to vibratory extraction of 14-in concrete piles.

For this project, one impact and one vibratory hammer may operate simultaneously. Because an impact hammer is not a continuous source, there is no adjustment needed in the source levels needed to calculate the Level A harassment or Level B harassment zones. In the event of concurrent activities, the Level A harassment zones would be equivalent to those produced by the impact hammer alone, and the Level B harassment zone would be the largest zone. Due to the confined nature of the Project Area, these zones are sometimes identical. Therefore, no separate analysis of concurrent activities was conducted for this project.

TABLE 4—PROJECT SOUND SOURCE LEVELS NORMALIZED TO 10 METERS

Pile type	Pile size (inch)	Method	Peak SPL (re 1 μ Pa (rms))	RMS SPL (re 1 μ Pa (rms))	SEL (re 1 μ Pa (rms))	Source
Concrete	16	Impact	193	168	160	Caltrans 2020.
Concrete	24	Impact	188	176	166	Caltrans 2020.
Fiberglass	16	Vibratory	NA	162	NA	Caltrans 2020.
Concrete or Timber	14	Vibratory extraction	NA	162	NA	NAVFAC SW 2022.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence

to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate

isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources like pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. The resulting isopleths are reported in Table 5, below.

TABLE 5—CALCULATED LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FOR IMPACT PILE DRIVING

Method	Source	Level A harassment—radius to isopleth (m)		Level B Harassment—radius to isopleth (m)
		Phocids	Otariids	
Impact	16-in Concrete	96	7	35
	24-in Concrete	290	22	117
Vibratory	16-in Fiberglass	23	2	* 6,265
	14-in Concrete or Timber	23	2	* 6,265

*The calculated distance to the Level B harassment threshold of 120 dB is 6,265m. However, sound propagation will be limited by the solid breakwaters surrounding the inner harbor and therefore the harassment zone will be limited to the area within the inner harbor breakwaters.

The maximum Level A harassment zones are expected to occur during impact driving of 24-in concrete piles,

extending out to 290 m from the source pile for harbor seals, and out to 22 m from the source pile for sea lions. The

290 m zone fills the inner harbor area surrounded by the breakwaters, as shown in Figure 7 of the IHA

application. The largest Level B harassment zone would occur during vibratory pile driving and extraction, and would encompass the entire inner harbor basin.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information that informs the take calculations, and describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur.

California Sea Lion

California sea lions regularly occur on rocks, buoys, and other structures. California sea lions were observed within the Project area during the field survey (Rincon, 2021). Breeding and pupping are not known to occur in the Project area. Based on anecdotal statements from Pillar Point Harbor operations staff, California sea lions could occur within the inner harbor area on a daily basis. Past observations indicate that sea lions rarely haul out within the Project area (Meyers, 2022). Because no density estimates are available for the species in this area, the

SMCHD estimated that two California sea lions could be present within the Pillar Point Inner Harbor each day. Based on this information, NMFS has similarly estimated that two California sea lions may be taken by Level B harassment each day of pile driving. This equates to 260 Level B harassment takes over 130 project days. Therefore, the SMCHD requested, and NMFS has authorized, 260 takes by Level B harassment of California sea lion (Table 6).

The largest Level A harassment zone for otariids extends approximately 23 m from the source during impact driving of a 24-in concrete pile (Table 5). SMCHD has conservatively assumed that 1 sea lion may occur within the 23 m zone for a duration long enough to be taken by Level A harassment every 2 days of impact pile driving, equating to 40 takes over 80 project days. Therefore, the SMCHD requested, and NMFS has authorized, 40 takes by Level A harassment of California sea lion (Table 6).

Harbor Seal

Harbor seals were observed within the Project area during the field survey and have been frequently documented within Pillar Point Harbor (Rincon,

2021). Breeding and pupping are not known to occur in the Project area. Based on anecdotal statements from Pillar Point Harbor operations staff, harbor seals could occur within the inner harbor area on a daily basis. Past observations indicate that harbor seals rarely haul out within the Project area (Meyers, 2022). Because no density estimates are available for the species in this area, the SMCHD estimated that two harbor seals could be present within the Pillar Point Inner Harbor each day. Based on this information, NMFS has similarly estimated that two harbor seals may be taken by Level B harassment each day of vibratory pile driving, and up to 10 percent of those individuals may be taken by Level A harassment each day. On days with impact driving, up to two harbor seals may be taken by Level A harassment, with no Level B harassment due to the Level A harassment zone extending to the boundaries of the inner harbor. This equates to 90 Level B harassment takes and 170 Level A harassment takes over 130 project days. Therefore, SMCHD requested, and NMFS has authorized, 90 takes by Level B harassment, and 170 takes by Level A harassment of harbor seals (Table 6).

TABLE 6—AUTHORIZED AMOUNT OF TAKING, BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT, BY SPECIES AND STOCK AND AS A PERCENTAGE OF STOCK ABUNDANCE

Common name	Stock	Level A harassment	Level B harassment	Total	Percent of stock
California sea lion	United States	40	260	300	0.12
Harbor seal	California	170	90	260	0.84

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the

least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

In addition to the measures described later in this section, SMCHD will employ the following mitigation measures:

- The Holder must ensure that construction supervisors and crews, the monitoring team, and relevant SMCHD staff are trained prior to the start of activities subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;

- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or entering the Level B harassment zone; and

- If take reaches the authorized limit for an authorized species, pile installation/removal will shut down

immediately if these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures apply to SMCHD's in-water construction activities:

- *Establishment of Shutdown Zones*—SMCHD will establish of 15.25 meter (50-foot) shutdown zone for all pinnipeds during in-water construction activities to avoid interaction between pile driving equipment and pinnipeds. For all marine mammal species other than harbor seals and California sea lions, the shutdown zone will encompass the entire inner harbor. Pile driving must be halted or delayed if a marine mammal is observed entering or within the shutdown zone. The activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

- *Monitoring for Level A Harassment and Level B Harassment*—SMCHD will monitor the Level A harassment and Level B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential halt of activity should the animal enter the shutdown zone. Placement of Protected Species Observers (PSOs) will allow PSOs to observe marine mammals within the Level B harassment zones. During pile driving activities, PSOs will monitor the entire inner harbor area and the outer harbor to the extent practicable. A qualified observer will monitor the zone of influence, and document all marine mammals that enter the monitoring zone.

- *Pre/post-activity Monitoring*—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than

30 minutes, the pre-activity monitoring of the shutdown zones will commence. Monitoring must also occur through 30 minutes post-completion of pile driving activity.

- *Protected Species Observers*—The placement of PSOs during all pile driving and removal activities (described in detail in the Monitoring and Reporting section) will ensure that the entire inner harbor is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire monitoring zone would not be visible (e.g., fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the monitoring zone could be detected.

- *Soft Start*—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the impact hammer operating at full capacity. For impact driving, an initial set of three strikes will be made by the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent three-strike sets before initiating continuous driving. Soft-start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's mitigation measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS

should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Monitoring Plan and Section 5 of the IHA. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (i.e., not construction personnel) who have no other assigned tasks during monitoring periods must be used;
 - At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
 - Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
 - The SMCHD must submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.
- PSOs must have the following additional qualifications:
- Ability to conduct field observations and collect data according to assigned protocols;

- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including, but not limited to, the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior;
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary. SMCHD will employ up to two PSOs. PSO locations will provide an unobstructed view of all water within the shutdown zone(s), and as much of the Level A harassment and Level B harassment zones as possible. PSO locations may include Johnson Pier, adjacent floating docks, and/or the shoreline area. If necessary, observations may occur from two locations simultaneously; and
- Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving or drilling equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Construction activities occurring during each daily observation period, including how many and what type of

piles were driven or removed and by what method (*i.e.*, impact or vibratory and if other removal methods were used) and the total duration of driving time for each pile (vibratory driving/removal) and number of strikes for each pile (impact driving).

- PSO locations during marine mammal monitoring.
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.
- Upon observation of a marine mammal, the following information:
 - Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
 - Time of sighting;
 - Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
 - Distance and location of each observed marine mammal relative to the pile being driven for each sighting;
 - Estimated number of animals (min/max/best estimate);
 - Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);
 - Animal's closest point of approach and estimated time spent within the harassment zone;
 - Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
 - Number of marine mammals detected within the harassment zones, by species; and
 - Detailed information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.
 - All PSO data will be submitted electronically in a format that can be queried such as a spreadsheet or database and would be submitted with the draft marine mammal report.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be

submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the SMCHD shall report the incident to the Office of Protected Resources (OPR), NMFS, and to the regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the SMCHD must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and

context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to both California sea lions and harbor seals, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Pile driving activities have the potential to disturb or displace marine mammals. Specifically, the planned project activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance and TTS. Level A harassment takes would be due to PTS. No mortality or serious injury is anticipated given the nature of the activity, even in the absence of the required mitigation. The potential for harassment is minimized through the construction method and the implementation of the mitigation measures (see Mitigation section).

Take may occur within a limited, confined area (Pillar Point Inner Harbor) of the stock's range. Level A harassment and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance, and the project is not anticipated to impact any known important habitat areas for any marine mammal species.

Take by Level A harassment is authorized to account for the potential that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment. Any take by Level A harassment is expected to

arise from, at most, a small degree of PTS because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS. Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, any PTS or TTS potentially incurred here would not be expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

Behavioral responses of marine mammals to pile driving at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock (ABR, 2016)) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable, such as changes in vocalization patterns. Given the limited number of piles to be installed or extracted per day and that pile driving and removal will occur across a maximum of 130 days within the 12-month authorization period, any harassment would be temporary.

Any impacts on marine mammal prey that will occur during SMCHD's activity would have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' annual rates of recruitment or survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species

or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized.
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks and will not be of a duration or intensity expected to result in impacts on reproduction or survival.
- No important habitat areas have been identified within the project area.
- For all species, Pillar Point Harbor is a very small and peripheral part of their range and anticipated habitat impacts are minor.
- The SMCHD will implement mitigation measures, such as soft-starts for impact pile driving and shut downs to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment, is at most, a small degree of PTS.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take authorized for both California sea lions and harbor seals is below one-third of the estimated stock abundance (0.12 percent and 0.84 percent, respectively; Table 6). This is likely a conservative estimate because it assumes all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs will

count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is expected to result from this activity, and none is authorized. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of this IHA

qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to SMCHD for the potential harassment of small numbers of California sea lions and harbor seals incidental to the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California, between December 1, 2024 and November 30, 2025 that includes the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: July 15, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2024-15859 Filed 7-17-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Public Search Facility User ID and Badging

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comments on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on May 13 during a 60-day comment period (89 FR 41395). This notice allows for an additional 30 days for public comment.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Public Search Facility User ID and Badging.

OMB Control Number: 0651-0041.

Needs and Uses: The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 41(i)(1) to maintain a Public Search Facility to make publicly accessible USPTO patent and trademark collections for search and retrieval. The Public Search Facility is located in a publicly accessible portion of USPTO headquarters in

Alexandria, Virginia, and offers the public access to the collection's paper, microfilm, and electronic files and trained staff to assist users with searches.

This information collection covers the application used to establish, renew, or replace security identification badges issued to members of the public who wish to access the Public Search Facility. Users can apply for a security badge in-person at the USPTO Security Office by providing the necessary information and presenting a valid form of photo identification. The issued security badges include a color photograph of the user and must be worn at all times while within the USPTO facility. Issued badges are valid for one year and can be renewed at no cost. Lost badges can be replaced at a cost of \$15. Public users are not required to obtain a security identification badge to access the Public Search Facility. Alternatively, public users can fill out a visitor badge request upon visiting the library. The process for obtaining a visitor badge is exempt from the Paperwork Reduction Act (PRA). The visitor badge must be turned in each time the user leaves the library. Re-entry requires obtaining a new visitor badge. However, using a security identification badge issued to a public user allows that individual to leave and re-enter the library without needing to obtain a visitor badge. Public users only need to obtain either the visitor badge or a security identification badge to enter the Public Search Facility; they do not need both simultaneously.

Previously, the Public Search Facility collected information from the public to establish and maintain accounts for online access to USPTO resources and to register the public for user trainings. Instead of using unique accounts for the Public Search Facility, access is now automatically provided through MyUSPTO accounts. Registrations for training are no longer required as trainings are now provided on demand via self-service online platforms. As a result, the USPTO is removing the information collection lines for online access accounts and user training registrations from this information collection as a part of this renewal.

Previously in the 60-Day **Federal Register** Notice, the USPTO listed the estimated total annual respondent burden as 6 hours. The USPTO now corrects this estimate to 5 hours of annual burden.

Forms:

- PTO Form 2030 (Application for Public User ID)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Individuals or households.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 60 respondents.

Estimated Number of Annual Responses: 60 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 5 minutes (0.08 hours) to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 5 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: \$75.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website, www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the information collection or the OMB Control Number, 0651–0041.

Further information can be obtained by:

- *Email:* InformationCollection@uspto.gov. Include "0651–0041 information request" in the subject line of the message.

- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Lisa Lawn,

Director, Records and Information Compliance Program Office, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2024–15870 Filed 7–17–24; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Summer Teacher Institute (NSTI) and Master Teacher of Invention and Intellectual Property Education Program (MTIP)

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comments on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on May 13, 2024 during a 60-day comment period (89 FR 41396). This notice allows for an additional 30 days for public comment.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: National Summer Teacher Institute (NSTI) and Master Teacher of Invention and Intellectual Property Education Program (MTIP).

OMB Control Number: 0651–0077.

Needs and Uses: The United States Patent and Trademark Office (USPTO) conducts the National Summer Teacher Institute (NSTI) on Innovation, STEM, and Intellectual Property. This program, which focuses on innovation, STEM, entrepreneurship, and intellectual property, is offered in support of USPTO's ongoing education and outreach programming and Department of Commerce Innovation initiatives. The Institute, launched in 2014, is part of the USPTO's ongoing efforts to foster innovation, competitiveness and economic growth, domestically and abroad, by providing relevant intellectual property, innovation, and invention education resources to school administrators, teachers, students, and parents.

In 2023, USPTO introduced the Master Teacher of Invention and Intellectual Property Education Program (MTIP) (previously published as Master Teacher in Intellectual Property Program in the 60-day notice) to align and support the USPTO's mission to foster innovation, competitiveness, domestic and international economic

growth, and deliver invention IP training to educators across the nation. The MTIP builds a network of qualified NSTI participants and intellectual property educators and enables them to become teacher-leaders. These teacher leaders in turn provide professional development to U.S. educators who seek to learn more about invention and IP education. MTIP teacher-leaders share USPTO resources and practical classroom experience they learned through their implementation of lessons learned at the NSTI.

USPTO facilitates the enhancement of internal and external relations, including stakeholder partnerships and collaborations, and support for Government-wide efforts to promote STEM education initiatives. In order to obtain a broad range of participants for the NSTI and MTIP, the USPTO must collect data related to courses taught, teaching experience, and school district demographics.

Both NSTI and MTIP combine experiential training tools, practices, and project-based learning models to support elementary, middle, and high school teachers in incorporating concepts of making, inventing, entrepreneurship, and innovation into classroom instruction. Recent focuses include the creation and protection of intellectual property; including inventions, knowledge discovery, creative ideas, and expressions of the human mind that may have commercial value and are protectable under patent, trademark, copyright, or trade secret laws. Intellectual property is modeled as both a teaching and learning platform to help inspire and motivate student achievement in science, technology, engineering, and mathematics.

This information collection covers data gathered from applicants and participants in the NSTI and MTIP programs. The USPTO gathers this information from program applications, and participant surveys, workshops, and webinars. The application collects data which the USPTO uses to determine who will be accepted into the respective programs. The participant survey is used to gather feedback from participants for future program enhancements, while the webinar survey allows the USPTO to understand the particular needs and interests of participants.

To account for the recent addition of the MTIP program, the name of this information collection has been changed from "National Summer Teacher Institute" to "National Summer Teacher Institute (NSTI) and Master Teacher of Invention and Intellectual Property Education Program (MTIP)".

Forms:

- PTO/NSTI/001 (NSTI Application Survey)
- PTO/NSTI/002 (NSTI Participant Survey)
- PTO/NSTI/003 (NSTI Webinar Survey)
- PTO/MTIP/001 (MTIP Application Survey)
- PTO/MTIP/002 (MTIP Participant Survey)
- PTO/MTIP/003 (MTIP Webinar Survey)

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals or households.

Respondent's Obligation: Voluntary.

Frequency: On occasion.

Estimated Number of Annual Respondents: 14,000 respondents.

Estimated Number of Annual Responses: 27,400 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 8 minutes (0.13 hours) and 30 minutes (0.5 hours) to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 5,998 hours.

Estimated Total Annual Respondent Non-hourly Cost Burden: \$0.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website, www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the information collection or the OMB Control Number, 0651–0077.

Further information can be obtained by:

- *Email:* InformationCollection@uspto.gov. Include "0651–0077 information request" in the subject line of the message.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office,

P.O. Box 1450, Alexandria, VA 22313–1450.

Lisa Lawn,

Director, Records and Information Compliance Program Office, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2024–15871 Filed 7–17–24; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB–2024–0031]

Agency Information Collection Activities: Comment Request

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) requests the Office of Management and Budget's (OMB's) extension of the existing information collection titled "Mortgage Assistance Relief Services (Regulation O)" approved under OMB Control Number 3170–0007.

DATES: Written comments are encouraged and must be received on or before September 16, 2024 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* PRA_Comments@cfpb.gov. Include Docket No. CFPB–2024–0031 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information

should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Mortgage Assistance Relief Services (Regulation O).

OMB Control Number: 3170–0007.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Businesses and other for-profit institutions.

Estimated Number of Respondents: 120.

Estimated Total Annual Burden Hours: 360.

Abstract: The required disclosures under Regulation O¹ assist prospective purchasers of mortgage assistance relief services (MARS) in making well-informed decisions and avoiding deceptive unfair acts and practices. The CFPB and the Federal Trade Commission use the information provided under Regulation O's recordkeeping requirements for enforcement purposes and to ensure compliance with Regulation O by MARS providers. The information is requested only on a case-by-case basis.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the CFPB's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2024–15828 Filed 7–17–24; 8:45 am]

BILLING CODE 4810–AM–P

¹ 12 CFR part 1015.

CONSUMER FINANCIAL PROTECTION BUREAU**[Docket No. CFPB–2024–0030]****Agency Information Collection Activities: Comment Request****AGENCY:** Consumer Financial Protection Bureau.**ACTION:** Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) requests the Office of Management and Budget's (OMB's) extension of the existing information collection titled "Consumer Leasing Act (Regulation M)" approved under OMB Control Number 3170–0006.

DATES: Written comments are encouraged and must be received on or before September 16, 2024 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* PRA_Comments@cfpb.gov. Include Docket No. CFPB–2024–0030 in the subject line of the email.
- *Mail/Hand Delivery/Courier:*

Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Leasing Act (Regulation M).

OMB Control Number: 3170–0006.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Businesses and other for-profit entities.

Estimated Number of Respondents: 13,301.

Estimated Total Annual Burden Hours: 2,062.

Abstract: Consumers rely on the disclosures required by the Consumer Leasing Act (CLA) ¹ and Regulation M ² for information to comparison shop among leases as well as to ascertain the true costs and terms of lease offers. Federal/State enforcement and private litigants use the records to ascertain whether accurate and complete disclosures of the cost of leases have been provided to consumers prior to consummation of the lease. This information provides the primary evidence of law violations in CLA enforcement actions brought by Federal agencies. The agency's ability to enforce the CLA would be significantly impaired without Regulation M's recordkeeping requirements.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the CFPB's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2024–15824 Filed 7–17–24; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION**Sunshine Act Meeting**

TIME AND DATE: Wednesday, July 17, 2024—10 a.m.

PLACE: Meeting will be held remotely and in person at 4330 East West

¹ 15 U.S.C. 1667 *et seq.*

² 12 CFR 1013.

Highway, Bethesda, Maryland, Room 420.

STATUS: Commission Meeting—Closed to the Public.

MATTERS TO BE CONSIDERED: Meeting Matter: Briefing Matter.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: July 15, 2024.

Alberta Mills,

Commission Secretary.

[FR Doc. 2024–15915 Filed 7–16–24; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE**Office of the Secretary****Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting**

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Regents, Uniformed Services University of the Health Sciences (BoR USUHS) will take place.

DATES: Monday, August 5, 2024, open to the public from 8:00 a.m. to 12:05 p.m. eastern time.

ADDRESSES: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Everett Alvarez Jr. Board of Regents Room (D3001), Bethesda, MD 20814. The meeting will be held both in-person and virtually. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT:

Annette Askins-Roberts, Designated Federal Officer (DFO), at (301) 295–3066 or bor@usuhs.edu. Mailing address is 4301 Jones Bridge Road, Bethesda, MD 20814. Website: <https://www.usuhs.edu/ao/board-of-regents>.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as "the Federal Advisory Committee Act" or "FACA"), 5 U.S.C. 552b (commonly known as the "Government in the Sunshine Act"), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the USD(P&R), on academic and administrative matters critical to the full accreditation and successful operation of Uniformed Services University (USU). These actions are necessary for USU to pursue its mission, which is to educate, train, and comprehensively prepare uniformed services health professionals, officers, scientists, and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The schedule includes opening comments from the Chair; a report by the President of USU; an update from the Assistant Secretary of Defense for Health Affairs; an update on the USU Facilities Master Plan; an update from the Liaison Committee of Medical Education site visit survey; and a brief on leadership and future military medical education.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102.3.165), the meeting will be held in-person and virtually and is open to the public from 8:00 a.m. to 12:05 p.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting virtually should contact Ms. Angela Bee via email at bor@usuhs.edu no later than five business days prior to the meeting.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Angela Bee via email at bor@usuhs.edu no later than five business days prior to the meeting, so that appropriate arrangements can be made.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the BoR USUHS about its approved agenda pertaining to this meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to Ms. Askins-Roberts at the address noted in the **FOR FURTHER INFORMATION CONTACT** section. Written statements that do not pertain to a scheduled meeting of the BoR USUHS may be submitted at any time. If individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least five calendar days prior to the meeting. Otherwise, the comments may not be provided to

or considered by the BoR USUHS until a later date. The DFO will compile all timely submissions with the BoR USUHS' Chair and ensure such submissions are provided to BoR USUHS members before the meeting.

Dated: July 15, 2024.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2024–15805 Filed 7–17–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[COE–2021–0007]

Notice of Availability of the Draft National Levee Safety Guidelines

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (USACE) and the Federal Emergency Management Agency (FEMA) have made available for public review and comment the draft National Levee Safety Guidelines (Guidelines). The draft Guidelines are intended to serve as a national resource of best practices to help achieve nationwide consistency in improving the reliability of levees and resilience of communities behind levees throughout the United States. The draft Guidelines have been developed with stakeholder input as part of the National Levee Safety Program.

DATES: Comments related to the draft National Levee Safety Guidelines must be submitted on or before August 31, 2024.

ADDRESSES: You may submit comments identified by docket number COE–2021–0007 by any of the following methods:

Federal eRulemaking Portal: Visit www.regulations.gov and follow the instructions for submitting comments.

Email: Send an email to hq-leveesafety@usace.army.mil and include the docket number, COE–2021–0007, in the subject line of the message.

Mail: U.S. Army Corps of Engineers Vicksburg District, ATTN: Levee Safety Center—RM 221, 4155 East Clay Street, Vicksburg, MS 39183.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: If submitting comments through the Federal eRulemaking Portal,

direct your comments to docket number COE–2021–0007. All comments received will be included in the public docket without change and may be made available on-line at www.regulations.gov, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or email. The regulations.gov website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to USACE without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any compact disk you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Ms. Tammy Conforti at 202–365–6586, email hq-leveesafety@usace.army.mil or visit www.leveesafety.org.

SUPPLEMENTARY INFORMATION: Congress enacted Title IX, entitled the National Levee Safety Program, of the Water Resources Development Act (WRDA) of 2007, as amended, authorizing various activities led by USACE and FEMA. The purpose of the National Levee Safety Program is to improve the way levees are managed throughout the United States and its territories in order to reduce the impacts of flooding and

improve the resilience of communities behind levees. The National Levee Safety Program has four major components which include: National Levee Safety Guidelines; Integrated Levee Management; National Levee Database; and Implementation Support. These four components are intended to work together to accomplish the goals of the program. There are fact sheets and additional information related to each of these components at www.leveesafety.org.

As part of the development of the National Levee Safety Program, USACE and FEMA developed a three-phased stakeholder engagement plan to continue their commitment to seek feedback from stakeholders at various phases of the program's development. Phase 1, which took place between December 2021 and March 2022, was focused on gathering initial input on the purpose and scope of the program. Phase 2, which took place between March and June 2023, included activities focused on soliciting feedback on options for draft products, including the National Levee Safety Guidelines and supplemental resources. For this notice, which is associated with Phase 3, comments are being sought on the full draft of the Guidelines.

The draft Guidelines contain voluntary best practices that are intended to be scalable and adaptable to local conditions. Topics in the draft Guidelines range from basic concepts and terminology to consistent approaches for levee-related activities throughout the life of a levee. In addition, strategies to reduce flooding impacts to people, property, and the environment are also covered. Finally, the value of addressing how climate change impacts levees, how natural and nature-based features can be integrated into levees, and understanding the needs of underserved and overburdened communities is also emphasized throughout the publication. The complete publication can be found at www.leveesafety.org/pages/nlsg or on www.regulations.gov under docket number COE-2021-0007. It is available by individual chapters or as one complete document. In preparation for release of the draft first edition of the National Levee Safety Guidelines, USACE hosted two webinars to provide an overview of the draft Guidelines and the comment process. The webinars were recorded and can be found at www.leveesafety.org/pages/nlsg.

Questions to Assist in Providing Feedback: Commentors are encouraged to consider the following questions to guide their feedback on the draft National Levee Safety Guidelines:

1. Did you find the document to be beneficial for you or your organization? Please explain your response.

2. Is there sufficient detail on the principles and practices described in the draft Guidelines? If not, what additional detail should be included?

3. Is there an activity that is missing? What should be explained more?

4. What other suggestions do you have for improving the draft National Levee Safety Guidelines?

Topic-Specific Webinars: To help with this effort, USACE has conducted a series of topic-specific webinars that provide background information on development of the draft National Levee Safety Guidelines, more detail on related content from applicable chapters, examples from various chapters that support the topic of the webinar, and information on how to submit feedback. Each webinar was recorded and posted on www.leveesafety.org/pages/nlsg.

The topic-specific webinars include:

- Levee Operations and Maintenance
- Emergency Planning, Response, and Recovery Related to Levees
- Living with Levees: Building Resilient Communities
- Assessing, Designing, and Constructing Levees
- Environmental Considerations in Flood Risk Management

Michael L. Connor,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2024-15814 Filed 7-17-24; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2024-SCC-0092]

Agency Information Collection Activities; Comment Request; Federal Student Loan Program: Internship/Residency and Loan Debt Burden Forbearance Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 16, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-

2024-SCC-0092. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave., SW, LBJ, Room 6W203, Washington, DC 20202-8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202-570-8414.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Student Loan Program: Internship/Residency

and Loan Debt Burden Forbearance Forms.

OMB Control Number: 1845–0018.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households

Total Estimated Number of Annual Responses: 2,215,812.

Total Estimated Number of Annual Burden Hours: 181,495.

Abstract: These forms serve as the means by which borrowers in the William D. Ford Federal Direct Loan (Direct Loan), Federal Family Education Loan (FFEL) and the Federal Perkins Loan (Perkins Loan) Programs may request forbearance of repayment on their loans if they meet certain conditions. The U.S. Department of Education and other loan holders uses the information collected on these forms to determine whether a borrower meets the eligibility requirements for the specific type of forbearance. The Service forbearance (SERV Forb) and the Student Loan Debt forbearance (SLDB Forb) forms are currently approved under OMB No. 1845–0018. The General forbearance (GEN Forb) form is currently approved under OMB No. 1845–0031. For greater simplicity and to make it easier to maintain consistency among the various forbearance forms, the Department is consolidating the two current collections into a single collection under OMB No. 1845–0018. This review request merges the number of respondents/responses/burden hours for both collections.

Dated: July 15, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–15858 Filed 7–17–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fund for the Improvement of Postsecondary Education—Tribal Controlled Colleges or Universities (TCCUs) Research and Development Infrastructure (RDI) Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2024 for the RDI grant program.

DATES:

Applications Available: July 18, 2024.

Deadline for Transmittal of

Applications: September 16, 2024.

Deadline for Intergovernmental Review: November 15, 2024.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.

FOR FURTHER INFORMATION CONTACT:

Jason Cottrell, Ph.D., U.S. Department of Education, 400 Maryland Avenue SW, Room 5C122, Washington, DC 20202–4260. Telephone: (202) 453–7530. Email: Jason.Cottrell@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The RDI grant program is designed to provide Historically Black Colleges and Universities (HBCUs), TCCUs, and Minority-Serving Institutions (MSIs), including Asian American and Native American Pacific Islander Serving Institutions (AANAPISIs), Alaska Native and Native Hawaiian Serving Institutions (ANNH), Hispanic Serving Institutions (HSIs), Native American Serving Non-Tribal Institutions (NASNTIs), and/or Predominantly Black Institutions (PBIs), or consortia led by an eligible institution of higher education (institution), with funds to implement transformational investments in research infrastructure, including research productivity, faculty expertise, graduate programs, physical infrastructure, human capital development, and partnerships leading to increases in external funding.

For HBCUs and MSIs, the RDI grant program supports institutions in increasing their level of research activity in alignment with the Carnegie Classification designations. For TCCUs, which currently have their own Carnegie Classification, this program seeks to support an increase in research activities, undergraduate research opportunities, faculty development, research development, and infrastructure, including physical

infrastructure and human capital development.

Assistance Listing Number: 84.116H.

OMB Control Number: 1894–0006.

Background: TCCUs provide access to a postsecondary education for many of the Nation's American Indian and Alaska Native students. In the fall of 2021, the 35 Title IV degree-granting TCCUs enrolled over 13,000, or 14 percent of, American Indian and Alaska Native undergraduate students.¹ Between July 2021 and June 2022, 20 of those TCCUs cumulatively conferred 380 bachelor's degrees to American Indian and Alaska Native students, representing 87.4 percent of all bachelor's degrees conferred by TCCUs.²

Because of their central role in educating American Indian and Alaska Native students, it is important for TCCUs to have the resources they need to excel in research activity. Teaching and research go hand in hand in ensuring student³ and institutional success.⁴ Research activity can impact funding, faculty and student recruitment and retention, and student research opportunities, and promote diversity in graduate students and faculty at an institution.

TCCUs play a critical role in educating Native students and provide opportunities to produce research on American Indian issues from an American Indian and Alaska Native perspective.⁵ According to the National Academies, data provided to their committee looking at MSIs and Science, Technology, Engineering, and Mathematics (STEM) showed that 93 percent of the students enrolled in STEM programs at four-year TCCUs in the fall of 2016 were Native American and Alaska Natives.⁶

However, TCCUs face obstacles in their efforts to sustain and implement extensive research activities. Administrations often have difficulty maintaining research activities due to the young nature of the institutions and

¹ U.S. Department of Education, IPEDS, Fall Enrollment component.

² U.S. Department of Education, IPEDS, Completions component.

³ NSSE. (n.d.). Digging Deeper Into the Quality of High-Impact Practices: HIPs Must be “Done Well” to Achieve Benefits.

⁴ Rosowsky, D. (2022, March 2). The Role of Research at Universities: Why it Matters. In *Forbes.com*.

⁵ Stull, G., Spyridakis, D., Gasman, M., Castro Samayoa, A., & Booker, Y. (2015). Redefining Success: How Tribal Colleges and Universities Build Nations, Strengthen Sovereignty, and Persevere Through Challenges.

⁶ Espinosa, L.L., McGuire, K., Miles Jackson, L. (2019). Minority Serving Institutions: America's Underutilized Resource for Strengthening the STEM Workforce.

their lack of research support offices.⁷ One study found that TCCUs' biggest obstacles in developing research activities are scheduling, infrastructure needs (*i.e.*, lack of space, equipment, and literature), partnership challenges (*i.e.*, lack of Tribal community knowledge), faculty capacity, and mistrust inside and outside of Tribal communities.⁸ Additionally, recent events like the COVID-19 pandemic have further demonstrated and exacerbated barriers to improvement, including technology infrastructure, funding constraints (*i.e.*, long-term funding),⁹ and isolation (*i.e.*, remote areas).¹⁰ However, one study found that the potential benefits of research activities for faculty and student development—such as knowledge production and dissemination through conferences, collaborations, and presentations—may far outweigh the costs of overcoming these obstacles. For example, faculty have reported that research opportunities have allowed them to introduce to their classes new information that was not previously available. Additionally, many researchers emphasized that Tribal college research is “more culturally sensitive and community-grounded, both in the methods and in the results.”¹¹ Therefore, we focus this competition on eligible TCCUs. In addition, the Department will make awards from unfunded applications submitted by HBCUs and MSIs from the FY2023 RDI program grant competition with the remaining FY2024 available funds.

Priorities: This notice contains one absolute priority which is from the notice of final priorities, requirements, and definitions for this program published elsewhere in this issue of the **Federal Register** (2024 NFP).

Absolute Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this notice contains one absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:
Funding for Tribal Controlled Colleges and Universities' Research and Development Infrastructure.

Projects proposed by TCCUs to improve their research and development activities, including infrastructure, faculty development, and academic programs.

Requirements: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following requirements apply. The requirements are from the 2024 NFP.

Limitation on Grant Awards. The Department will only make awards to applicants that are not the individual or lead applicant in a current active grant from the RDI grant program.

Use of Funds: Grantees must conduct one or more of the following activities:

(1) Providing for the improvement of infrastructure existing on the date of the grant award, including deferred maintenance, or the establishment of new physical infrastructure, including instructional program spaces, laboratories, and research facilities relating to the fields of science, technology, engineering, the arts, mathematics, health, agriculture, education, medicine, law, and other disciplines.

(2) Hiring and retaining faculty, students, research-related staff, or other personnel, including research personnel skilled in operating, using, or applying technology, equipment, or devices to conduct or support research.

(3) Supporting research internships and fellowships for students, including undergraduate, graduate, and post-doctoral positions, which may include providing direct student financial assistance and other supports to such students.

Note: Under 20 U.S.C. 1138(d)(1), funds made available under FIPSE may not be used to provide direct financial assistance in the form of grants or scholarships to students who do not meet eligibility criteria under Title IV of the Higher Education Act of 1965, as amended (HEA).

(4) Creating new, or expanding existing, academic positions, including internships, fellowships, and post-doctoral positions, in fields of research for which research and development infrastructure funds have been awarded to the grantee under this program.

(5) Creating and supporting inter- and intra-institutional research centers (including formal and informal communities of practice) in fields of research for which research and development infrastructure funds have been awarded to the grantee under this

program, including hiring staff, purchasing supplies and equipment, and funding travel to relevant conferences and seminars to support the work of such centers.

(6) Building new institutional support structures and departments that help faculty learn about, and increase faculty and student access to, Federal research and development grant funds and non-Federal academic research grants.

(7) Building data and collaboration infrastructure so that early findings and research can be securely shared to facilitate peer review and other appropriate collaboration.

(8) Providing programs of study and courses in fields of research for which research and development infrastructure funds have been awarded to the grantee under this program.

(9) Paying operating and administrative expenses for, and coordinating project partnerships with members of, the consortium on behalf of which the eligible institution has received a grant under this program, provided that grantees may not pay for the expenses of any R1 institutions that are members of the consortia.

(10) Installing or extending the life and usability of basic systems and components of campus facilities related to research, including high-speed broadband internet infrastructure sufficient to support digital and technology-based learning.

(11) Expanding, remodeling, renovating, or altering biomedical and behavioral research facilities existing on the date of the grant award that received support under section 404I of the Public Health Service Act (42 U.S.C. 283k).

(12) Acquiring and installing furniture, fixtures, and instructional research-related equipment and technology for academic instruction in campus facilities in fields of research for which research and development infrastructure funds have been awarded to the grantee under this program.

(13) Providing increased funding to programs that support research and development at the eligible institution that are funded by the National Institutes of Health, including through their Path to Excellence and Innovation program.

(14) Faculty professional development.

(15) Planning purposes.

Definition: The definition below applies to this competition and is from the 2024 NFP.

Tribal Controlled Colleges or Universities has the meaning ascribed it in section 316(b)(3) of the HEA.

Program Authority: 20 U.S.C. 1138–1138d.

⁷ Riley, E.T., Vadiiee, N., & Ganguli, A. (2017). The Evolution of Research at Tribal Colleges and Universities. In *Tribal College Journal*, 29(2).

⁸ Mortensen, M. (2001). Survey of Tribal Colleges Reveals Research's Benefits, Obstacles. In *Tribal College Journal*, 13(2).

⁹ Redden, E. (2021, March 15). Trying Times for Tribal Colleges. In *Inside Higher Ed*.

¹⁰ Stull, G., Spyridakis, D., Gasman, M., Castro Samayoa, A., & Booker, Y. (2015). Redefining Success: How Tribal Colleges and Universities Build Nations, Strengthen Sovereignty, and Persevere Through Challenges.

¹¹ Mortensen, M. (2001). Survey of Tribal Colleges Reveals Research's Benefits, Obstacles. In *Tribal College Journal*, 13(2).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2024 NFP.

Note: The Department will implement the provisions included in the OMB final rule, *OMB Guidance for Federal Financial Assistance*, which amends 2 CFR parts 25, 170, 175, 176, 180, 182, 183, 184, and 200, on October 1, 2024. Grant applicants that anticipate a performance period start date on or after October 1, 2024 should follow the provisions stated in the OMB Guidance for Federal Financial Assistance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these updated regulations please visit: <https://www.cfo.gov/resources/uniform-guidance/>.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds:

\$4,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Average Size of Awards:
\$2,000,000.

Maximum Award Amount: \$2,000,000 for a 48-month project period.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants are TCCUs (as defined in this notice). Eligible applicants may apply individually or as lead applicants of a consortium with other eligible applicants and/or other partners such as an institution of higher education with an R1 Carnegie Classification, community colleges, or non-profit, industry, and philanthropic partners. The lead applicant must be an eligible applicant.

2. a. *Matching Requirements and Exception:* Grantees must provide a 1:1 match, which can include in-kind donations. The Secretary may waive the matching requirement on a case-by-case basis upon a showing of any of the following exceptional circumstances:

(i) The difficulty of raising matching funds for a program to serve an area with high rates of poverty in the lead applicant's geographic location, defined as a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other Tribal land or county that has a poverty rate of at least 25 percent as determined every 5 years using American Community Survey 5-Year data;

(ii) Serving a significant population of students from low-income backgrounds at the lead applicant location, defined as at least 50 percent (or the eligibility threshold for the appropriate institutional sector available at <https://www2.ed.gov/about/offices/list/ope/ides/eligibility.html>) of degree-seeking enrolled students receiving need-based grant aid under Title IV of the HEA;

(iii) Significant economic hardship as demonstrated by low average educational and general expenditures per full-time equivalent undergraduate student at the lead applicant institution, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction without need of a waiver, as determined by the Secretary in accordance with the annual process for designation of eligible Titles III and V institutions; or

(iv) Information that otherwise demonstrates a commitment to the long-term sustainability of the applicant's projects, such as evidence of a consortium relationship with an R1 institution, a State bond, State matching, planning documents such as a campus plan, multi-year faculty hiring plan, support of industry, Federal grants received, or a demonstration of institutional commitment that may include commitment from the institution's board. (2024 NFP)

Note: Applicants seeking a waiver of the matching requirement must provide the waiver request information outlined above within their application.

b. *Indirect Cost Rate Information:* A grantee's indirect cost reimbursement is limited to 8 percent of a modified total direct cost base. For more information regarding indirect costs, or to obtain a

negotiated indirect cost rate, please see www.ed.gov/about/offices/list/ocfo/intro.html. (2024 NFP).

c. *Administrative Cost Limitation:*

This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Guidance for Federal Financial Assistance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Build America, Buy America Act:* This program is subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements. Accordingly, under this program, grantees and their subrecipients (subgrantees) and contractors may not use their grant funds for infrastructure projects or activities (e.g., construction, remodeling, and broadband infrastructure) unless—

(a) All iron and steel used in the infrastructure project or activity are produced in the United States;

(b) All manufactured products used in the infrastructure project or activity are produced in the United States; and

(c) All construction materials are manufactured in the United States.

Grantees may request waivers to these requirements by submitting a Build America, Buy America Act Waiver Request Form. For more information, including a link to the Waiver Request Form, see the Department's Build America Buy America Waiver website at: <https://www2.ed.gov/policy/fund/guid/buy-america/index.html>.

IV. Application and Submission Information

1. *Application Submission*

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>, which contain requirements and information on how to submit an application.

2. *Submission of Proprietary*

Information: Given the types of projects that may be proposed in applications for the RDI grant program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define “business information” and describe the process we use in

determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information), please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review*: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

4. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice. Additionally, no funds received by an institution of higher education under this section may be used to fund any activities or services provided by institutions that are not eligible as lead applicants in this competition.

5. *Recommended Page Limit*: The application narrative is where you, the applicant, address the selection criteria and the priority that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10-pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget

justification; the assurances and certifications; the one-page abstract, the resumes, the bibliography, or the letters of support; or the waiver request for the matching requirement. However, the recommended 50-page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria*: The selection criteria for this competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in the parentheses next to the criterion. An application may earn up to a total of 110 points based on the selection criteria. All applications will be evaluated based on the selection criteria as follows:

(a) *Significance*. (Maximum 25 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The likelihood that the proposed project will result in system change or improvement. (up to 10 points)

(ii) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (up to 5 points)

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project. (up to 10 points)

(b) *Quality of the Project Design*. (Maximum 30 points)

(1) The Secretary considers the quality of the project design.

(2) In determining the quality of the project design, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (up to 5 points)

(ii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field. (up to 5 points)

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (up to 5 points)

(iv) The extent to which the proposed project represents an exceptional approach to the priority or priorities established in the competition. (up to 5 points)

(v) The extent to which the proposed project will integrate with or build on similar or related efforts in order to improve relevant outcomes (as defined this notice), using nonpublic funds or resources. (up to 5 points)

(vi) The extent to which the proposed project will integrate with, or build on similar or related efforts, to improve relevant outcomes (as defined in this notice), using existing funding streams from other programs or policies supported by community, State, and Federal resources. (up to 5 points)

(c) *Quality of Project Services*.

(Maximum 15 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 5 points)

(3) In addition, the Secretary considers the following factors:

(i) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (up to 5 points)

(ii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources. (up to 5 points)

Note: For the purpose of this competition, technical assistance services could include, for example, technical assistance provided to faculty, staff, and students (at all levels) designed to increase research activities, including to expand institutional capacity to secure new funding, support student research experiences, or facilitate faculty professional development.

(d) *Adequacy of Resources*. (Maximum 15 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (up to 5 points)

(ii) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding. (up to 5 points)

(iii) The potential for continued support of the project after Federal

funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (up to 5 points)

(e) *Quality of the Management Plan.* (Maximum 10 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (up to 5 points)

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (up to 5 points)

(f) *Quality of the Project Evaluation.* (Maximum 15 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation will provide timely guidance for quality assurance. (up to 5 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (up to 5 points)

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial

assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of three external reviewers will read, prepare a written evaluation of, and score all eligible applications using the selection criteria provided in this notice. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score. The Department may use more than one tier of reviews in evaluating applications. The Department will prepare a rank order of applications for the absolute priority based solely on the evaluation of their quality according to the selection criteria. The rank order of applications will be used to create a slate.

In the event there are two or more applications with the same final score in the rank order listing, and there are insufficient funds to fully support each of these applications, the Department will apply the following procedure to determine which application or applications will receive an award:

First Tiebreaker: The first tiebreaker will be the highest average score for the selection criterion titled "Adequacy of Resources." If a tie remains, the second tiebreaker will be utilized.

Second Tiebreaker: The second tiebreaker will be the highest average score for the selection criterion titled "Significance." If a tie remains, the third tiebreaker will be utilized.

Third Tiebreaker: The third tiebreaker will be the applicant with the highest percentage of Pell Grant students enrolled at the lead applicant institution based on the most recent IPEDS data available.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgement about your integrity, business ethics, and record of

performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. *In General:* In accordance with the Guidance for Federal Financial Assistance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

5. *Performance Measures:* For purposes of Department reporting under 34 CFR 75.110, the Department will use the following program-level

performance measures to evaluate the success of the RDI grant program:

- (a) The annual research and development expenditures in:
 - (i) Science and engineering.
 - (ii) Non-science and engineering.
- (b) Annual faculty development expenditures.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024-15538 Filed 7-17-24; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24-901-000.
Applicants: Stagecoach Pipeline & Storage Company LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—CONED to be effective 8/1/2024.

Filed Date: 7/12/24.

Accession Number: 20240712-5000.

Comment Date: 5 p.m. ET 7/24/24.

Docket Numbers: RP24-902-000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits report of the daily delivery variance charge (DDVC) revenues and receipt point penalty revenues that have been credited to shippers.

Filed Date: 7/12/24.

Accession Number: 20240712-5046.

Comment Date: 5 p.m. ET 7/24/24.

Docket Numbers: RP24-903-000.

Applicants: MountainWest Pipeline, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Contract 7757 Ovirtiv to be effective 7/12/2024.

Filed Date: 7/12/24.

Accession Number: 20240712-5055.

Comment Date: 5 p.m. ET 7/24/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP23-466-002.

Applicants: Florida Gas Transmission Company, LLC.

Description: Compliance filing: RP23-466-000 Offer of Settlement to be effective N/A.

Filed Date: 7/10/24.

Accession Number: 20240710-5161.

Comment Date: 5 p.m. ET 7/30/24.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help

members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: July 12, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-15846 Filed 7-17-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24-2505-000]

Solar Star 3, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Solar Star 3, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 1, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

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

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: July 12, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-15847 Filed 7-17-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24-2506-000]

Solar Star 4, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Solar Star 4, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 1, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

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The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: July 12, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-15848 Filed 7-17-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24-101-000.
Applicants: Babbitt Ranch Energy Center, LLC, Bronco Plains Wind II, LLC, Clearwater Wind III, LLC, Wadley Solar, LLC, Washington County Solar, LLC, Clearwater Energy Resources LLC, BIP Naples BorrowerCo VCOC L.L.C., BX Naples BorrowerCo L.L.C.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Babbitt Ranch Energy Center, LLC, et al.

Filed Date: 7/10/24.

Accession Number: 20240710-5202.

Comment Date: 5 p.m. ET 7/31/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23-912-001.

Applicants: Sun Streams Expansion, LLC.

Description: Notice of Non-Material Change in Status of Sun Streams Expansion, LLC.

Filed Date: 7/12/24.

Accession Number: 20240712-5122.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-255-001.

Applicants: CPV Stagecoach Solar, LLC.

Description: Notice of Change in Status of CPV Stagecoach Solar, LLC.

Filed Date: 7/12/24.

Accession Number: 20240712-5117.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-1831-001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b); Deficiency Response-OATT Attach M&N Amend-Address Regulatory Assets&Liabilities to be effective 5/1/2024.

Filed Date: 7/12/24.

Accession Number: 20240712-5137.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-2028-001.

Applicants: Ameren Transmission Company of Illinois.

Description: Tariff Amendment: Amendment Filing to be effective 5/17/2024.

Filed Date: 7/12/24.

Accession Number: 20240712-5033.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-2105-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of ER24-2105-000, Original NSA No. 7248, AC2-015 to be effective 7/28/2024.

Filed Date: 7/11/24.

Accession Number: 20240711-5173.

Comment Date: 5 p.m. ET 8/1/24.

Docket Numbers: ER24-2449-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to ER24-2449-000, Original NSA No. 7300, AC1-164 to be effective 9/1/2024.

Filed Date: 7/12/24.

Accession Number: 20240712-5045.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-2505-000.

Applicants: Solar Star 3, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate

Authority and Request for Waivers to be effective 9/10/2024.

Filed Date: 7/11/24.

Accession Number: 20240711-5157.

Comment Date: 5 p.m. ET 8/1/24.

Docket Numbers: ER24-2506-000.

Applicants: Solar Star 4, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authority and Request for Waivers to be effective 9/10/2024.

Filed Date: 7/11/24.

Accession Number: 20240711-5159.

Comment Date: 5 p.m. ET 8/1/24.

Docket Numbers: ER24-2507-000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: Amended and Restated Rate Schedule No. 87 to be effective 9/11/2024.

Filed Date: 7/12/24.

Accession Number: 20240712-5054.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-2508-000.

Applicants: Envoy Solar, LLC.

Description: Baseline eTariff Filing: Envoy Solar, LLC MBR Tariff to be effective 9/11/2024.

Filed Date: 7/12/24.

Accession Number: 20240712-5058.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-2509-000.

Applicants: BCD 2024 Fund 5 Lessee, LLC.

Description: Baseline eTariff Filing: BCD 2024 Fund 5 Lessee, LLC MBR Tariff to be effective 9/11/2024.

Filed Date: 7/12/24.

Accession Number: 20240712-5059.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-2510-000.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: Termination of City of Long Beach—SERRF GIA & DSA (WDT1443/SA Nos. 1046-1047) to be effective 9/11/2024.

Filed Date: 7/12/24.

Accession Number: 20240712-5062.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-2511-000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Talladega Solar LGIA Termination Filing to be effective 7/12/2024.

Filed Date: 7/12/24.

Accession Number: 20240712-5082.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-2512-000.

Applicants: FRP Gilchrist County Solar, LLC.

Description: Baseline eTariff Filing: FRP Gilchrist County Solar, LLC

Application for MBR Authorization to be effective 9/11/2024.

Filed Date: 7/12/24.

Accession Number: 20240712–5086.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24–2513–000.

Applicants: FRP Columbia County Solar, LLC.

Description: Baseline eTariff Filing: FRP Columbia County Solar, LLC Application for MBR Authorization to be effective 9/11/2024.

Filed Date: 7/12/24.

Accession Number: 20240712–5089.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24–2514–000.

Applicants: FRP Gadsden County Solar, LLC.

Description: Baseline eTariff Filing: Gadsden County Solar, LLC Application for MBR Authorization to be effective 9/11/2024.

Filed Date: 7/12/24.

Accession Number: 20240712–5090.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24–2515–000.

Applicants: LS Power Grid New York Corporation I.

Description: LS Power Grid New York Corporation I submits Informational Filing of 2023 Annual Formula Rate Update and True-Up.

Filed Date: 7/12/24.

Accession Number: 20240712–5110.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24–2516–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA, Service Agreement No. 7303; AE2–051 to be effective 6/12/2024.

Filed Date: 7/12/24.

Accession Number: 20240712–5125.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24–2517–000.

Applicants: Cube Yadkin Transmission LLC.

Description: Compliance filing: Order Nos. 2023 and 2023—A Compliance Filing and Request for Waiver to be effective 8/11/2024.

Filed Date: 7/12/24.

Accession Number: 20240712–5151.

Comment Date: 5 p.m. ET 8/2/24.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES24–42–000.

Applicants: Duquesne Light Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Duquesne Light Company.

Filed Date: 7/12/24.

Accession Number: 20240712–5123.

Comment Date: 5 p.m. ET 8/2/24.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH24–12–000.

Applicants: Unison Energy, LLC, Tiger Infrastructure Partners Fund III AIV U LP.

Description: Unison Energy, LLC, et al. submits FERC–65A Notice of Change in Fact to Waiver Notification of.

Filed Date: 7/12/24.

Accession Number: 20240712–5128.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: OA04–2–003.

Applicants: MORENCI WATER AND ELECTRIC CO.

Description: Amendment to Prior Applications for Disclaimer of Jurisdiction and Waiver of the Reciprocity Requirement, or in the Alternative, a Waiver of the Requirements of Order Nos. 888 and 889, et al., for the Morenci Water & Electric Company.

Filed Date: 7/10/24.

Accession Number: 20240710–5201.

Comment Date: 5 p.m. ET 7/31/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: July 12, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–15845 Filed 7–17–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–2509–000]

BCD 2024 Fund 5 Lessee, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of BCD 2024 Fund 5 Lessee, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 1, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal**

Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

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

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: July 12, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-15850 Filed 7-17-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24-2508-000]

Envoy Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Envoy Solar, LLC's application for market-based rate authority, with an

accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 1, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

User assistance is available for eLibrary and the Commission's website

during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.reference.room@ferc.gov.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: July 12, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-15849 Filed 7-17-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24-21-000]

Commission Information Collection Activities (FERC-588); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC-588, Emergency Natural Gas Transportation, Sale, and Exchange Transactions (OMB Control Number 1902-0144).

DATES: Comments on the collections of information are due September 16, 2024.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC24-21-000 and the specific FERC collection number (FERC-588)) by one of the following methods: *Electronic filing through <http://www.ferc.gov>*, is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native

applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by other delivery services:

- Mail via U.S. Postal Service Only: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- All other delivery services: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at DataClearance@FERC.gov, telephone at (202) 502-6362.

SUPPLEMENTARY INFORMATION:

Title: FERC-588 (Emergency Natural Gas Transportation, Sale, and Exchange Transactions).

OMB Control No.: 1902-0144.

Type of Request: Three-year extension of the FERC-588 information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: FERC-588 is an existing information collection consisting of filing requirements and notice procedures applicable to responses to natural gas emergency circumstances. Two sets of information collection activities pertain to such responses. One set applies to responses by a jurisdictional “natural-gas company,” i.e., a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.¹ Section 7(c)(1)(A) of the Natural Gas Act² requires any natural-gas company to obtain a certificate of public convenience and necessity issued by the Commission before engaging in the transportation or sale of natural gas in interstate commerce, or undertaking the construction or extension of any facilities for the transportation or sale of natural gas in interstate commerce. Under 18 CFR 157.17, a jurisdictional natural-gas company may file an application for a temporary certificate authorizing the construction and operation of extensions of existing facilities, interconnections of pipeline systems, or sales of natural gas that may

be required to assure maintenance of adequate service, or to service particular customers.

The other set of responses to a natural gas emergency, at 18 CFR part 284 subpart I, exempts a person who engages in an emergency natural gas transaction in interstate commerce from the certificate requirements of section 7 of the Natural Gas Act.³ The term “emergency natural gas transaction” is defined at 18 CFR 284.262 as the sale, transportation, or exchange of natural gas (including the construction and operation of necessary facilities) conducted pursuant to this subpart, that is:

(1) Necessary to alleviate an emergency; and

(2) Not anticipated to extend for more than 60 days in duration.

A non-jurisdictional company that engages in an emergency natural gas transactions must file information with the Commission under 18 CFR 284.270, so that the Commission may ensure compliance with relevant legal requirements.

Types of Respondent: Providers and recipients of assistance in natural gas emergency circumstances.

Estimate of Annual Burden:⁴ The Commission estimates the total annual burden and cost⁵ for this information collection in the following table:

Number of respondents	Annual number of responses per respondent	Total number of responses (Col. A × Col. B)	Average hr. burden and cost per response	Total annual hr. burden and cost (Col. C × Col. D)
A.	B.	C.	D.	E.
10	3	30	10 hrs; \$1,000.	300 hrs.; \$30,000.

Comments: Comments are invited on: (1) whether the collections of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated

collection techniques or other forms of information technology.

Dated: July 12, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-15851 Filed 7-17-24; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12034-01-OEJECR; EPA-HQ-OEJECR-2024-0146]

National Environmental Justice Advisory Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the

¹ The definition of “natural-gas company” is at 15 U.S.C. 717a(6).

² 15 U.S.C. 717f(c)(1)(A).

³ 18 CFR 284.261.

⁴ “Burden” is the total time, effort, or financial resources expended by persons to generate,

maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

⁵ The Commission staff believes that industry is similarly situated to the Commission in terms of

cost for wages and benefits. Based on FERC’s current annual average cost of \$207,786 (for salary plus benefits) for a full-time equivalent, the average hourly cost is \$100/hour. Therefore, the hourly cost used in the burden calculation is \$100.

National Environmental Justice Advisory Council (NEJAC) will meet on the date and time described below. The meeting is open to the public. For additional information about registering to attend the meeting or to provide public comment, please see "Registration" under **SUPPLEMENTARY INFORMATION**. Pre-Registration is required.

DATES: The NEJAC will convene a virtual public meeting on Thursday, August 8, 2024, from approximately 1:00 p.m. and end approximately at 6:30 p.m., Eastern Time. The meeting discussions will focus on several topics including, but not limited to, NEJAC recommendations for cumulative impacts and presentations from EPA programs. A public comment period relevant to current NEJAC charges and recommendations will be considered by the NEJAC on Thursday, August 8, 2024, approximately at 4:30 p.m. to 5:30 p.m., Eastern Time (see **SUPPLEMENTARY INFORMATION**). Members of the public wishing to participate during the public comment period must register by 11:59 p.m., Eastern Time, August 1, 2024. Written comments can be submitted through August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Paula Flores-Gregg, NEJAC Designated Federal Officer, U.S. EPA; email: nejac@epa.gov; telephone: (214) 665-8123. Additional information about the NEJAC is available at <https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council>.

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee "will provide independent advice and recommendations to the Administrator about broad, cross-cutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement, and economic issues related to environmental justice."

Registration: Individual registration is required for the public meeting. No two individuals can share the same registration link. Information on how to register is located at <https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-meetings>. Registration to attend the meeting is available through the scheduled meeting days. The deadline to sign up to speak during the public comment period will close at 11:59 p.m., Eastern Time, August 1, 2024. When registering, please provide your name, organization, city and state, and email address. Please also indicate

whether you would like to provide oral public comment during the meeting, or whether you are submitting written comments at the time of registration.

A. Public Comment

The NEJAC is interested in receiving public comments relevant to the following charges and recommendations:

1. NEJAC Title VI Charge;
2. Other.

Individuals or groups making remarks during the oral public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your comments; including your recommendations on what you want the NEJAC to advise the EPA to do. Submitting written comments for the record are strongly encouraged. You can submit your written comments in three different ways: 1. By using the webform at <https://www.epa.gov/environmentaljustice/forms/national-environmental-justice-advisory-council-nejac-public-comment>; 2. by sending comments via email to nejac@epa.gov; and 3. by creating comments in the Docket ID No. EPA-HQ-OEJECR-2024-0146 at <http://www.regulations.gov>. Written comments can be submitted through August 22, 2024. More information about the NEJAC's current charges can be found here <https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-current-charges>.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Paula Flores-Gregg, at (214) 665-8123 or via email at nejac@epa.gov. To request special accommodations for a disability or other assistance, please submit your request at least seven (7) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the email or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Elizabeth Jones,

Acting Director, Office of Policy, Partnerships, and Program Development, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2024-15800 Filed 7-17-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12113-01-OA]

Local Government Advisory Committee's (LGAC) Small Communities Advisory Subcommittee (SCAS) Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), EPA hereby provides notice of meetings for the Local Government Advisory Committee's (LGAC) Small Communities Advisory Subcommittee (SCAS) on the dates and times described below. These meetings will be open to the public. For information on public attendance and participation, please see the registration information under **SUPPLEMENTARY INFORMATION**.

DATES: The SCAS will have a series of in person and virtual meetings throughout 2024. SCAS meeting dates are as followed: August 2nd 11:00 a.m.–12:30 p.m., September 6th 11:00 a.m.–12:30 p.m., September 26th (in person and virtual) 8:30 a.m.–10:00 a.m., October 25th 11:00 a.m.–12:30 p.m., November 22nd 11:00 a.m.–12:30 p.m., and December 20th 11:00 a.m.–12:30 p.m. All times are Eastern Standard Time Zone.

FOR FURTHER INFORMATION CONTACT:

Lynzi Barnes, SCAS Designated Federal Officer, at barnes.edlynzia@epa.gov or 773-638-9158.

Information on Accessibility: For information on access or services for individuals requiring accessibility accommodations, please contact Lynzi Barnes, SCAS Designated Federal Officer, at barnes.edlynzia@epa.gov or 773-638-9158. To request accommodation, please do so five (5) business days prior to meeting dates, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION:

Content

The SCAS will discuss several priority issues at EPA and its implications on smaller towns. Topics will range from climate communication, environmental justice, water issues, and more. Agendas and meeting materials will be posted online (link below) one week prior to the meeting.

Registration

The meetings will be held virtually and in person on September 26th. Members of the public who wish to

participate should register by contacting the Designated Federal Officer (DFO) at Barnes.edlynzia@epa.gov.

Online participation will be via Microsoft Teams. Once available, the agenda and other supportive meeting materials will be available online at <https://www.epa.gov/ocir/small-community-advisory-subcommittee-scas> and will be emailed to all registered. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

Edlynzia Barnes,

Designated Federal Officer, Office of Congressional and Intergovernmental Relations.

[FR Doc. 2024-15855 Filed 7-17-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2024-0057; FRL-11683-06-OCSPP]

Certain New Chemicals; Receipt and Status Information for June 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 6/01/2024 to 6/30/2024.

DATES: Comments identified by the specific case number provided in this document must be received on or before August 19, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2024-0057, through the *Federal eRulemaking Portal*

at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: rahai.jim@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 6/01/2024 to 6/30/2024. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, a chemical substance may be either an "existing" chemical substance or a "new" chemical substance. Any chemical substance that is not on EPA's

TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a "new chemical substance," while a chemical substance that is listed on the TSCA Inventory is classified as an "existing chemical substance." (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: <https://www.epa.gov/tsca-inventory>.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for "test marketing" purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <https://www.epa.gov/chemicals-under-tsca>.

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through [regulations.gov](https://www.epa.gov/regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing

notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL-4942-7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, table I provides the following information (to the extent that such information is not subject to a CBI

claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.*, domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter "A" (*e.g.* P-18-1234A). The version column designates submissions in sequence as "1", "2", "3", etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANs APPROVED * FROM 6/01/2024 TO 6/30/2024

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-22-0126A	3	06/07/2024	Takasago	(S) This polymer constitutes the wall of microcapsules containing fragrance that can be used in different homecare and personal-care applications.	(S) Cellulose, polymer with 1,1'-[2-ethyl-2-[(3-mercapto-1-oxopropoxy)methyl]-1,3-propanediyl] bis(3-mercaptopropanoate) and 1,2,3-propanetriol bis(2-methyl-2-propenoate), peroxydisulfuric acid ((HO)S(O)2O2) ammonium salt (1:2)- and sodium (disulfite) (2:1)-initiated.
P-22-0149A	4	06/14/2024	Colonial Chemical, Inc..	(S) All-purpose hard surface cleaner, Low foam floor scrubber, Spray Metal Cleaning Concentrate.	(S) Hexanoic acid, 3,5,5-trimethyl-, sodium salt (1:1).
P-23-0150A	6	06/19/2024	CBI	(G) Industrial use for roll-on, brushing, and spray application.	(G) Branched Glycidyl Ester and Bisphenol Glycidyl Ether polymer adduct with Aralkyl Diamine.
P-24-0013A	2	06/13/2024	Momentive Performance Materials.	(S) Resin/binder in paint formulations for industrial coatings.	(G) Siloxanes and Silicones, di-Me, hydroxy-terminated, polymers with 3-[[[3-alkoxy-1-(alkoxycarbonyl)-3-oxoalkyl]heteroatom]propyl Me silsesquioxanes, alkoxy-terminated.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 6/01/2024 TO 6/30/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-24-0040A	3	06/20/2024	Sudoc, LLC	(G) Additive for commercial, non-spray commercial and consumer applications.	(G) Metal, aqua[(alkylnitrocarbocyclepolyhetero polyheterocyclopolyalkane-ketone)-polyoxidato]-, metal.
P-24-0083A	3	06/21/2024	CBI	(G) Ingredient for cleaning products.	(G) Branched alcohol alkoxylate.
P-24-0085A	3	06/04/2024	Luna Labs	(S) Curative for polyurethane sealant.	(S) Siloxanes and Silicones, di-Me, 3-[[[4-[(4-isocyanantocyclohexyl)methyl] cyclohexyl] amino] carbonyl] oxy] propyl group terminated.
P-24-0110A	2	05/31/2024	US Paint Corp.	(G) Component of coating.	(G) Alkyl fatty acids, polymers with substituted alkene, heteromonocyclic alkenoate, substituted heteropolycyclic, substituted alkyl alkenoate, substituted alkanolic acid, carbomonocyclic dicarboxylic acid, alkyl alkenoate, alkyl alkenoate, alkenoic acid, substituted carbomonocycle, and trisubstituted alkyl, alkyl substituted alkyl alkenoate and substituted bis alkylalkanenitrile-initiated.
P-24-0114A	2	05/31/2024	HPC Holdings, Inc. ..	(G) Chemical Intermediate.	(S) 1,3-Butanediol, 4,4,4-trifluoro-3-(trifluoromethyl)-.
P-24-0125	1	04/17/2024	CBI	(G) Plasticizer Additive.	(G) Dialkyl carbomonocyclodiate.
P-24-0128A	4	06/06/2024	CBI	(S) Chemical intermediate.	(G) Tetramethyldisiloxanediy[bis[propylcarbonyl].
P-24-0132A	2	06/11/2024	CBI	(G) Sizing agent	(S) Sunflower oil, oleic acid-high, maleated.
P-24-0137	1	04/19/2024	KAO Specialties Americas, LLC.	(G) Component of liquid detergent.	(G) Alkene, reaction products with oxide, hydrolyzed, alkali metal salts.
P-24-0160A	2	06/05/2024	CBI	(G) Photoacid generator use at customer sites.	(G) Iodonium, bis(dialkyl carbomonocycle) salt with alkyl carbomonocycle hetero-acid.
P-24-0163A	2	06/13/2024	CBI	(G) Gas adsorption cartridges. Protective Garments.	(G) Transition metal polykis (heteroatom substituted carbomonocycle), hydroxy- oxo-.
P-24-0164	1	06/13/2024	Huntsman International, LLC.	(S) Intermediate in the production of a catalyst.	(S) 2-Propanamine, N, N'-(oxydi-2,1-ethanediyl)bis-.
P-24-0166	1	06/24/2024	Nagase America, LLC.	(S) Heat transfer fluid in a cooling system for a reaction chamber.	(S) Pentane, 1,1,2,2,3,3,4,4-octafluoro-5-(1,1,2,2-tetrafluoroethoxy)-.

In table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned

to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the

type of amendment (e.g., amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCs APPROVED * FROM 6/01/2024 TO 6/30/2024

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J-24-0009	06/03/2024	05/30/2024	N	(G) Chromosomally-modified saccharomyces cerevisiae.
J-24-0010	06/03/2024	05/30/2024	N	(G) Chromosomally modified saccharomyces cerevisiae.
J-24-0011	06/03/2024	05/30/2024	N	(G) Chromosomally modified saccharomyces cerevisiae.
J-24-0012	06/03/2024	05/30/2024	N	(G) Chromosomally-modified saccharomyces cerevisiae.
J-24-0013	06/03/2024	05/30/2024	N	(G) Chromosomally-modified saccharomyces cerevisiae.
P-15-0446	06/10/2024	06/05/2024	N	(G) Rare earth doped zirconium oxide.
P-17-0235A	05/31/2024	11/28/2022	Amended the generic chemical name.	(G) Fatty amidopropyl trialkyl ammonium alkyl sulfate.
P-18-0226	05/31/2024	03/04/2024	N	(G) Trialkylammonioethyl fatty-alkylate, alkyl sulfate.
P-19-0166A	06/14/2024	06/27/2022	Amended the generic chemical name.	(G) Triaryl sulfonium, multicycloalkylalkoxycarbonyloxymonofluoroalkylsulfonate.
P-22-0025	06/19/2024	06/10/2024	N	(G) Oxirane, 2-(chloromethyl)-, homopolymer, ether with dialkyl-alkanediol (2:1).

TABLE II—NOCs APPROVED * FROM 6/01/2024 TO 6/30/2024—Continued

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P-22-0090	06/14/2024	05/21/2024	N	(S) 4,8,11-dodecatrinal.
P-22-0093	06/03/2024	05/24/2024	N	(G) Alkenoic acid, alkyl-substituted alkyl ester, polymer with (polyalkylamino)alkyl alkylalkenoate, alkyl-substituted alkylalkenoate, alpha-(alkyl-oxoalkenyl)-omega-alkoxypoly(oxy-1,2-ethanediyl), [(alkoxy-alkyl-alkenyl)oxy]polyalkylsilane-initiated, compds. with polyethylene glycol phosphoric acid based alkyl ether.
P-22-0175	06/06/2024	05/23/2024	N	(G) Modified silsesquioxane, alkoxy-terminated.
P-87-1177	06/20/2024	03/21/1990	N	(G) Siloxanes and silicones, di-me, vinyl group-terminated, reaction products with trisiladioxadimethoxyalkanes.

In table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has

been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the

type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 6/01/2024 TO 6/30/2024

Case No.	Received date	Type of test information	Chemical substance
L-24-0235	06/20/2024	Bioconcentration Factor Predictions; Bacterial Reverse Mutation Test (OECD Test Guideline 471); Prenatal Developmental Toxicity Study (OECD Test Guideline 414); Carcinogenicity (OECD Test Guideline 451); Acute Dermal Toxicity (OECD Test Guideline 402); Skin Sensitization (OECD Test Guideline 406); Acute Dermal Irritation (OECD Test Guideline 404); Acute Eye Irritation (OECD Test Guideline 405); Chromosomal Aberration Testing.	(G) Diisopropyl imidazolium salt.
P-12-0241	06/21/2024	Analyte Reports	(G) [2-Propenoic acid, 2-methyl-, 2-hydroxyethyl esters, telomers with C18-26-alkyl acrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl methacrylate, 2,2-[1,2 diazenedylbis(1-methylethylidene)]bis[4,5-dihydro-1Himidazole]hydrochloride (1:2)-initiated].
P-14-0712	06/27/2024	Polychlorinated Dibenzodioxins and Polychlorinated dibenzofurans Testing.	(S) Waste plastics, pyrolyzed, C5-55 fraction.
P-16-0543	06/25/2024	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P-21-0166	06/20/2024	Gel Permeation Chromatography Testing	(G) Siloxanes and silicones, di-me, [alkylpiperazinium-hydroxyalkoxy]alkyl group-terminated, arylsulfonates (salts).
P-21-0180, ...	6/20/2024	Determination of Dissociation Constant (Conductometric Method).	(G) Sulfonium, (halocarbomonocycle)diphenyl-, salt with 1-heterosubstituted-2-methylalkyl trihalobenzoate (1:1); (G) Phenoxathiinium, 10-phenyl-, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbopolycycle, hetero-acid)benzenesulfonate (1:1); (G) Heterotrisubstituted-bile acid, 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl ester, ion(1-), (5)-, 5-phenyldibenzothiophenium(1:1); (G) Sulfonium, (alkylsubstitutedphenyl)diphenyl-, salt with 1-(heterosubstitutedalkyl)-2,2,2-triheterosubstitutedalkyl trisubstitutedbenzoate (1:1); (G) Dibenzothiophenium, 5-phenyl-, 4-[1-(heterosubstitutedalkyl)-2,2,2-triheterosubstitute dalkoxy]-4-oxoalkyl trisubstitutedbenzoate (1:1); (G) Sulfonium, tris(4-fluorophenyl)-, (substitutedphenoxy)alkyl substitutedbenzoate (1:1).
P-21-0202, ...	06/07/2024	Determination of Water Solubility (Shake Flask Method).	(G) Sulfonium, carbomonocycle bis[(trihaloalkyl)carbomonocycle], substituted carbomonocyclic ester; (G) Sulfonium, carbomonocycle bis[(trihaloalkyl) carbomonocycle], disubstituted carbomonocyclic ester.
P-23-0104	06/07/2024	Determination of Tin in Dermal Penetration Media Samples Validation.	(S) Tin, dioctylbis(2,4-pentanedionato-kappa.o2,kappa.o4)-.
P-22-0056	06/25/2024		

TABLE III—TEST INFORMATION RECEIVED FROM 6/01/2024 TO 6/30/2024—Continued

Case No.	Received date	Type of test information	Chemical substance
P-22-0086	06/20/2024	Dissociation Constants in Water (OECD Test Guideline 112).	(G) Phenoxathiinium, 10-phenyl-, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri- carbopolycycle, hetero-acid)benzenesulfonate (1:1).
P-22-0122	06/20/2024	Dissociation Constants in Water (OECD Test Guideline 112).	(G) Heterotrisubstituted-bile acid, 1-(difluorosul fomethyl)-2,2,2-trifluoroethyl ester, ion(1-), (5)-, 5-phenyldibenzothiophenium(1:1).
P-24-0137	04/19/2024	Acute Eye Irritation (OECD Test Guideline 405); Combined Repeated Dose Toxicity with the Reproduction/Development Toxicity Screening Test (OECD Test Guideline 422); Earthworm, Acute Toxicity Tests (OECD Test Guideline 207); <i>Daphnia sp.</i> , Acute Immobilization Test (OECD Test Guideline 202); <i>Daphnia magna</i> Reproduction Test (OECD Test Guideline 211); Freshwater and Saltwater Fish Acute Toxicity Test (OECD Test Guideline 203); <i>In Vitro</i> Mammalian Cell Gene Mutation Test (OECD Test Guideline 476); Mammalian Spermatogonial Chromosomal Aberration Test (OECD Test Guideline 483); Prenatal Developmental Toxicity Study (OECD Test Guideline 414); Inherent Biodegradability—Concawe Test (OCSPP Test Guideline 835.3215); Ready Biodegradability (OECD Test Guideline 301); Fish Short-Term Reproduction (OECD Test Guideline 299); Seed Germination/Root Elongation Toxicity Test (OPPTS Test Guideline 850.4200); Sediment-Water Chironomid Toxicity Test Using Spiked Sediment (OECD Test Guideline 218); Skin Sensitization (OECD Test Guideline 406); 90-Day Oral Toxicity in Rodents (OECD Test Guideline 408); Modified Activated Sludge, Respiration Inhibition Test (OCSPP Test Guideline 850.3300); Acute Dermal Irritation (OECD Test Guideline 404); Acute Dermal Toxicity/Pathology (OCSPP Test Guideline 885.3100); Acute Oral Toxicity/Pathogenicity (OCSPP Test Guideline 885.3050); Algal Toxicity (OECD Test Guideline 201); Adsorption/Desorption (Batch Equilibrium) (OECD Test Guideline 106); Bacterial Reverse Mutation Test (OECD Test Guideline 471).	(G) Alkene, reaction products with oxide, hydrolyzed, alkali metal salts.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 15, 2024.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2024-15856 Filed 7-17-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1158; FR ID 232916]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before September 16, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to nicole.ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–1158.

Title: Transparency Rule Disclosures, Safeguarding and Securing the Open internet, WC Docket No. 23–320 *et al.*

Form Number: N/A.

Type of Review: Revision of a currently-approved collection.

Respondents: Business or other for-profit entities, Not-for-profit entities; State, local, or Tribal governments.

Number of Respondents and Responses: 2,259 respondents; 2,259 responses.

Estimated Time per Response: 32.7 hours (average).

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for these collections is contained in sections 1, 2, 3, 4, 10, 13, 201, 202, 208, 217, 257, 301, 303, 316, 332, 403, 501, 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, and 47 U.S.C. 151, 152, 153, 154, 160, 163, 201, 202, 208, 217, 257, 301, 303, 316, 332, 403, 501, 503, and 1302.

Total Annual Burden: 73,869 hours.

Total Annual Cost: No Cost.

Needs and Uses: As part of this revision, the title of this information collection will be updated to “Transparency Rule Disclosures, Safeguarding and Securing the Open internet, WC Docket No. 23–320, *et al.*” The Transparency Rule modified in the *Safeguarding and Securing the internet Declaratory Ruling, Order, Report and Order, and Order on Reconsideration*, WC Docket No. 23–320 *et al.*, FCC 24–52, requires all providers of broadband internet access service (BIAS) to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of their BIAS sufficient for

consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain internet offerings. The rules ensure transparency and continued internet openness, while making clear that BIAS providers can manage their networks effectively. The Commission anticipates that small entities may have less of a burden and larger entities may have more of a burden than the average compliance burden. This is because larger BIAS providers serve more customers, are more likely to serve multiple geographic regions, are more likely to offer more service tiers, and are not eligible to avail themselves of the temporary (with the potential to become permanent) exemptions from the Transparency Rule enhancements granted to BIAS providers that have 100,000 or fewer broadband subscribers.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024–15750 Filed 7–17–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, July 23, 2024 at 10:00 a.m. and its continuation at the conclusion of the open meeting on July 25, 2024.

PLACE: 1050 First Street NE, Washington, DC and virtual. (This meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Matters concerning participation in civil actions or proceedings or arbitration.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2024–15970 Filed 7–16–24; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

[Docket No. FMC–2024–0005]

Controlled Carriers Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission is publishing an updated list of controlled carriers, *i.e.*, ocean common carriers operating in U.S.-foreign trades that are, or whose operating assets are, directly or indirectly owned or controlled by foreign governments. Such carriers are subject to increased regulatory oversight by the Commission.

FOR FURTHER INFORMATION CONTACT: David Eng, Secretary; Phone: (202) 523–5725; Email: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is updating the list of controlled carriers to add an entity that qualifies as a controlled carrier. The Shipping Act of 1984, as amended (Shipping Act), defines a “controlled carrier” as an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government. 46 U.S.C. 40102(9). Ownership or control by a government is deemed to exist for a carrier if (1) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government, or (2) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier. *Id.*; 46 CFR 565.2(a).

As required by the Shipping Act, controlled carriers are subject to enhanced oversight by the Commission. For example, 46 U.S.C. 40701(b) provides that the Commission may, after providing notice and opportunity for a hearing, prohibit the publication or use of a rate, charge, classification, rule, or regulation that a controlled carrier has failed to demonstrate is just and reasonable. *See* 46 U.S.C. 40701(b). In addition, 46 U.S.C. 40502(f) provides that in an action for a breach of a service contract, the dispute resolution forum cannot in any way be controlled by or affiliated with a controlled carrier or by the government that owns or controls the carrier. *See* 46 U.S.C. 40502(f). Congress enacted these protections to ensure that controlled carriers, whose marketplace decision making can be influenced by foreign governmental

priorities or by their access to non-market sources of capital, do not engage in unreasonable below-market pricing practices which could disrupt trade or harm privately-owned shipping companies.

The controlled carrier list is not a comprehensive list of foreign-owned or controlled ships or ship owners; rather, it is only a list of ocean common carriers that are controlled by governments. *See* 46 U.S.C. 40102(9). Thus, tramp operators and other non-common carriers are not included, nor are non-vessel-operating common carriers, regardless of their ownership or control.

The controlled carrier list was last updated on July 1, 2024. *See* 89 FR 54460. This notice revises the list to add Anji Shipping Co., Ltd. as a controlled carrier of the government of the People's Republic of China. Accordingly, Anji Shipping Co., Ltd. is now subject to the requirements of 46 U.S.C. 40701–40706, and to the Commission's regulations relating to controlled carriers. It is also subject to the provisions of 46 U.S.C. 40502(f).

There are no changes to report with respect to the remaining controlled carriers on the list.

It is requested that any other information regarding possible omissions or inaccuracies in this list be provided to the Commission's Office of the General Counsel at generalcounsel@fmc.gov. *See* 46 CFR 501.12.

The amended list of currently classified controlled carriers and their corresponding Commission-issued Registered Persons Index numbers is set forth below:

(1) COSCO SHIPPING Lines Co., Ltd. (RPI No. 015614)—People's Republic of China;

(2) Orient Overseas Container Line Limited (RPI No. 011398)—People's Republic of China;

(3) OOCL (Europe) Limited (RPI No. 024786)—People's Republic of China;

(4) Hede (HONGKONG) International Shipping Limited (RPI No. 033332)—People's Republic of China;

(5) HMM (RPI No. 001452)—Republic of Korea;

(6) Anji Shipping Co., Ltd. (RPI No. 033604)—People's Republic of China.

By the Commission.

David Eng,
Secretary.

[FR Doc. 2024–15752 Filed 7–17–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: July 23, 2024 at 10:00 a.m. EDT.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 140 856 172 #; or via web: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzEzOTlkZmQtODI0ZS00ZTBhLWJhNmYtMGI1Y2M0OTUzYWYx%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%221a441fb8-5318-4ad0-995b-f28a737f4128%22%7d.

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION: Board Meeting Agenda.

Open Session

1. Approval of the June 25, 2024, Board Meeting Minutes
2. Monthly Reports
 - (a) Participant Report
 - (b) Legislative Report
3. Quarterly Reports
 - (c) Investment Review
 - (d) Budget Review
 - (e) Audit Status
4. Internal Audit Update
5. OI Annual Presentation

Closed Session

6. Information covered under 5 U.S.C. 552b (c)(9)(B) and (c)(10).

Authority: 5 U.S.C. 552b (e)(1).

Dated: July 12, 2024.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2024–15754 Filed 7–17–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics, Meeting of the ICD–10 Coordination and Maintenance Committee

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS),

Classifications and Public Health Data Standards Staff, announces the following meeting of the ICD–10 Coordination and Maintenance (C&M) Committee. This meeting is open to the public, limited only by the number of audio lines available. Online registration is required.

DATES: The meeting will be held on September 10, 2024, from 9 a.m. to 5 p.m., EDT, and September 11, 2024, from 9 a.m. to 5 p.m., EDT.

ADDRESSES: This is a virtual meeting. Register in advance at https://cms.zoomgov.com/webinar/register/WN_8hiZrGncQYCFuH9P7LCloQ. The Meeting ID is 160 744 0104; the Passcode is 621302. After registering, you will receive a confirmation email containing information about joining the meeting. Further information will be provided on each of the respective web pages when it becomes available. For CDC, NCHS: <https://www.cdc.gov/nchs/icd/icd-10-maintenance/meetings.html>. For the Centers for Medicare & Medicaid Services, Department of Health and Human Services: <https://www.cms.gov/medicare/coding-billing/icd-10-codes/icd-10-coordination-maintenance-committee-materials>.

FOR FURTHER INFORMATION CONTACT:

Traci Ramirez, Medical Classification Specialist, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782–2064. Telephone: (301) 458–4454; Email: TRamirez@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose: The ICD–10 Coordination and Maintenance (C&M) Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Tenth Revision, Clinical Modification (CM) and ICD–10 Procedure Coding System (PCS).

Matters to be Considered: The tentative agenda will include discussions on the ICD–10–CM and ICD–10–PCS topics listed below. Agenda items are subject to change as priorities dictate. Please refer to the posted agenda for updates one month prior to the meeting.

ICD–10–PCS Topics:

1. Transcatheter Atrial Shunt Bypass *
2. Administration of Roctavian
3. Temporary Transvenous Diaphragm Activation ***
4. Administration of emapalumab-lzsg **
5. Insertion of Endovascular Anchors
6. External Fixation with Automated Strut Adjustment *
7. Extracorporeal Interstitial Fluid Removal **

8. Administration of tarlatamab-dlle **

9. Intraoperative Donor Organ

Protection in Renal Transplantation

10. Section X Updates

11. Addenda and Key Updates *

* Request is for an April 1, 2025, implementation date.

** Request is for an April 1, 2025, implementation date, and the requestor intends to submit a new technology add-on payment (NTAP) application for FY 2026 consideration.

*** Requestor intends to submit an NTAP application for FY 2026 consideration.

Presentations for procedure code requests are conducted by both the requestor and the Centers for Medicare & Medicaid Services (CMS) during the C&M Committee meeting. Discussion from the requestor generally focuses on the clinical issues for the procedure or technology, followed by the proposed coding options from a CMS analyst. Topics presented may also include requests for new procedure codes that relate to a new technology add-on payment (NTAP) policy request.

CMS has modified the approach for presenting the NTAP-related ICD-10-PCS procedure code requests that involve the administration of a therapeutic agent. For the September 10-11, 2024, ICD-10 C&M Committee meeting, consistent with the requirements of section 1886(d)(5)(K)(iii) of the Social Security Act, applicants submitted requests to create a unique procedure code to describe the administration of a therapeutic agent, such as the option to create a new code in Section X within the ICD-10-PCS procedure code classification. CMS will initially display only those meeting materials associated with the NTAP-related ICD-10-PCS procedure code requests that involve the administration of a therapeutic agent on the CMS website in August 2024 at: <https://www.cms.gov/medicare/coding-billing/icd-10-codes/icd-10-coordination-maintenance-committee-materials>.

The NTAP-related ICD-10-PCS procedure code requests that involve the administration of a therapeutic agent are:

1. Administration of emapalumab-lzsg **
2. Administration of tarlatamab-dlle **

** Request is for an April 1, 2025, implementation date, and the requestor intends to submit an NTAP application for FY 2026 consideration..

These topics will not be presented during the September 10-11, 2024, meeting. CMS will solicit public

comments regarding any clinical questions or coding options included for these procedure code topics in advance of the meeting continuing through the end of the respective public comment periods. Members of the public should send any questions or comments to the CMS mailbox at:

ICDProcedureCodeRequest@cms.hhs.gov.

CMS intends to post a question-and-answer document in advance of the meeting to address any clinical or coding questions that members of the public may have submitted. Following the conclusion of the meeting, CMS will post an updated question-and-answer document to address any additional clinical or coding questions that members of the public may have submitted during the meeting that CMS was not able to address or that were submitted after the meeting.

The NTAP-related ICD-10-PCS procedure code requests that do not involve the administration of a therapeutic agent and all non-NTAP-related procedure code requests will continue to be presented during the virtual meeting on September 10, 2024, consistent with the standard meeting process.

CMS will make all meeting materials and related documents available at: <https://www.cms.gov/medicare/coding-billing/icd-10-codes/icd-10-coordination-maintenance-committee-materials>. Any inquiries related to the procedure code topics scheduled for the September 10-11, 2024, ICD-10 C&M Committee meeting that are under consideration for April 1, 2025, or October 1, 2025, implementation should be sent to the CMS mailbox at: ICDProcedureCodeRequest@cms.hhs.gov.

ICD-10-CM Topics:

1. Abnormal Rheumatoid Factor and Anti-citrullinated Protein Antibody Without a Diagnosis of Rheumatoid Arthritis
2. Demodex Blepharitis
3. Encounter for Prophylactic Removal of Fallopian Tube(s) for Persons Without Known Genetic/Familial Risk Factors
4. Genetic Neurodevelopmental Disorders
5. Hypothalamic Obesity
6. Kabuki Syndrome
7. Topical Steroid Withdrawal
8. Usher Syndrome
9. Addenda

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been

delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024-15795 Filed 7-17-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section; Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces the renewal of the charter of the Safety and Occupational Health Study Section (SOHSS).

FOR FURTHER INFORMATION CONTACT:

Joanne Fairbanks, Designated Federal Officer, Safety and Occupational Health Study Section, Centers for Disease Control and Prevention, Department of Health and Human Services, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone: (304) 285-6143; Email: JFairbanks@cdc.gov.

SUPPLEMENTARY INFORMATION: CDC is providing notice under 5 U.S.C. 1001 through 1014 of the renewal of the charter of the Safety and Occupational Health Study Section, Centers for Disease Control and Prevention, Department of Health and Human Services. This charter has been renewed for a two-year period through June 30, 2026.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–15796 Filed 7–17–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Board of Scientific Counselors, National Center for Injury Prevention and Control

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting for the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC). This meeting is open to the public. Time will be available for public comment.

DATES: The meeting will be held on September 24, 2024, from 10 a.m. to 12:30 p.m., EDT. The public comment period will be from 12:10 p.m. to 12:25 p.m., EDT.

ADDRESSES: Webinar, Atlanta, Georgia. All participants must register by using the following link to attend the meeting: https://cdc.zoomgov.com/webinar/register/WN_cnG74hSRR8C_2DCCRmW5Hg.

FOR FURTHER INFORMATION CONTACT: Christopher R. Harper, Ph.D., Designated Federal Officer, Board of Scientific Counselors, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S–1069, Atlanta, Georgia 30341. Telephone: (404) 718–8330; Email: ncipcbosc@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose: The Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC) will: (1) conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes and

strategies related to the prevention of injury, overdose, and violence; (2) assist States and other entities in preventing intentional and unintentional injuries, and to promote health and well-being; and (3) make recommendations of grants and cooperative agreements for research and prevention activities related to injury, overdose, and violence. The BSC, NCIPC makes recommendations regarding policies, strategies, objectives, and priorities and reviews progress toward injury, overdose, and violence prevention. The Board also provides advice on the appropriate balance of intramural and extramural research and provides guidance on the needs, structure, progress, and performance of intramural programs. Further, the Board provides guidance on extramural scientific program matters. Additionally, the Board provides second-level scientific and programmatic review of applications for research grants, cooperative agreements, and training grants related to injury, overdose, and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Board also provides feedback and input on strategic plans, resources, and priority publications related to injury, overdose, and violence prevention.

Matters to be Considered: The agenda will include discussions on the Updated Child Abuse and Neglect Research Priorities and the Updated Youth and Community Violence Research Priorities. Agenda items are subject to change as priorities dictate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–15793 Filed 7–17–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2024–0055; NIOSH 232]

Meeting of the Board of Scientific Counselors, National Institute for Occupational Safety and Health, National Firefighter Registry Subcommittee

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH), National Firefighter Registry Subcommittee. This meeting will take place in person and virtually. It is open to the public, limited only by the space available (approximately 80 seats) and the number of web conference lines available (500 lines). Time will be available for public comment.

DATES: The meeting will be held on August 22, 2024, from 9 a.m. to 3:30 p.m., EDT.

Written comments must be received on or before August 15, 2024.

ADDRESSES: Centers for Disease Control and Prevention, Alice Hamilton Laboratory Building, 5555 Ridge Avenue, Cincinnati, Ohio 45213. The conference room will have seating for approximately 80 people.

Please note that the meeting location is a Federal facility and in-person access is limited to United States citizens unless prior authorizations, taking up to 30 to 60 days, have been made. Visitors must follow all directions for access to CDC facilities. Instructions for visitors to CDC, including safety requirements related to COVID–19, are available at <https://www.cdc.gov/screening/visitors.html>.

If you wish to attend the meeting either in person or virtually, please register at the NIOSH website at <https://www.cdc.gov/niosh/scientific-counselors/nfrs.html> or by telephone at (404) 498–1650 no later than August 15, 2024. If you are attending virtually, you will receive the Zoom web conference access information after registering.

You may submit comments, identified by Docket No. CDC–2024–0055;

NIOSH–232, by either of the methods listed below. CDC does not accept comments by email.

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

• *Mail:* Ms. Sherri Diana, NIOSH Docket Office, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, Mailstop C–34, Cincinnati, Ohio 45226. Attn: Docket No. CDC–2024–0055; NIOSH–232.

Instructions: All submissions received must include the Agency name and docket number. Docket number CDC–2024–0055; NIOSH–232 will close August 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Kandyce Reeves, M.P.H., Designated Federal Officer, Board of Scientific Counselors, National Institute for Occupational Safety and Health, National Firefighter Registry Subcommittee, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–4, Atlanta, Georgia 30329–4027. Telephone: (404) 498–1650; Email: KReeves3@cdc.gov.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Health and Human Services, the Assistant Secretary for Health, and by delegation, the Director, Centers for Disease Control and Prevention (CDC), are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly, or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health.

The Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH) provides advice to the NIOSH Director on NIOSH research and prevention programs. The Board also provides guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results. In addition, the Board evaluates the degree to which the activities of NIOSH: (1) conform to those standards of scientific excellence appropriate for Federal scientific institutions in accomplishing objectives in occupational safety and health; (2) address currently relevant needs in the fields of occupational safety and health either alone or in conjunction with other known activities inside and outside of NIOSH; and (3) produce their intended results in addressing important research questions in occupational safety and health, both in terms of applicability of the research findings and dissemination of the findings.

Purpose: The BSC, NIOSH National Firefighter Registry Subcommittee provides scientific expertise to the Board that assists the BSC, NIOSH in advising the NIOSH Director about the Institute's efforts to establish and operate the National Firefighter Registry for Cancer. Specifically, the Subcommittee advises the Board on the following issues pertaining to the "required strategy" as mandated by the Firefighter Cancer Registry Act of 2018 (the Act): (1) increase awareness of the National Firefighter Registry for Cancer and encourage participation among all groups of firefighters; (2) consider data collection needs; (3) consider data storage and electronic access of health information; and (4) in consultation with subject matter experts, develop a method for estimating the number and type of fire incidents attended by a firefighter. Additional responsibilities of the Subcommittee are to provide guidance to the Board regarding the inclusion and maintenance of data on firefighters as required by the Act.

Matters to be Considered: The agenda for the meeting includes the National Firefighter Registry for Cancer project overview, status, national launch updates, communication strategies, targeted enrollment approach, data review, and future planning applicable to stakeholders. Agenda items are subject to change as priorities dictate.

The agenda is also posted on the NIOSH website at <https://www.cdc.gov/niosh/scientific-counselors/nfrs.html>.

Public Participation

Written Public Comment: Written comments will be accepted per the instructions provided in the addresses section above. Comments received in advance of the meeting are part of the public record and are subject to public disclosure. The comments will be included in the official record of the meeting. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near-duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Written comments received by August 15, 2024, will be provided to the Subcommittee prior to the meeting.

Oral Public Comment: The public is welcome to participate during the public comment period, from 11:45 a.m. to 12 p.m., EDT, August 22, 2024. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first-come, first-served basis. Members of the public who wish to address the Subcommittee are requested to contact the Designated Federal Officer for scheduling purposes (see **FOR FURTHER INFORMATION CONTACT** above).

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–15794 Filed 7–17–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Advisory Committee on Immunization Practices

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS) is seeking nominations for membership on the Advisory Committee on Immunization Practices (ACIP). The ACIP consists of up to 19 experts in fields associated with immunization practices and public health, use of vaccines and other immunobiological agents in clinical practice or preventive medicine, clinical or laboratory vaccine research, assessment of vaccine efficacy and safety, or have knowledge about

consumer perspectives and/or social and community aspects of immunization programs.

DATES: Nominations for membership on the ACIP must be received no later than August 15, 2024. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations must be completed online at <https://www.cdc.gov/vaccines/acip/apply-for-membership/index.html>.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, Committee Management Specialist, Advisory Committee on Immunization Practices, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24-8, Atlanta, Georgia 30329-4027. Telephone: (404) 639-8836; Email: ACIP@cdc.gov.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Immunization Practices (ACIP) is charged with advising the Director, Centers for Disease Control and Prevention (CDC), on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under applicable provisions of the Affordable Care Act and section 2713 of the Public Health Service Act and implementing regulations, immunization recommendations of ACIP that have been approved by the Director, CDC, and appear on CDC immunization schedules generally must be covered by applicable health plans.

Nominations are being sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of immunization practices, multi-disciplinary expertise in public health, expertise in the use of vaccines and immunologic agents in both clinical and preventive medicine, knowledge of vaccine development, evaluation, and vaccine delivery, or knowledge about consumer perspectives and/or social and community aspects of immunization programs. Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms. Selection of members is based on

candidates' qualifications to contribute to the accomplishment of ACIP objectives (<http://www.cdc.gov/vaccines/acip/index.html>).

HHS policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on Federal workgroups or prior experience serving on a Federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for ACIP membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in July 2025, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. SGE nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address)

- Two letters of recommendation from professional colleagues familiar with the candidate's work. A maximum of four letters of recommendation will be accepted.

- Letters of recommendation should not come from current ACIP members.

- At least one letter of recommendation from person(s) not employed by HHS. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (e.g., National Institutes of Health, Food and Drug Administration, Substance Abuse and Mental Health Services Administration, etc.). CDC employees should not provide letters of recommendation.

- A cover letter that includes the candidate's statement of interest in serving on the ACIP, the qualifications and expertise that the candidate would bring, and written evidence to support how the candidate meets all relevant criteria.

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024-15792 Filed 7-17-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This is a virtual meeting. It is open to the public, with a public comment period. The public is also welcome to submit written comments in advance of the meeting, to the contact person listed in the addresses section below. The public is also welcome to listen to the meeting by joining the teleconference (information below), limited only by the number of audio conference lines available (150).

DATES: The meeting will be held on August 7, 2024, from 11 a.m. to 6 p.m., EDT, and on August 8, 2024, from 11 a.m. to 1 p.m., EDT. A public comment session will be held on August 7, 2024,

at 5 p.m., EDT, and will conclude at 6 p.m., EDT, or following the final call for public comment, whichever comes first.

Written comments must be received on or before August 5, 2024.

ADDRESSES: You may submit comments by mail to: Rashaun Roberts, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, Mailstop C-24, Cincinnati, Ohio 45226.

Meeting Information: The USA toll-free dial-in numbers are: +1 669 254 5252 US (San Jose); and +1 646 828 7666 US (New York). The meeting ID is: 160 6763 3819; the Passcode is: 98685439; and the Web conference by Zoom meeting connection is: <https://cdc.zoomgov.com/j/16067633819?pwd=RUdYXlZZHFKanpJOHZrcGJlbTlaZz09>.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Official, National Institute for Occupational Safety & Health, Centers for Disease Control and Prevention, 1090 Tusculum Avenue, Mailstop C-24, Cincinnati, Ohio 45226, Telephone: (513) 533-6800; Toll Free 1 (800) 232-4636; Email: ocas@cdc.gov.

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines, that have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC.

The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13179 on March 22, 2024. Unless continued by the President the Board will terminate on September 30, 2025, consistent with E.O. 14109 of September 29, 2023.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy (DOE) facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Considered: The agenda will include discussions on the following: National Institute for Occupational Safety & Health Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC Petitions Update; Procedures Review Finalization/ Document Approvals; Idaho National Lab; Savannah River Site, Pinellas Workgroup, and Subcommittee on Dose Reconstruction Review updates; a Board Work Session; and Board Correspondence review. Agenda items are subject to change as priorities dictate. For additional information, please contact Toll Free 1-800-232-4636.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024-15797 Filed 7-17-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3456-FN]

Medicare and Medicaid Programs: Application From The Joint Commission for Continued Approval of Its Ambulatory Surgical Center (ASC) Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces our decision to approve The Joint Commission for continued recognition as a national accrediting organization for Ambulatory Surgical Centers that wish to participate in the Medicare or Medicaid programs.

DATES: The decision announced in this notice is applicable September 1, 2024, to September 1, 2030.

FOR FURTHER INFORMATION CONTACT: Caecilia Andrews (410) 786-2190.

SUPPLEMENTARY INFORMATION:

I. Background

Ambulatory Surgical Centers (ASCs) are distinct entities that operate exclusively for the purpose of furnishing outpatient surgical services to patients. Under the Medicare program, eligible beneficiaries may receive covered services from an ASC provided certain requirements are met. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) establishes distinct criteria for a facility seeking designation as an ASC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416 specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for ASCs.

Generally, to enter into an agreement, an ASC must first be certified by a State survey agency (SA) as complying with the conditions or requirements set forth in part 416 of our Medicare regulations. Thereafter, the ASC is subject to regular surveys by an SA to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable

Medicare conditions are met or exceeded, we may deem that provider entity as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. The AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at § 488.5.

The Joint Commission's (TJC's) current term of approval for its ASC program expires December 20, 2024.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

We note, TJC submitted the application for continued CMS-approval in advance; therefore the 210-days from the receipt of a complete application and our decision to approve has reset TJC's approval terms from December to September.

III. Provisions of the Proposed Notice

On February 26, 2024, CMS published a proposed notice in the **Federal Register** (89 FR 14076), announcing TJC's request for continued approval of its Medicare ASC accreditation program. In the February 26, 2024, proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we conducted a review of TJC's Medicare ASC accreditation application in

accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An administrative review of TJC's: (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its ASC surveyors; (4) ability to investigate and respond appropriately to complaints against accredited ASCs; and (5) survey review and decision-making process for accreditation.

- The equivalency of TJC's standards for ASCs as compared with Medicare's Conditions for Coverage (CfCs) for ASCs.

- TJC's survey process to determine the following:

- ++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

- ++ The comparability of TJC's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

- ++ TJC's processes and procedures for monitoring an ASC found out of compliance with TJC's program requirements. These monitoring procedures are used only when TJC identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the State survey agency monitors corrections as specified at § 488.9(c)(1).

- ++ TJC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

- ++ TJC's capacity to provide CMS with electronic data and reports necessary for the effective validation and assessment of the organization's survey process.

- ++ The adequacy of TJC's staff and other resources, and its financial viability.

- ++ TJC's capacity to adequately fund required surveys.

- ++ TJC's policies with respect to whether surveys are announced or unannounced, to ensure that surveys are unannounced.

- ++ TJC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

- ++ TJC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey

as CMS may require (including corrective action plans).

IV. Analysis of and Responses to Public Comments on the Proposed Notice

In accordance with section 1865(a)(3)(A) of the Act, the February 26, 2024 proposed notice also solicited public comments regarding whether TJC's requirements met or exceeded the Medicare CfCs for ASCs. No comments were received in response to our proposed notice.

V. Provisions of the Final Notice

A. Differences Between TJC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared TJC's ASC accreditation requirements and survey process with the Medicare CfCs of parts 416, and the survey and certification process requirements of parts 488 and 489. Our review and evaluation of TJC's ASC application, which were conducted as described in section III. of this final notice, yielded the following areas where, as of the date of this notice, TJC has completed revising its standards and certification processes in order to do all of the following:

- Meet the standard's requirements of all of the following regulations:

- ++ Section 416.42 to clarify that ASCs may only allow qualified physicians to perform surgery.

- ++ Section 416.44(b)(1) to ensure ASCs to meet the provisions applicable to Ambulatory Health Care Occupancies and address the Life Safety Code (LSC) Tentative Interim Amendments (TIAs), TIA 12-2, TIA 12-3, and TIA 12-4 requirements.

- ++ Section 416.44(b)(2) to clarify within TJC's existing standard related to LSC waivers, that the timeframe for achieving compliance begins when the facility receives the survey report and in accordance with the timeframes in § 488.28(d).

- ++ Section 416.44(c) to incorporate the requirement for ASCs to comply with Health Care Facilities Code (HCFC) NFPA 99, and Tentative Interim Amendments (TIAs), TIA 12-2, TIA 12-3, TIA 12-4, TIA 12-5 and TIA 12-6 and to revise TJC's introductory paragraph of the Statement of Condition Instructions to include HCFC deficiencies.

- ++ Section 416.50(e)(2) to clarify the standard to ensure if a patient is adjudged incompetent under applicable State laws by a court of proper jurisdiction, the rights of the patient are exercised by the person appointed under State law to act on the patient's behalf.

++ Section 416.50(e)(3) to clearly identify that if a State court has not deemed a patient incompetent, any legal representative or surrogate designated by the patient in accordance with State law may exercise the patient's rights to the extent allowed by State law.

CMS also reviewed TJC's comparable survey processes, which were conducted as described in section III. of this final notice, and yielded the following areas where, as of the date of this notice, TJC has completed revising its survey processes in order to demonstrate that it uses survey processes that are comparable to state survey agency processes by:

++ Clarifying TJC's survey activity for Life Safety Code (LSC) related to the length of time required to complete an LSC/Health Care Facilities Code (HCFC) survey, as the survey activity will depend upon various circumstances (for example, age & condition, size of ASC/building, construction type, number of stories, sprinkler system, essential electric system, etc.).

++ Updating TJC's survey procedures to ensure all areas of the LSC/HCFC are surveyed and reflected in TJC's Surveyor Activity Guide.

++ Providing clarification to its Surveyor Activity Guide indicating that the 2012 edition of the NFPA Life Safety Code and NFPA 99 applies to ASCs.

++ Clarifying that any LSC/HCFC waivers can only be granted by CMS, in accordance with § 416.44(c)(2).

++ Providing additional surveyor training as it relates to scope, manner and degree of citations related to medication administration, physical environment, and Life Safety Code, in accordance with the State Operations Manual (SOM) Appendix L, Task 4.

++ Providing additional surveyor education comparable to CMS' Principles of Documentation, specifically to ensure records reviewed and reported on TJC's survey report to the facility are clear.

++ Revising TJC's process to ensure the appropriate sample of patient records is reviewed during surveys based on ASC case volume.

B. Term of Approval

Based on our review described in section III. and section V. of this final notice, we approve TJC as a national accreditation organization for ASCs that request participation in the Medicare program. The decision announced in this final notice is effective September 1, 2024 through September 1, 2030. In accordance with § 488.5(e)(2)(i) the term of the approval will not exceed 6 years.

VI. Collection of Information and Regulatory Impact Statement

This document does not impose information collection requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the **Federal Register Liaison**, to electronically sign this document for purposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024-15816 Filed 7-17-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Request for Assistance for Child Victims of Human Trafficking

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), Office on Trafficking in Persons (OTIP) is requesting a three-year extension of the form: Request for Assistance (RFA) for Child Victims of Human Trafficking (Office of Management and Budget (OMB) #0970-0362, expiration 09/30/2024). Burden estimates have been updated based on observed increases in the volume of requests received. The RFA form and estimated time per response remains the same.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. You can also obtain copies of the proposed collection of information by emailing infocollection@acf.hhs.gov. Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Trafficking Victims Protection Act (TVPA) of 2000, as amended, directs the Secretary of the U.S. Department of Health and Human Services (HHS), upon receipt of credible information that a foreign national minor may have been subjected to a severe form of trafficking in persons and is seeking assistance available to victims of trafficking, to promptly determine if the child is eligible for benefits and services to the same extent as refugees. HHS delegated this authority to OTIP.

OTIP developed a RFA form for case managers, attorneys, law enforcement officers, child welfare workers, and other representatives to report these trafficking concerns to HHS in accordance with the TVPA of 2000, as amended, and allow for OTIP to review the concerns and determine eligibility for benefits.

Specifically, the RFA form asks the requester for their identifying information, identifying information for the child, and information describing the potential trafficking concerns. The RFA form takes into consideration the need to compile information regarding a child's experiences in a trauma-informed and child-centered manner and assists the requester in assessing whether the child may have been subjected to a severe form of trafficking in persons.

The information provided through the completion of a RFA form enables OTIP to make prompt determinations regarding a foreign national minor's eligibility for assistance, facilitate the required consultation process should the minor receive interim assistance, and enable OTIP to assess and address potential child protection issues. OTIP also uses the information provided to respond to congressional inquiries, fulfill Federal reporting requirements, and inform policy and program development that is responsive to the needs of victims.

In 2019, OTIP launched Shepherd, an online case management system, to process requests for assistance and certification on behalf of foreign

national minor and adult victims of trafficking. If a requester encounters issues submitting a request through Shepherd, they may submit the RFA form to OTIP as a password protected PDF to childtrafficking@acf.hhs.gov.

Respondents: Representatives of governmental entities, members of the community, and nongovernmental entities providing social, legal, or protective services to foreign national minors in the United States who may have been subjected to severe forms of trafficking in persons. Furthermore, representatives within the community with a concern that a foreign national minor may have been subjected to severe forms of trafficking in persons may also use the RFA form.

Annual Burden Estimates

Increased awareness of reporting requirements under the TVPA of 2000, as amended among providers who serve foreign national children and youth has resulted in sustained, year-over-year increases in the number of RFA forms received by OTIP since fiscal year 2021. While the number of RFA forms received by OTIP each year largely reflects OTIP’s efforts to engage case managers, attorneys, law enforcement officers, child welfare workers, and other representatives who serve foreign national children and youth, the number of RFA forms received is also impacted by a variety of social, political, and environmental factors that impact migration trends, including natural

disasters and other climate-mediated events, that fluctuate each year. In fiscal year 2021, a record number of unique individuals (2,178) were referred to OTIP through 2,650 total RFA forms. In fiscal year 2022, 3,150 unique individuals were referred to OTIP through 3,709 total RFA forms. In fiscal year 2023, 3,612 unique individuals were referred to OTIP through 4,052 total RFA forms. There are no changes proposed to the RFA form but based on the increased need for trafficking-specific case management services among foreign national children and youth, as evidenced through sustained increases in the volume of RFA forms received by OTIP each year since fiscal year 2021, burden estimates for this collection have been revised.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Request for Assistance for Child Victims of Human Trafficking	10,500	1	1	10,500	3,500

Authority: 22 U.S.C. 7105 (b)
Mary C. Jones,
ACF/OPRE Certifying Officer.
[FR Doc. 2024–15789 Filed 7–17–24; 8:45 am]
BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0113]

Clinical Pharmacology Considerations for Human Radiolabeled Mass Balance Studies; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “Clinical Pharmacology Considerations for Human Radiolabeled Mass Balance Studies.” This guidance describes FDA’s recommendations regarding clinical pharmacology considerations for conducting human radiolabeled mass balance studies, including deciding whether and when to conduct the study, designing the study, and reporting results.

DATES: The announcement of the guidance is published in the **Federal Register** on July 18, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2022–D–0113 for “Clinical Pharmacology Considerations for Human Radiolabeled Mass Balance Studies.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential

with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Anuradha Ramamoorthy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, Anuradha.ramamoorthy@fda.hhs.gov, 240-402-6426.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Clinical Pharmacology Considerations for Human Radiolabeled Mass Balance

Studies." A human radiolabeled mass balance study is the single most direct study to obtain quantitative and comprehensive information on the absorption, distribution, metabolism, and excretion of an investigational drug in the human body. The mass balance study can provide information to determine the overall pathways of metabolism and excretion of an investigational drug, identify circulating metabolites, and determine the abundance of metabolites relative to the parent or total drug-related exposure. This guidance provides FDA's recommendations for clinical pharmacology considerations in conducting human radiolabeled mass balance studies during drug development, including: (1) deciding whether and when to conduct the study, (2) designing the study, and (3) reporting the study results.

This guidance finalizes the draft guidance of the same name issued on May 5, 2022 (87 FR 26763). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include: (1) updates to terms used in the guidance to provide clarity, (2) additional references that have been published since the draft guidance was issued, and (3) editorial changes to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on "Clinical Pharmacology Considerations for Human Radiolabeled Mass Balance Studies." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521). The collections of information in 21 CFR 201.57 relating to prescription product labeling requirements have been approved under OMB control number 0910-0572. The collections of information for submission of investigational new drug applications in 21 CFR part 312 have been approved under OMB control number 0910-0014. The collections of information for submission of new drug

applications in 21 CFR part 314 have been approved under OMB control number 0910-0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: July 15, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-15812 Filed 7-17-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357-6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8W-25A, Rockville, Maryland 20857; (301) 443-6593, or visit our website at: <http://www.hrsa.gov/vaccinecompensation/index.html>.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking

compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that “[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.” Set forth below is a list of petitions received by HRSA on May 1, 2024, through May 31, 2024. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master “shall afford all interested persons an opportunity to submit relevant, written information” relating to the following:

1. The existence of evidence “that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition;” and

2. Any allegation in a petition that the petitioner either:

a. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by” one of the vaccines referred to in the Table; or

b. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine” referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 8W-25A, Rockville, Maryland 20857. The Court’s caption (Petitioner’s Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,
Administrator.

List of Petitions Filed

1. Amanda Harnisch, Phoenix, Arizona, Court of Federal Claims No: 24-0691V
2. Roberta Parker, Nashville, Tennessee, Court of Federal Claims No: 24-0692V
3. Bernard Stewart, Pasadena, Maryland, Court of Federal Claims No: 24-0693V
4. McKenzie R. Miller, Rochester, New York, Court of Federal Claims No: 24-0694V
5. Arianna White, East Lansing, Michigan, Court of Federal Claims No: 24-0697V
6. Jean Modglin, Anna, Illinois, Court of Federal Claims No: 24-0702V
7. William Caruso, Port St. Lucie, Florida, Court of Federal Claims No: 24-0705V
8. Robert Cavallo, Boston, Massachusetts, Court of Federal Claims No: 24-0706V
9. David Tomala, Los Angeles, California, Court of Federal Claims No: 24-0707V
10. Linn Tanzman, Shelter Island, New York, Court of Federal Claims No: 24-0708V
11. Adam Yeoman, Green Bay, Wisconsin, Court of Federal Claims No: 24-0709V
12. Amelia Radovanovici, Durango, Colorado, Court of Federal Claims No: 24-0710V
13. Christina Molnar, Willoughby Hills, Ohio, Court of Federal Claims No: 24-0712V
14. Alex Willenborg, Hyde Park, New York, Court of Federal Claims No: 24-0713V
15. Yolanda Stewart, Clarksville, Tennessee, Court of Federal Claims No: 24-0714V
16. Laura Stevens, Austin, Texas, Court of Federal Claims No: 24-0716V
17. James O’Dell, Boston, Massachusetts, Court of Federal Claims No: 24-0720V
18. Valerie Edwards on behalf of Z. G., New York, New York, Court of Federal Claims No: 24-0722V
19. Richard Roberts, Salida, Colorado, Court of Federal Claims No: 24-0724V
20. Nannie Diggs, Poquoson, Virginia, Court of Federal Claims No: 24-0725V
21. Michelle Emery, Shawnee, Tennessee, Court of Federal Claims No: 24-0726V
22. Jerry Wayne Roden, Chattanooga, Tennessee, Court of Federal Claims No: 24-0729V
23. Anthony Farrell, Peoria, Arizona, Court of Federal Claims No: 24-0731V
24. Aimee Alvarez, Boston, Massachusetts, Court of Federal Claims No: 24-0732V
25. James Rice, Weatherford, Texas, Court of Federal Claims No: 24-0733V
26. Donna Kostuch, White Bear Lake, Minnesota, Court of Federal Claims No: 24-0737V
27. Lori Thompson, Bowling Green, Kentucky, Court of Federal Claims No: 24-0738V
28. Andrew Davidson, San Diego, California, Court of Federal Claims No: 24-0739V
29. Dennis Dombrowski, II, Ortonville, Michigan, Court of Federal Claims No: 24-0741V
30. Tiffany Crider, Jackson, Tennessee, Court of Federal Claims No: 24-0744V
31. Chloi Pampallis, San Francisco, California, Court of Federal Claims No: 24-0745V
32. Anthony Vicari, Lynden, Washington, Court of Federal Claims No: 24-0746V
33. Joan Western, Mount Pleasant, Wisconsin, Court of Federal Claims No: 24-0747V
34. Sherian Smith, Upland, Pennsylvania, Court of Federal Claims No: 24-0748V
35. Madelyn Clark, Crystal Lake, Illinois, Court of Federal Claims No: 24-0749V
36. Roselyne Omwega, Albuquerque, New Mexico, Court of Federal Claims No: 24-0752V
37. Junious Nielsen, Rochester, New York, Court of Federal Claims No: 24-0753V

38. Robert Moseley, Boston, Massachusetts, Court of Federal Claims No: 24–0754V
39. Kathy L. Troen, Pella, Iowa, Court of Federal Claims No: 24–0757V
40. Donnie Yinger, Albany, New York, Court of Federal Claims No: 24–0758V
41. Junious Nielsen, Webster, New York, Court of Federal Claims No: 24–0759V
42. Junious Nielsen, Webster, New York, Court of Federal Claims No: 24–0760V
43. Nancy A. Carroll, Rochester, Minnesota, Court of Federal Claims No: 24–0762V
44. Kristine Albertson, Woodstock, Georgia, Court of Federal Claims No: 24–0765V
45. Neil Saint, Evans, Georgia, Court of Federal Claims No: 24–0768V
46. Rebecca Dobbins, Easley, South Carolina, Court of Federal Claims No: 24–0769V
47. Joanna Ratcliffe, Los Angeles, California, Court of Federal Claims No: 24–0770V
48. Andrea Borah, New York, New York, Court of Federal Claims No: 24–0772V
49. Rhona Page, San Diego, California, Court of Federal Claims No: 24–0774V
50. Michelle DePalma, Phoenix, Arizona, Court of Federal Claims No: 24–0776V
51. Jessica Corso, Simpsonville, South Carolina, Court of Federal Claims No: 24–0777V
52. Jennifer Allen, Mason, Ohio, Court of Federal Claims No: 24–0778V
53. Brittany Smith-Gordon, Warminster, Pennsylvania, Court of Federal Claims No: 24–0779V
54. Saeeda Syed, Goodyear, Arizona, Court of Federal Claims No: 24–0780V
55. Simone Bui, Newburyport, Massachusetts, Court of Federal Claims No: 24–0783V
56. Ashley Phillips on behalf of E. A., Los Angeles, California, Court of Federal Claims No: 24–0784V
57. Ella Coleman-Artz, Coalport, Pennsylvania, Court of Federal Claims No: 24–0785V
58. Rebecca Feller, Council Bluffs, Iowa, Court of Federal Claims No: 24–0786V
59. Susan DiMillo, Lockport, New York, Court of Federal Claims No: 24–0789V
60. Ronald Samson, Council Bluffs, Iowa, Court of Federal Claims No: 24–0790V
61. Eric Gervasi, Philadelphia, Pennsylvania, Court of Federal Claims No: 24–0791V
62. Julie Ann Kueber on behalf of S. K., Indianapolis, Indiana, Court of Federal Claims No: 24–0793V
63. Michaela Strickland, Johnson City, Tennessee, Court of Federal Claims No: 24–0794V
64. Kelsey Leeman, Damariscotta, Maine, Court of Federal Claims No: 24–0796V
65. Timothy Kirkwood, Orlando, Florida, Court of Federal Claims No: 24–0798V
66. David Trainor, East Bridgewater, Massachusetts, Court of Federal Claims No: 24–0801V
67. Jason Horn, Woodridge, Illinois, Court of Federal Claims No: 24–0802V
68. Yulia Ogorodnikova on behalf of L.O., Phoenix, Arizona, Court of Federal Claims No: 24–0803V
69. Isak Ladegaard, Champaign, Illinois, Court of Federal Claims No: 24–0804V
70. Deatrice F. Ruff, Waxhaw, North Carolina, Court of Federal Claims No: 24–0806V
71. Sherry Ellsworth, Lumberton, North Carolina, Court of Federal Claims No: 24–0812V
72. Judith Gratton, Holliston, Massachusetts, Court of Federal Claims No: 24–0813V
73. Rachel Tupitza, Erie, Pennsylvania, Court of Federal Claims No: 24–0814V
74. Haley Labian, Kalamazoo, Wisconsin, Court of Federal Claims No: 24–0818V
75. Marilenis Perez, Boston, Massachusetts, Court of Federal Claims No: 24–0820V
76. Charles Tucker, Hines, Illinois, Court of Federal Claims No: 24–0821V
77. Steven Williams, Washington, District of Columbia, Court of Federal Claims No: 24–0822V
78. Claire Forchheimer, San Jose, California, Court of Federal Claims No: 24–0823V
79. Edward Vincent Russell, Morehead City, North Carolina, Court of Federal Claims No: 24–0824V
80. Lisa West-Thomas, Tacoma, Washington, Court of Federal Claims No: 24–0827V
81. Colleen Ortiz, Manahawkin, New Jersey, Court of Federal Claims No: 24–0828V
82. Michael Clayton, Aurora, Colorado, Court of Federal Claims No: 24–0829V
83. Melissa Ward, Cantonment, Florida, Court of Federal Claims No: 24–0830V
84. Aline Crawford, Chalmette, Louisiana, Court of Federal Claims No: 24–0831V
85. Christopher Seter, Franklin, Tennessee, Court of Federal Claims No: 24–0832V
86. Louis Quick, Lakeville, Minnesota, Court of Federal Claims No: 24–0833V
87. Jennifer Kuch, Saginaw, Michigan, Court of Federal Claims No: 24–0835V
88. Yves Boyer, New York, New York, Court of Federal Claims No: 24–0838V
89. Celeste Sandbank, Roseville, California, Court of Federal Claims No: 24–0839V
90. Eugene Gryga, Bryn Mawr, Pennsylvania, Court of Federal Claims No: 24–0841V
91. Jamie Drake, Newport News, Virginia, Court of Federal Claims No: 24–0842V
92. Christy Lantz, Salisbury, Maryland, Court of Federal Claims No: 24–0844V
93. Tracy Paustian on behalf of J. P., Los Angeles, California, Court of Federal Claims No: 24–0846V
94. Mary Annalee Hull, Honolulu, Hawaii, Court of Federal Claims No: 24–0847V

[FR Doc. 2024–15821 Filed 7–17–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA’s role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8W–25A, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: <http://www.hrsa.gov/vaccinecompensation/index.html>.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each

proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that “[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.” Set forth below is a list of petitions received by HRSA on April 1, 2024, through April 30, 2024. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master “shall afford all interested persons an opportunity to submit relevant, written information” relating to the following:

1. The existence of evidence “that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,” and
2. Any allegation in a petition that the petitioner either:
 - a. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by” one of the vaccines referred to in the Table, or
 - b. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or

significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine” referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading “For Further Information Contact”), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 8W-25A, Rockville, Maryland 20857. The Court’s caption (Petitioner’s Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,
Administrator.

List of Petitions Filed

1. Marvin Walker, Red Level, Alabama, Court of Federal Claims No: 24-0487V
2. Ronald Moore, Camden, New Jersey, Court of Federal Claims No: 24-0490V
3. Michael Koldobskiy, Baltimore, Maryland, Court of Federal Claims No: 24-0491V
4. April Rogers on behalf of E. R., Clinton, Mississippi, Court of Federal Claims No: 24-0492V
5. Shailendra Jain, Santa Clara, California, Court of Federal Claims No: 24-0497V
6. Kathleen MCHALE on behalf of L. M., Avon, Ohio, Court of Federal Claims No: 24-0499V
7. Tonya Johnson, Tappahannock, Virginia, Court of Federal Claims No: 24-0501V
8. John Lynn Stedje, Guymon, Oklahoma, Court of Federal Claims No: 24-0503V
9. Gail Sanders, New Rochelle, New York, Court of Federal Claims No: 24-0504V
10. Deirdre Guest, Southampton, New York, Court of Federal Claims No: 24-0505V
11. Michelle Papa, Charlotte, North Carolina, Court of Federal Claims No: 24-0507V
12. Kerry Janike, Lincoln, Nebraska, Court of Federal Claims No: 24-0509V
13. Lily Hobi, West Linn, Oregon, Court of Federal Claims No: 24-0512V
14. Kimberley Cabbell, Staunton, Virginia, Court of Federal Claims No: 24-0514V
15. Melissa Fisk, Grant, Michigan, Court of Federal Claims No: 24-0518V
16. Gerald Schuch, Kenosha, Wisconsin, Court of Federal Claims No: 24-0526V
17. Scarlet Gardner, Asheville, North Carolina, Court of Federal Claims No: 24-0527V
18. Jeffrey Butwinick, Eagan, Minnesota, Court of Federal Claims No: 24-0528V
19. Chad Brandon, Naples, Florida, Court of Federal Claims No: 24-0531V
20. Monica Young, Oak View, California, Court of Federal Claims No: 24-0534V
21. Sara Schara, Sherburne, New York, Court of Federal Claims No: 24-0541V
22. Dajuan Deshazer, Boscobel, Wisconsin, Court of Federal Claims No: 24-0544V
23. Stuart Murphy, Hesperia, California, Court of Federal Claims No: 24-0545V
24. Traci Weiss on behalf of A. W., San Diego, California, Court of Federal Claims No: 24-0546V
25. Daniel Hait, Oconomowoc, Wisconsin, Court of Federal Claims No: 24-0548V
26. Jean Logan, Jacksonville, Florida, Court of Federal Claims No: 24-0549V
27. Emma Piske, Plaquemine, Louisiana, Court of Federal Claims No: 24-0552V
28. Jason Altschuler, Jasper, Georgia, Court of Federal Claims No: 24-0555V
29. Kyle Williams, Denver, Colorado, Court of Federal Claims No: 24-0556V
30. Cassandra Lynn, Los Angeles, California, Court of Federal Claims No: 24-0560V
31. William Feehan, Chicago, Illinois, Court of Federal Claims No: 24-0561V
32. Latronda Coble, Savannah, Georgia, Court of Federal Claims No: 24-0563V
33. Joe Sinicropi, Riverside, California, Court of Federal Claims No: 24-0565V
34. Cynthia Reyes, Seattle, Washington, Court of Federal Claims No: 24-0566V
35. Miranda Rogers, Dallas, Texas, Court of Federal Claims No: 24-0569V
36. Patricia Cotton, Stamford, Connecticut, Court of Federal Claims No: 24-0573V
37. Jennifer Gagliardi, Springfield, Vermont, Court of Federal Claims No: 24-0575V
38. Robert Reidinger, Sewell, New Jersey, Court of Federal Claims No: 24-0576V
39. Rlanda Bellamy, Little River, South Carolina, Court of Federal Claims No: 24-0577V
40. Patricia Ryder, Boston, Massachusetts, Court of Federal Claims No: 24-0582V
41. Kartik Ramakrishnan on behalf of M. R., Chicago, Illinois, Court of Federal Claims No: 24-0583V

42. Jenny Schroth and Jeffrey Robert Schroth on behalf of D. S., Appleton, Wisconsin, Court of Federal Claims No: 24–0585V
43. Holly C. Nelson, Stratford, Connecticut, Court of Federal Claims No: 24–0586V
44. Jason Miller, Napoleonville, Louisiana, Court of Federal Claims No: 24–0587V
45. Sheri Blake, Fayetteville, Arkansas, Court of Federal Claims No: 24–0589V
46. Donna Marin, Louisville, Kentucky, Court of Federal Claims No: 24–0591V
47. John Sproul, Ypsilanti, Michigan, Court of Federal Claims No: 24–0599V
48. Karen Mangold, Charlotte, North Carolina, Court of Federal Claims No: 24–0601V
49. Bonnie McClelland, Tyler, Texas, Court of Federal Claims No: 24–0605V
50. Stanka Vujovic, Englewood, New Jersey, Court of Federal Claims No: 24–0607V
51. Patricia Romero, Mountain View, California, Court of Federal Claims No: 24–0608V
52. Nick McGuire, Oxnard, California, Court of Federal Claims No: 24–0609V
53. Sterling Conley, Sarasota, Florida, Court of Federal Claims No: 24–0610V
54. Rene Ahern, Kirkland, Washington, Court of Federal Claims No: 24–0611V
55. Kelly Kennedy, Maryville, Tennessee, Court of Federal Claims No: 24–0615V
56. Kent A. Stensrud, Madison, Minnesota, Court of Federal Claims No: 24–0616V
57. Crystal Green, Kennewick, Washington, Court of Federal Claims No: 24–0621V
58. Aimee Sher on behalf of C. S., St. Louis, Missouri, Court of Federal Claims No: 24–0626V
59. Justine Guillen, Los Angeles, California, Court of Federal Claims No: 24–0627V
60. Brian Weiser, Chicago, Illinois, Court of Federal Claims No: 24–0628V
61. Garrett Keuer, Lubbock, Texas, Court of Federal Claims No: 24–0629V
62. Dennis Geary, Mount Pleasant, Pennsylvania, Court of Federal Claims No: 24–0631V
63. William Mayfield, San Antonio, Texas, Court of Federal Claims No: 24–0632V
64. Nicola Tognara, Phoenix, Arizona, Court of Federal Claims No: 24–0633V
65. Mary A. Walker-Jackson, Philadelphia, Pennsylvania, Court of Federal Claims No: 24–0635V
66. Ronald Shelk, Chicago, Illinois, Court of Federal Claims No: 24–0636V
67. Bahaeldin Hussein, Falls Church, Virginia, Court of Federal Claims No: 24–0638V
68. Jamie Fletcher and Aaron Fletcher on behalf of G. F., Ellsworth, South Dakota, Court of Federal Claims No: 24–0640V
69. Karen Maghirang on behalf of M. M., Camden, Missouri, Court of Federal Claims No: 24–0641V
70. Ann Heinrichs, Chicago, Illinois, Court of Federal Claims No: 24–0643V
71. Pamela Kahn, Boston, Massachusetts, Court of Federal Claims No: 24–0644V
72. Nancy Smacchi, Wilkes-Barre, Pennsylvania, Court of Federal Claims No: 24–0649V
73. Mahya Sheikhzadeh, San Jose, California, Court of Federal Claims No: 24–0650V
74. Mary Curry, Missoula, Montana, Court of Federal Claims No: 24–0651V
75. Raleigh Gharbi on behalf of A. G., Navarre, Florida, Court of Federal Claims No: 24–0652V
76. Vergie Tate-Singleton, Flossmoor, Illinois, Court of Federal Claims No: 24–0653V
77. Sheila Flynn, Roseville, Minnesota, Court of Federal Claims No: 24–0658V
78. Karen Ranieri on behalf of I. R., Boston, Massachusetts, Court of Federal Claims No: 24–0659V
79. Gail Mitchell, McDonough, Georgia, Court of Federal Claims No: 24–0660V
80. Benson Kravtin, Brooklyn, New York, Court of Federal Claims No: 24–0661V
81. Jessica Massie, Marathon, Florida, Court of Federal Claims No: 24–0662V
82. Gary Mahana, Toms River, New Jersey, Court of Federal Claims No: 24–0664V
83. Laura Missiha, Houston, Texas, Court of Federal Claims No: 24–0666V
84. Jacopo Vecchiato, Kirkland, Washington, Court of Federal Claims No: 24–0667V
85. Alicia M. Urbas, Holly Springs, North Carolina, Court of Federal Claims No: 24–0668V
86. Jennifer Mccorkle, Harrisburg, Pennsylvania, Court of Federal Claims No: 24–0669V
87. Mark Lanese on behalf of Christine Lanese, Deceased, Aventura, Florida, Court of Federal Claims No: 24–0674V
88. Mandy Dols, Moose Lake, Minnesota, Court of Federal Claims No: 24–0675V
89. Symencha Chambers, Houston, Texas, Court of Federal Claims No: 24–0677V
90. Loretta Jackson, Chandler, Arizona, Court of Federal Claims No: 24–0678V
91. Brandon Mason, Boscobel, Wisconsin, Court of Federal Claims No: 24–0679V
92. Marta Ubiles, Allentown, Pennsylvania, Court of Federal Claims No: 24–0680V
93. Mark Engle, Chewelah, Washington, Court of Federal Claims No: 24–0681V
94. Valerie McClure, Rice Lake, Wisconsin, Court of Federal Claims No: 24–0682V
95. Debra White, Wheat Ridge, Colorado, Court of Federal Claims No: 24–0685V
96. Veta Wholey, Fredericksburg, Virginia, Court of Federal Claims No: 24–0686V
97. Mark Counts, Warren, Michigan, Court of Federal Claims No: 24–0688V
98. Breia Weiland on behalf of B. W., Phoenix, Arizona, Court of Federal Claims No: 24–0689V
99. Julie Boudrie, Monroe, Michigan, Court of Federal Claims No: 24–0690V

[FR Doc. 2024–15817 Filed 7–17–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource Related Research Projects (R24 Clinical Trial Not Allowed).

Date: August 12, 2024.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11A, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: J. Bruce Sundstrom, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11A, Rockville, MD 20892, 240–669–5045 sundstromj@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 12, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–15787 Filed 7–17–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP–E.

Date: September 11–12, 2024.

Time: 9:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–276–5085, tandlea@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; The NCI Transition, Clinical, and Community Oncology Career Development Awards and Institutional Research and Education Training Grants Meeting.

Date: September 19, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive,

Room 7W234, Rockville, Maryland 20850, 240–276–6368, Stoicaa2@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP–B.

Date: September 19–20, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: E. Tian, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850, 240–276–6611, tiane@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–3: NCI Clinical and Translational Cancer Research.

Date: September 25, 2024.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W612, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Prashant Sharma, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W612, Rockville, Maryland 20850, 240–275–6351, prashant.sharma@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP–A.

Date: September 26–27, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive Room 7W120, Rockville, Maryland 20850, 240–276–6457, mh101v@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP–D.

Date: September 26–27, 2024.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Amr M. Ghaleb, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850, 240–276–6611, amr.ghaleb@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–5: NCI Clinical and Translational Cancer Research.

Date: September 26, 2024.

Time: 9:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Shree Ram Singh, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–672–6175, singhshr@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) Review SEP–I.

Date: September 26–27, 2024.

Time: 9:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: John Paul Cairns, Ph.D., Scientific Review Officer, Research Programs Review, Branch Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850, 240–276–5415, paul.cairns@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; PLCO U01 SEP Review Meeting.

Date: October 3, 2024.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W102, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Shakeel Ahmad, Ph.D., Branch Chief, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W102, Rockville, Maryland 20850, 240–276–6442, ahmads@mail.nih.gov.

Name of Committee: National Cancer Institute Initial Review Group; Transition to Independence Study Section (I).

Date: October 16–17, 2024.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W602, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Delia Tang, M.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Rockville, Maryland 20850, 240–276–6456, tangd@mail.nih.gov.

Name of Committee: National Cancer Institute Initial Review Group Career Development Study Section (J).

Date: October 21–22, 2024.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Cancer Institute Shady Grove 9609 Medical Center Drive, Room 7W624 Rockville, Maryland 20850 (Virtual Meeting).
Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850, 240–276–6132, tushar.deb@nih.gov.
(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)
Dated: July 12, 2024.
David W. Freeman,
Supervisory Program Analyst, Office of Federal Advisory Committee Policy.
[FR Doc. 2024–15819 Filed 7–17–24; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Revision of Mental Health Client/Participant Outcome Measures and Infrastructure, Prevention, and Promotion Indicators (OMB No. 0930–0285)

SAMHSA is requesting approval from the Office of Management and Budget (OMB) for a revision to extend the expiration date for the previously approved instruments and data collection activities for the Center Mental Health Services Mental Health Client/Participant Outcome Measures and Infrastructure, Prevention, and Promotion Indicators (OMB No 0930–0285) that expires on March 30, 2025.

To be fully accountable for the spending of Federal funds, SAMHSA requires all programs to collect and report data to ensure that program goals and objectives are met. Data are collected and used to monitor and improve performance of each program and ensure appropriate and thoughtful spending of Federal funds.

SAMHSA requests to continue using and extend the expiration date for the currently approved Client-level Mental Health Client/Participant Outcome measures and Infrastructure, Prevention, and Promotion indicators and to extend the expiration date.

These two data collections maintain capacity and requirements to report qualitative performance and quantitative outcomes for all Center for Mental Health Services discretionary grant programs, including: demographic characteristics of clients served; social determinants of health of clients served before, during, and at end of services; numbers of clients served; and process measures, outputs, outcomes, of grant program required activities.

Currently, the information collected from these data collections is entered and stored on SAMHSA’s Performance Accountability and Reporting System (SPARS), which is a real-time, performance management system that

captures information on mental health and substance abuse treatment services delivered in the United States through discretionary grantees. Continued approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Modernization Act of 2010 (GPRMA) reporting requirements that quantify the effects and accomplishments of its discretionary grant programs, which are consistent with OMB guidance.

SAMHSA and its Centers will use the data collected for annual reporting required by GPRMA, to describe clients and individuals served and to summarize outputs and outcomes of grant program activities. SAMHSA and its Centers will use the data for annual reporting. SAMHSA’s report for each fiscal year will include actual results of performance monitoring for the three preceding fiscal years. Information collected through this request will allow SAMHSA to report on the results of these performance outcomes as well as be consistent with SAMHSA-specific performance domains, and to assess the accountability and performance of its discretionary grant programs. The information collected through this request will allow SAMHSA to improve its ability to assess the impact of its programs on key outcomes of interest and to gather vital descriptive characteristics about clients served by discretionary grant programs.

Currently, there are 76,209 total burden hours in the two data collections. SAMHSA is requesting an increase to 139,178 hours to account for additional grantees having reporting requirements and to account more fully for the time needed to report quarterly on the IPP indicators. The proposed estimate of time to collect data and complete the instruments is shown in table 1.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

SAMHSA tool	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Client-level baseline assessment—interview	75,600	1	75,600	0.3	22,680
Client-level baseline assessment—administrative	84,000	1	84,000	0.1	8,400
Client-level 3- or 6-month reassessment—interview	53,760	1	53,760	0.3	16,128
Client-level 3- or 6-month reassessment—administrative ...	67,200	1	67,200	0.1	6,720
Client-level discharge assessment—interview	12,500	1	12,500	0.3	3,750
Client-level discharge assessment—administrative	25,000	1	25,000	0.1	2,500
Section H Program Specific Data: baseline, 3- or 6-month reassessment, and clinical discharge	75,000	2	150,000	0.1	15,000
Subtotal	393,060		468,060		75,178
Infrastructure development, prevention, and mental health promotion quarterly record abstraction	2,000	4	8,000	8	64,000
Subtotal	2,000		8,000		64,000

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN—Continued

SAMHSA tool	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Total	395,060		476,060		139,178

Send comments to SAMHSA Reports Clearance Officer at samhsapra@samhsa.hhs.gov.

Written comments should be received by September 16, 2024.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2024–15811 Filed 7–17–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6482–N–01]

Housing Trust Fund: Fiscal Year 2024 Allocation Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fiscal year 2024 funding awards.

SUMMARY: The Housing and Economic Recovery Act of 2008 (HERA) established the Housing Trust Fund (HTF) to be administered by HUD. Pursuant to the Federal Housing Enterprises Financial Security and Soundness Act of 1992 (the Act), as amended by HERA, eligible HTF grantees are the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands. This notice announces the formula allocation amount for each eligible HTF grantee.

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Office of Affordable Housing Programs, Room 7160 Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–7000; telephone (202) 708–2684. (This is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION: Section 1131 of HERA, Division A amended the Act to add a new section 1337 entitled “Affordable Housing Allocations” and a new section 1338 entitled “Housing Trust Fund.” Congress authorized the Housing Trust Fund (HTF) with the stated purpose of: (1) Increasing and preserving the supply of rental housing for extremely low-income families with incomes between 0 and 30 percent of area median income and very low-income families with incomes between 30 and 50 percent of area median income, including homeless families, and (2) increasing homeownership for extremely low-income and very low-income families. Section 1337 of the Act (12 U.S.C. 4567) requires Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) to set-aside 4.2 basis points (.042 percent) of the unpaid principal of their new mortgage purchases annually to fund the HTF and the Capital Magnet Fund. Each year, 65% of the amounts set aside by Fannie Mae and Freddie Mac are then allocated to the HTF.

Section 1338 of the Act (12 U.S.C. 4568) directs HUD to establish, through regulation, the formula for the distribution of amounts made available for the HTF. The provisions in section 1338(c)(3) of the Act (12 U.S.C. 4568(c)(3)) specify the factors to be used for the formula and priority for certain factors. The HTF implementing regulations are at 24 CFR part 93. The factors and methodology HUD uses to allocate HTF funds among eligible grantees are established in the HTF regulation at 24 CFR 93.50, 93.51, and 93.52.

The funding announced for Fiscal Year 2024 through this notice is \$214,112,536.70. Appendix A to this notice provides the HTF allocation amount for each grantee.

Maria Claudette Fernandez,
General Deputy Assistant Secretary for Community Planning and Development.

Appendix A: FY 2024 Housing Trust Fund Allocation Amounts

Grantee	FY 2024 allocation
1. Alabama	\$3,144,833.37

Grantee	FY 2024 allocation
2. Alaska	3,144,833.37
3. Arizona	3,434,122.34
4. Arkansas	3,000,094.92
5. California	21,561,035.25
6. Colorado	3,213,158.50
7. Connecticut	3,144,833.37
8. Delaware	3,000,094.92
9. District of Columbia ..	3,144,833.37
10. Florida	7,297,924.05
11. Georgia	4,454,124.92
12. Hawaii	3,144,833.37
13. Idaho	3,144,833.37
14. Illinois	6,053,256.61
15. Indiana	3,165,160.77
16. Iowa	3,144,833.37
17. Kansas	3,144,833.37
18. Kentucky	3,144,833.37
19. Louisiana	3,144,833.37
20. Maine	3,144,833.37
21. Maryland	3,215,521.54
22. Massachusetts	4,233,855.37
23. Michigan	4,162,030.20
24. Minnesota	3,144,833.37
25. Mississippi	3,144,833.37
26. Missouri	3,153,844.72
27. Montana	3,144,833.37
28. Nebraska	3,144,833.37
29. Nevada	3,144,833.37
30. New Hampshire	3,144,833.37
31. New Jersey	5,367,920.02
32. New Mexico	3,144,833.37
33. New York	12,459,948.67
34. North Carolina	9,349,938.86
35. North Dakota	3,144,833.37
36. Ohio	4,676,009.12
37. Oklahoma	3,144,833.37
38. Oregon	3,193,409.99
39. Pennsylvania	5,276,312.45
40. Rhode Island	3,144,833.37
41. South Carolina	3,144,833.37
42. South Dakota	3,144,833.37
43. Tennessee	3,150,564.64
44. Texas	8,605,522.64
45. Utah	3,144,833.37
46. Vermont	3,144,833.37
47. Virginia	3,838,928.42
48. Washington	4,182,091.31
49. West Virginia	3,144,833.37
50. Wisconsin	3,257,782.86
51. Wyoming	3,144,833.37
52. Puerto Rico	712,713.46
53. American Samoa	0
54. Guam	49,843.91
55. Northern Marianas ..	24,268.89
56. Virgin Islands	47,180.18
Total	214,112,536.70

[FR Doc. 2024–15783 Filed 7–17–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**[Docket No. FR-6315-N-01]****Allocation Formula, Applicable Requirements, and Waivers and Suspension of Requirements for Rapid Unsheltered Survivor Housing (RUSH)****AGENCY:** Office of Assistant Secretary for Community Planning and Development, HUD.**ACTION:** Notice.

SUMMARY: When the President makes a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), the affected areas may receive various forms of disaster relief. Under the Emergency Solutions Grants (ESG) program, HUD typically provides relief through regulatory waivers to affected areas. This Notice describes a new form of relief that HUD can provide under the ESG program—special ESG grants that HUD designates as Rapid Unsheltered Survivor Housing (RUSH) grants for areas that are identified as eligible for FEMA Individual Assistance when a “major disaster” is declared under the Stafford Act (declared disaster areas). As authorized by section 231 of the Department of Housing and Urban Development Appropriations Act of 2020, HUD may make these grants to States or local governments to address the needs of individuals and families who are experiencing homelessness or at risk of homelessness in declared disaster areas and have needs not otherwise served or fully met by existing Federal disaster relief programs. This Notice explains HUD’s plan for allocating and administering these RUSH grants including the funding methodology and applicable requirements for awards. As further explained in this Notice, RUSH grants will be made to States or local governments for the purpose of assisting individuals and families who are experiencing homelessness or at risk of homelessness, have been residing in a declared disaster area, and have needs that are not otherwise served or fully met by existing Federal disaster relief programs. HUD plans to begin making allocations as described in this Notice as of the date authorized by the HUD Appropriations Act of 2020. HUD welcomes public comments on all aspects of this Notice, particularly comments that respond to the questions included in Section VIII of this Notice.

DATES: *Comment Due Date:* September 16, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice. There are two methods for submitting public comments, listed below. All submissions must refer to the above-referenced docket number (FR-6315-N-01) and title of this Notice.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. All submissions must refer to the docket number and title of this Notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance, Department of

Housing and Urban Development, 451 7th Street SW, Room 7262, Washington, DC 20410-0500; telephone number 202-402-5015 (this is not a toll-free number) or RUSH@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:**I. Statutory Authority**

For major disasters declared under the Stafford Act on or after December 20, 2019, section 231 of the Department of Housing and Urban Development Appropriations Act, 2020, (Section 231)¹ authorizes HUD to use funds recaptured from HUD’s homeless assistance grants (*e.g.*, Continuum of Care (CoC) Program and Emergency Solutions Grants Program (ESG) grants) to make RUSH grants² to States or local governments to address the needs of individuals and families who are experiencing homelessness or at risk of homelessness in a declared disaster area³ and whose needs are not otherwise served or fully met by existing Federal disaster relief programs. For purposes of RUSH funding, HUD understands “existing Federal disaster relief programs” to mean the Federal and non-Federal cost share under Federal programs that provide assistance for the purpose of disaster relief and are permanently authorized as of the date of the RUSH award. These programs include the Transitional Sheltering Assistance (TSA) program (42 U.S.C. 5170b) and Non-Congregate Sheltering (NCS) administered by the Federal Emergency Management Agency (FEMA). In addition, Federal duplication of benefit requirements apply. For more information about these programs, visit FEMA’s website.⁴

II. RUSH Funding Methodology

The formulas HUD will use to allocate and, if necessary, reallocate RUSH

¹ Public Law 116-94, Division H, Title II, section 231 (codified at 42 U.S.C. 11364a).

² RUSH grants provide funding under the ESG program; therefore, unless this Notice or a subsequent HUD notice, waiver, or rule specifically provides otherwise, RUSH grant funds will be governed by the same Federal requirements that apply to ESG grant funds authorized under subtitle B of McKinney-Vento Homeless Assistance Act.

³ For purposes of this Notice, declared disaster areas are areas that are identified as eligible for FEMA Individual Assistance when a major disaster is declared under the Stafford Act on or after December 20, 2019.

⁴ <https://www.fema.gov/assistance/individual/program>.

funding will follow the directive provided at 42 U.S.C. 11364a, rather than the allocation and reallocation formulas for annual ESG grant amounts at 24 CFR 576.3 and 24 CFR 576.300–575.303. HUD has determined that it would be inconsistent with 42 U.S.C. 11364a(c) to allocate the RUSH funds according to the annual ESG formula in 24 CFR 576.3 or to reallocate those funds as provided by 24 CFR 576.300–575.303 because those allocation and reallocation requirements make no account of major disasters and rely heavily on the formula for Community Development Block Grant (CDBG) funding, which is designed to target community development need and distribute annually appropriated funding nationwide. In contrast, 42 U.S.C. 11364a(c)(1) requires that RUSH funding be allocated “to States or local governments to address the needs of homeless individuals or families or individuals or families at risk of homelessness in areas affected by a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) on or after December 20, 2019, whose needs are not otherwise served or fully met by existing Federal disaster relief programs.” Accordingly, HUD will use the formulas set out in sections II.A, B, and C of this Notice to distribute funding that becomes available for RUSH grants to meet the directive of 42 U.S.C. 11364a(c)(1).

A. Initial Allocation

Consistent with the statutory purpose and scheme, the initial allocation of RUSH is designed to provide immediate funding to States or local governments capable of acting quickly to meet the unmet homeless assistance and homeless prevention needs in declared disaster areas. The formula is designed to allow for the rapid identification of eligible recipients and the calculation of award amounts from readily available data sources. Because section 231 funding is not sufficient to keep pace with the needs that RUSH grants are designated to address, HUD plans to use minimum threshold requirements to make sure each RUSH grant can reasonably be used to address the needs of disaster survivors who are experiencing homelessness or at risk of experiencing homelessness and whose needs are not served or fully met by existing Federal disaster relief programs. Provided that data is available, HUD plans to notify States or local governments of their eligibility for a RUSH grant within 30 days of a major disaster. Any allocation of RUSH funds is subject to the availability of funds. As

part of the minimum threshold requirements, HUD will apply the funding formula only to States or local governments that have jurisdiction over the declared disaster areas and have reasonable capacity to address the needs of individuals and families experiencing homelessness and at risk of homelessness in the declared disaster areas.

In addition, HUD will apply the funding formula only in cases where a major disaster has been declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) on or after December 20, 2019, and the disaster has severely affected survivors who are experiencing homelessness or at risk of experiencing homelessness because the disaster has affected housing stock, homeless services, or encampments or other locations where people are sleeping. For severe disasters, homeless service providers are impacted in three distinct ways:

(1) Disasters disrupt the lives and support networks of individuals and families experiencing homelessness resulting in increased need for assistance and increased work for homelessness providers.

(2) Homeless shelters and other facilities for programs that serve individuals and families experiencing homelessness could be damaged and rendered unavailable, requiring immediate rehabilitation or the acquisition of alternative emergency shelter facilities.

(3) The number of persons experiencing homelessness or at risk of experiencing homelessness could increase significantly because individuals and families, such as those previously residing with friends or family, may become homeless due to their homes being damaged.

Minimum Threshold Requirements for Initial Allocation: HUD may make a RUSH allocation when the following criteria are met:

a. The ESG area includes a declared disaster area (*see* fn.3);

b. The ESG area has a high level of homelessness as evidenced by the ESG area Point-in-Time (PIT) count having 50 or more people experiencing homelessness; and

i. 0.1% or greater of the population in the declared disaster area is experiencing homelessness, or

ii. in the declared disaster area, the unsheltered population is greater than or equal to 30% of the total population experiencing homelessness;

c. There is a high level of displacement as evidenced by one of the following:

i. FEMA has activated TSA or NCS in the disaster declared area within the ESG area, or

ii. In rare circumstances when NCS or TSA are not activated but HUD's analysis finds that, in the declared disaster area, there is a loss or disrupted usability of a significant number of housing units for people experiencing homelessness, homeless services, encampments, or other locations where people are sleeping;

d. Using the formula for the initial allocation described below, the potential recipient would receive an initial allocation of at least \$100,000; and

e. The potential RUSH recipient is an existing ESG or RUSH recipient with at least one grant that has a period of performance that has not yet concluded.

Additionally, HUD will review performance and financial information about the potential recipient. HUD will not make a RUSH allocation to a recipient if the information currently available to HUD, including performance reporting, monitoring results, audits or Inspector General reports, or IDIS data regarding draws and expenditures, indicates the recipient has not complied with existing ESG or RUSH grant requirements or does not have the capacity to administer RUSH funding, unless HUD determines those capacity issues or noncompliance concerns are not relevant to the use of the RUSH allocation as provided by section 231 or there are specific conditions that can appropriately mitigate the risk with respect to the RUSH funding.

Formula for Initial Allocation: The initial allocation will be an amount equal to the lesser of \$3,000,000 in the case of a State and \$1,000,000 in the case of a local government or the amount determined by multiplying the number of persons experiencing sheltered or unsheltered homelessness (based on the most recent PIT count) in counties or local municipalities that are within the declared disaster areas by the Fair Market Rent (FMR) for a 1-bedroom apartment in those areas. If the PIT count area does not match the declared disaster area and sufficient levels of data is available to do a pro-ratio, HUD will use the most recent sheltered PIT count data as reported in each CoC's Housing Inventory Count and pro-rate the unsheltered PIT count data to reflect the extent of homelessness in the declared disaster area. In cases where HUD is making allocations to a State and one or more local governments, the number of people experiencing homelessness in the local governments receiving awards

will be subtracted from the total for the State.

To receive a RUSH grant, the State or local government (as defined in section 411(1) of the McKinney-Vento Homeless Assistance Act and section 100261(1) of the MAP-21 Act) must amend its most recently approved Annual Action Plan⁵ to account for the new amount, indicating the existing Federal disaster relief program resources, including supplemental appropriations, that are available to meet the State or local government's needs and how they will use the allocation of RUSH funds to meet needs that are not otherwise served or fully met by existing Federal disaster relief programs in accordance with 42 U.S.C. 11364a and this Notice. The State or local government must submit its amended plan to HUD as provided in section IV of this Notice. Consistent with 42 U.S.C. 11364a, this amendment must include updates to the homeless needs portions of the State or local government's plan to reflect the estimates of the needs of individuals or families experiencing homelessness or individuals or families at risk of experiencing homelessness.

B. Second Allocation

Following the initial allocation determined as set forth in section II.A, when data to verify the extent of serious damage to the rental housing stock and the level of serious unmet need becomes available, typically within 60 to 120 days after a major disaster, HUD will identify whether the disaster meets the appropriate minimum threshold and, subject to the availability of funding, apply the formula prescribed below for a second allocation, and subsequently notify the jurisdiction.

Obtaining reliable data immediately after a disaster can be a challenge, including serious housing damage for the CDBG-DR program, FEMA Housing Impact Assessments, and homeless data

available from the PIT count on an annual basis. HUD relies on FEMA inspection data, generally available 60 to 90 days after a disaster, as the best data source for measuring serious unmet needs and the number of seriously damaged renter housing units.

To determine the second allocation, the formula includes data elements that can quickly be attained to identify the disaster's impact on households that are experiencing homelessness and the number of renter units that were damaged because of extenuating factors associated with the disaster. This formula allows HUD to quickly allocate funds to States or local governments where the most severe needs have been established.

Minimum Threshold Requirements for Second Allocation: For the second allocation of RUSH funding, HUD is establishing minimum threshold requirements for the entire declared disaster area and minimum threshold requirements that apply to each state or local government with jurisdiction over a declared disaster area.

The second allocation may only be provided when a declared disaster area meets the following criteria:

- (a) The declared disaster area has a total PIT count of sheltered and unsheltered persons of at least 500;
- (b) HUD estimates the serious damage in the declared disaster area to be above \$50 million.

Further, a State or local government will only be eligible for a second allocation of RUSH funding if it meets the following criteria:

- (a) The State or local government received an initial allocation of RUSH; and
- (b) Using the formula for second allocation methodology detailed below, the State or local government would receive an allocation of at least \$100,000.

If the PIT count area does not match the declared disaster area and sufficient

data are available to do a pro-ratio, HUD will pro-rate the PIT count data to reflect the extent of homelessness in the declared disaster area.

Additionally, HUD will review performance and financial information about the potential recipient. HUD will not make a RUSH allocation to a recipient if the information currently available to HUD, including performance reporting, monitoring results, audits or Inspector General reports, or IDIS data regarding draws and expenditures, indicates the recipient has not complied with existing ESG or RUSH grant requirements or does not have the capacity to administer RUSH funding, unless HUD determines those capacity issues or noncompliance concerns are not relevant to the use of the RUSH allocation as provided by Section 231 or there are specific conditions that can appropriately mitigate the risk with respect to the RUSH funding.

Formula for Second Allocation: The second allocation to the State or local government will be the lesser of \$10 million or the sum of the amounts calculated by applying the following formula for each county or local municipality in which the threshold for making a RUSH allocation is met:

[(The most recent Point in Time count for unsheltered and sheltered persons) × (36) × (the 1BR Fair Market Rent) × (Seriously Damaged Renter Housing Units/Total Renter Units)] + [(Seriously Damaged Renter Housing Units) × (0.03) × (the 1BR Fair Market Rent)].

This formula is a combination of the two calculations shown below. The first calculation estimates the impact of the disaster on the existing homeless population; the second calculation estimates a potential need for "new" homeless individuals.

$$\text{Existing Need} = \left(\frac{\text{Seriously Damaged Renter Housing Units}}{\text{Total Renter Units}} \right) \times \text{PIT count} \times (1\text{BR FMR} \times 36)$$

$$\text{New Need} = (\text{Seriously Damaged Renter Housing Units}) \times 0.03 \times (1\text{BR FMR})$$

$$\text{Total Allocation} = \text{Existing Need} + \text{New Need}$$

In cases where HUD is making allocations to a State and one or more local governments, data regarding number of people experiencing

homelessness and renter units in the local governments receiving awards will be subtracted from the totals for the State.

The *Existing Need* formula uses the fraction of an area's rental inventory that is seriously damaged by a disaster as a proxy for the relative impact of the

⁵ <https://www.hudexchange.info/programs/consolidated-plan/>.

event on people experiencing homelessness, then multiplies that fraction by the PIT count and the local cost of 1-bedroom housing unit for a period of 36 months. The resulting value estimates the amount that would be necessary to provide rapid rehousing and emergency shelter to people affected by the disaster who were experiencing homelessness at the time.

The *New Need* formula calculates the number of renters who were affected by the disaster and multiplies that by a factor of .03, which estimates the proportion of affected renters who are likely to experience homelessness in the aftermath of a disaster and need assistance. Those most at risk of displacement are renters or the persons residing with family and friends in renter households. This .03 factor is low because not all seriously damaged rental units will include individuals or families at risk of experiencing homelessness. Many of those affected will be eligible for FEMA and other kinds of assistance; however, some families and individuals at risk will not be eligible.

As with the initial allocation, to receive its second allocation of a RUSH grant the State or local government must amend its most recently approved Action Plan to account for the new amount, indicating the existing Federal disaster relief program resources available to meet the State or local government's needs and how it will use the allocation of RUSH funds to meet needs that are not otherwise served or fully met by the TSA, NCS, or other existing Federal disaster relief programs in accordance with 42 U.S.C. 11364a and this Notice. The State or local government must submit its amended plan to HUD as provided in section IV of this Notice.

C. Multiple Disasters

If multiple Presidentially declared disasters affect the same area over a 12-month period, HUD may find that the combined effects of those disasters make the formula for allocating RUSH funding inappropriate to address the needs as required by 42 U.S.C. 11364a. If HUD makes this finding, HUD may recalibrate the formula as HUD determines necessary to reflect the specific data HUD receives with respect to the combined effects of the disasters, the availability and use of resources for each disaster to date, the status of the existing recovery efforts, and reported needs of homeless assistance providers in the affected areas.

D. Reallocation

Reallocation of RUSH funds may be necessary if a State or local government declines RUSH funds, if a recipient fails to make the submission for its allocation as provided by this Notice, or if RUSH funds are recaptured post-award.

If a State or local government declines an allocation or fails to make the submission for its allocation as provided by this notice, HUD may recalculate the formula without the jurisdiction that declines the allocation. If there are no changes in the allocation results, HUD will retain those funds for future RUSH awards. HUD will recapture any unspent RUSH funds remaining post-award and retain those funds for future RUSH awards.

III. Applicable Requirements, Suspension of Requirements, and Regulatory Waivers

Unless this Notice or a subsequent HUD notice, waiver, or rule specifically provides otherwise, RUSH grant funds will be governed by the same Federal requirements that apply to ESG grant funds authorized under subtitle B of the McKinney-Vento Homeless Assistance Act.

A. Program Participant Eligibility

To be eligible for assistance provided with RUSH funds, an individual or family must: (1) be "homeless" or "at-risk of homelessness" as those terms are defined at 24 CFR 576.2 or meet the new criteria in section 103(b) of the McKinney-Vento Homeless Assistance Act; (2) have been residing in a declared disaster area; and (3) have needs that will not be served or fully met by the TSA Program (42 U.S.C. 5170b), NCS, or other existing Federal disaster relief programs.

A household will not be required to requalify as homeless or at risk of homelessness for purposes of RUSH funds if the household was already determined to meet the definition of homeless or at risk of homelessness and was receiving ESG assistance when the disaster occurred.

RUSH grants are not subject to the requirements for "serving youth who lack 3rd party documentation or live in unsafe situations" that HUD typically includes in its grant agreements for annual ESG grants, because those requirements apply only to grants made under the "homeless assistance grants" heading of the annual appropriations act for HUD.

B. Suspension of Requirements

Section 231(c)(2) of the Department of Housing and Urban Development Appropriations Act, 2020 (42 U.S.C.

11364a (c)(2)) authorizes HUD to suspend consultation, citizen participation, and matching requirements for purposes of the RUSH funds so that recipients may deploy the funds quickly in response to a federally declared major disaster. Accordingly, HUD is suspending the ESG match requirements in section 416(a) of the McKinney-Vento Act and 24 CFR 576.201 for both allocations of RUSH funding. As further explained in section IV of this Notice, HUD is making limited and conditional suspensions of the consultation and citizen participation requirements for RUSH funds as follows:

(1) CoC consultation requirements in section 413(b) of the McKinney-Vento Act and 24 CFR 576.400(a):

a. Initial allocation of RUSH funds: suspended provided that the recipient publishes how it will use its allocation, at a minimum, on the internet at the appropriate government website or through electronic media. See Section IV for the specific requirements related to this publication as well as notification and communication methods.

b. Second allocation of RUSH funds: required.

(2) Consultation and citizen participations requirements under sections 105(e) and 107 of the Cranston-Gonzalez National Affordable Housing Act and 24 CFR 91.110, and 91.115:

a. Initial allocation of RUSH funds: suspended, provided that the recipient publishes how it will use its allocation, at a minimum, on the internet at the appropriate government website or through electronic media. See Section IV for the specific requirements related to this publication as well as notification and communication methods.

b. Second allocation of RUSH funds: In person or remote consultation is required; citizen participation is required with a 5-day public comment period, reduced from the otherwise applicable 30-day public comment period. The public hearing may be in person or remote.

In addition, because this suspension prevents costs paid with program income from counting toward match as provided by 24 CFR 576.201(f) and 576.407(c)(1), HUD is providing prior approval for program income to be used as provided by 2 CFR 200.307(e)(2). Accordingly, program income may be treated as an addition to the Recipient's grant (or the subrecipient's subgrant, if the income is generated by the subrecipient's activities), provided that the program income is used in accordance with the purposes and

conditions of that grant or subgrant. Otherwise, program income, as defined under 24 CFR 576.2, must be deducted from allowable costs as provided by 2 CFR 200.307(e)(1).

C. Regulatory Waivers

In accordance with 24 CFR 5.110 and 91.600, HUD may provide regulatory waivers upon a determination of good cause, subject to statutory limitations. A recipient may request waivers from the Department as needed to address specific needs related to its recovery activities. HUD cannot waive federal civil rights and fair housing requirements. Recipients should work with the assigned Community Planning and Development representatives to request waivers from HUD and include the following information with their request:

- (1) A description of the project;
- (2) A citation to the regulatory requirements that the recipient is seeking to have waived;
- (3) An explanation of the pertinent facts and reasons why the Secretary should determine that good cause exists for the waiver; and
- (4) A discussion of why the waiver is necessary to address the unique unmet needs of a community impacted by a disaster.

HUD may contact a recipient to obtain additional information necessary to evaluate a waiver request.

D. Exemption From Build America, Buy America Preference

Section 70912(4) of the *Build America, Buy America* (BABA) Act excludes pre and post disaster or emergency response expenditures from Federal financial assistance subject to the Buy America preference under BABA. Because RUSH grants can only be used for disaster response expenditures as described in this Notice, RUSH grants are not subject to BABA requirements.

E. Performance Reporting

RUSH recipients will be required to report on uses of the RUSH funds, in their Consolidated Annual Performance and Evaluation Report (CAPER) and through submission of project data to the Sage Homeless Management Information System (HMIS) Repository. Should a recipient need an extension of the reporting deadlines in 24 CFR 91.520(a), they may request a waiver as described in III.C. HUD may also require recipients to submit quarterly reports to HUD regarding their RUSH grants.

IV. Allocation and Amendment Review Process; Program Changes

The requirements at 24 CFR 576.200, as modified by this Notice, shall apply to the amendment review process for RUSH funds allocated as described in this Notice. HUD will promptly notify an eligible ESG recipient by letter when it determines an allocation is to be made available.

For the initial allocation described in this Notice, the State or local government must prepare and submit within 30 days of the initial award announcement an amendment to its most recently approved Action Plan provided under 24 CFR part 91 to include the new RUSH amount and other information described above in section II of this Notice. For the second RUSH allocation described in this Notice, the State or local government must prepare and submit within 60 days of the second allocation award announcement an amendment to its most recently approved Action Plan provided under 24 CFR part 91 to include the new RUSH amount and other information described above in section II of this Notice. The State or local government must submit the signed certifications required by 24 CFR 91.325(a) and the relevant program-specific certifications for the ESG program, as further explained in section IX of this Notice, for each amendment submission. HUD may grant an extension on the submission of the Action Plan amendment if disaster-related circumstances make it unreasonable to submit the amendments within the required timeframe, such as extended utility outages, major structural damage to personal and private properties in the declared disaster areas, or if multiple Presidentially declared disasters affect the same area over a 12-month period. Each amendment submitted to HUD to receive the RUSH funds described in this Notice will be subject to the review process set forth in 24 CFR 91.500, except that HUD will expedite its review. HUD may allow the State or local government to submit a single amendment covering both allocations depending on the timing of the allocations and extenuating circumstances.

As stated in section III.B., HUD is suspending the consultation and citizen participation requirements for the initial allocation of RUSH funds, provided a recipient publishes how it will use its allocation, at a minimum, on the internet at the appropriate government website or through other electronic media. In this publication, the recipient

must describe the activities it will fund with RUSH funds and indicate whether, as of the date of that publication, the activity has already occurred or has yet to occur. In its notification and communication methods, the recipient must also ensure effective communication with individuals with disabilities and take reasonable steps to ensure meaningful access to persons with limited English proficiency (LEP). See 24 CFR 576.407(a) and (b). See also 24 CFR 8.6 (HUD's Section 504 regulation); 28 CFR 35, Subpart E—Communications (Title II ADA regulation); 24 CFR part 1 (Title VI of the Civil Rights Act of 1964).

To make a change described in 24 CFR 576.200(b) after HUD's award of funding, including changing the allocation, distribution, or use of RUSH funds, a recipient must amend its consolidated plan as provided by 24 CFR 91.505 and 576.200(b), except that the recipient is not required to comply with any consultation or citizen participation requirements for the initial allocation of funds, provided that the recipient publishes its planned changes, at a minimum, on the internet at the appropriate government website or through other electronic media.

V. Eligible Costs, Including Pre-Award Costs

The requirements of 24 CFR part 576, subpart B, apply unless otherwise suspended or waived as described in this Notice. To ensure RUSH funds are used effectively and efficiently, a recipient should carefully evaluate the appropriateness and cost effectiveness of interventions needed to immediately respond to a disaster.

RUSH funds may be used to address many short-term disaster response needs. Eligible activities outlined in 24 CFR part 576 include costs under the following program components: street outreach, emergency shelter, homelessness prevention, rapid rehousing, and HMIS. However, a recipient must implement procedures to verify and document that RUSH funds are used only for needs that are not served or fully met by existing Federal disaster relief programs and that RUSH costs meet both the applicable cost principles in 2 CFR part 200, subpart E, and duplication of benefits requirements discussed in section VI below.

Importantly, in accordance with the requirements at 24 CFR 576.102, a recipient may use RUSH assistance to rehabilitate an emergency shelter damaged during the disaster. Often, insurance will cover necessary repairs and rehabilitation; however, if the

emergency shelter does not have sufficient insurance or if there is a gap in funding to repair the shelter, RUSH funds may be used to cover the costs, subject to the cost principles in 2 CFR part 200, subpart E and duplication of benefits requirements discussed in section VI below.

In accordance with 2 CFR 200.458, HUD is providing prior approval of pre-award costs, subject to the following conditions:

(1) The pre-award costs must satisfy all allowable criteria under 2 CFR 200.403, except that the pre-award costs may be incurred on any date between and including the date of HUD's letter notifying a recipient of an initial RUSH allocation and the date immediately preceding the start date of the period of performance/budget period for the grant.

(2) The pre-award costs must be necessary for efficient and timely performance of eligible RUSH activities.

(3) Before committing to use RUSH funds to reimburse each pre-award cost, a recipient must either make a written determination that the pre-award cost is for an activity that is exempt from environmental review or categorically excluded and not subject to review under related environmental laws and authorities under 24 CFR part 58 or verify that the applicable environmental review has been completed and a Request for Release of Funds has been approved in accordance with 24 CFR part 58, if applicable.

(4) Although the pre-award costs may consist of costs incurred by a recipient or its subrecipient(s), the subrecipient must receive the recipient's prior written approval before incurring any pre-award costs and that written approval must be consistent with all of HUD's conditions for prior approval of pre-award costs.

(5) The documentation supporting each pre-award cost reimbursed with RUSH funds must show compliance with each of these conditions for HUD's prior approval of pre-award costs.

(6) A recipient must assume the risk of all pre-award costs it incurs or approves before executing its RUSH grant agreement with HUD. HUD will not be required to reimburse pre-award costs if for any reason the recipient does not receive a RUSH grant, if the grant is less than anticipated and inadequate to cover such costs, or if the pre-award costs do not meet the conditions listed above.

VI. Duplication of Benefits (DOB) and Agreement To Repay

Section 312 (42 U.S.C. 5155) of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*) prohibits duplication of benefits for programs that provide financial assistance to people or entities suffering losses because of a major disaster or emergency.

"Duplication of benefits" occurs when Federal financial assistance is provided to a person or entity through a program to address losses resulting from a Federally-declared emergency or disaster, and the person or entity has received (or would receive, by acting reasonably to obtain available assistance) financial assistance for the same costs from any other source (including insurance), and the total amount received exceeds the total need for those costs. Recipients of RUSH funds must establish and maintain adequate procedures to prevent duplication of benefits.

VII. Environmental Review Process During Emergencies Following Disasters

Notwithstanding the provisions of 24 CFR 576.407(d), and in accordance with Sec. 100261(3) of MAP-21, activities funded as described in this Notice are subject to environmental review by responsible entities under 24 CFR part 58. "Responsible entities" (as defined in 24 CFR 58.2) must assume all of the responsibilities with respect to environmental review, decision making, and action required under 24 CFR part 58. Additionally, as required by 24 CFR 58.4(a), when a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

HUD's environmental review regulations in 24 CFR part 58 include two provisions that may be relevant to environmental review procedures for activities relating to disaster response and recovery.

The first is 24 CFR 58.34(a)(10), which provides an exemption for certain activities undertaken to control or arrest the effects from disasters or imminent threats to public safety. Emergency activities for temporary or permanent improvements that do not alter environmental conditions and that are limited to protection, repair, or restoration activities necessary only to control or arrest the effects of the disaster or imminent threats to public safety, including those resulting from physical deterioration, may be considered exempt from the environmental review process (24 CFR 58.34(a)(10)). Responsible entities must document the determination in the environmental review record and

should contact their HUD Regional Environmental Officer or Field Environmental Officer for guidance on applicability of the 58.34(a)(10) exemption, if needed.

The second is 24 CFR 58.33(b), which allows for the combined Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF) to be disseminated and/or published simultaneously with the submission of the RROF. This streamlined approach applies when funds are needed on an emergency basis and adherence to separate comment periods would prevent the provision of assistance to address the immediate threat to public health and safety. The FONSI/NOI-RROF must state that (1) funds are needed on an emergency basis due to a Presidentially declared disaster or local emergency that has been declared by the chief elected official of the responsible entity; (2) the public comment and objection periods have been combined into one 15-day comment period; and (3) all comments should be submitted to both HUD and the Responsible Entity issuing the notice.

VIII. Request for Public Comment

HUD welcomes comments on all aspects of this Notice, but is especially interested in comments on the following subjects:

(1) HUD has determined that it may make an allocation of RUSH funds when FEMA activates its Transitional Sheltering Assistance (TSA) Program or Non-Congregate Sheltering (NCS). Is the activation of TSA or NCS an appropriate trigger for RUSH?

(2) As an alternative to FEMA TSA and NCS, what other analysis might HUD use to determine a significant number of housing units for people experiencing homelessness, homeless services, encampments, or other locations where people are sleeping reach the level of severity necessary to trigger a RUSH allocation.

(2) Are there specific ways, other than those identified in section II.A of this Notice, in which homeless service providers are impacted by severe disasters that HUD should consider with respect to the RUSH methodology for allocating funds?

(3) Are there costs, including pre-award costs, that are not identified in section V of this Notice, that HUD should consider allowing as eligible costs for RUSH either through regulatory waiver as provided by 24 CFR 5.110 or pre-approval as provided by 2 CFR 200.407?

(4) The Notice proposes a 2-stage allocation with thresholds to qualify for

each. Does this approach appropriately balance the need to issue RUSH funds quickly with the need to ensure the disbursement of funds reflect actual need?

(5) The initial allocation will be an amount equal to the lesser of \$3,000,000 in the case of a State and \$1,000,000 in the case of a local government or the amount determined by multiplying the number of persons experiencing sheltered or unsheltered homelessness (based on the most recent Point-in-Time count) in counties or local municipalities for which the threshold for making a first RUSH allocation is met by the Fair Market Rent for a 1-BR apartment in those areas (see Section II.A). Are there other formula factors that HUD should consider for the initial allocation amount?

(6) The Notice proposes an allocation based on the sum of two formulas, one estimating the impact on the existing population experiencing homelessness and the second estimating the potential need of “new” people experiencing homelessness (see Section II.A and B). For communities that meet the threshold for a second allocation, are there other formula factors HUD should consider in determining the second allocation amount?

(7) HUD’s plan is to allocate RUSH funding to States or local governments with the capacity to address the needs of people experiencing homelessness. What objective criteria should HUD establish to determine the appropriate grantee for RUSH allocations?

(8) How can the RUSH allocation methodology be modified to allocate resources equitably and adequately to address declared disaster areas, particularly in cases where a local government does not meet the eligibility or threshold requirements for an allocation but is most impacted by the disaster?

(9) In addition to data collected as part of the CAPER, what additional data and information should HUD collect to ensure that HUD and other stakeholders have an adequate picture of the performance and outcomes of RUSH funding?

(10) How can HUD and other Federal agencies that provide disaster assistance make it easier to comply with RUSH duplication of benefits requirements?

(11) HUD is suspending the consultation and citizen participation requirements listed in Section III.B for the initial allocation of RUSH funds and reducing the public comment to 5 days for the second allocation. Realizing that the goal is to distribute RUSH funds quickly, do these suspension conditions and limitations provide the right

balance under the circumstances or should HUD set different conditions or limitations on its suspension of consultation and citizen participation requirements?

(12) To ensure that HUD only provides a second allocation to recipients who are making adequate progress on their initial allocation, are there criteria that HUD should consider when making the second allocation to evaluate a recipient’s capacity and progress in implementing the first allocation?

(13) Are there any pre-award cost conditions described in Section V that would create a significant barrier to response and recovery efforts?

(14) Are there any revisions to this Notice that would add clarity, reduce uncertainty, and assist recipients in distributing RUSH funds and complying with RUSH requirements?

IX. Certifications

For purposes of all ESG funds, including RUSH funds, recipients must submit certifications as required by the McKinney-Vento Act. However, as provided under this Notice, HUD does not require RUSH funds to be matched. Therefore, the certifications required for RUSH are the same standard ESG certifications HUD requires for annual ESG appropriations, except that the match certification is removed. See Section III B.

X. Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

The FONSI is available with the posting of this Notice on HUD’s Funding Opportunities web page at: https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps.

Marion McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2024–15852 Filed 7–17–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/
AOA501010.999900; OMB Control Number
1076–0196]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Requests for Indian Land Title and Records Information

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 19, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to the Office of Information and Regulatory Affairs (OIRA) through https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202212-1076-001 or by visiting <https://www.reginfo.gov/public/do/PRAMain> and selecting “Currently under Review—Open for Public Comments” and then scrolling down to the “Department of the Interior.”

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; comments@bia.gov; (202) 924–2650. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. You may also view the ICR at <https://www.reginfo.gov/public/Forward?SearchTarget=PRA&textfield=1076-0196>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public, and other Federal agencies, with an opportunity to comment on new, proposed, revised, and continuing collections of

information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 5, 2023 (88 FR 879). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Land Title and Records Office (LTRO) maintains title documents for land that the United States holds in trust or restricted status for individual Indians or Tribes (Indian land), much like counties and other localities maintain title documents for fee land within their jurisdictions. Individuals or entities that are requesting information regarding title documents—either for property they own or for property they seek to lease

or encumber—must provide certain information to the LTRO in order for LTRO to accurately identify the property for which they are seeking information. LTRO uses the information provided by individuals or entities in order to identify the property so that they can retrieve the appropriate title documents and produce reports for that property. The collection of information is found in § 150.305, which provides that anyone requesting title documents or reports must provide certain information, such as the name of the reservation where the land is located and the tract number or legal description.

Title of Collection: Requests for Indian Land Title and Records Information.

OMB Control Number: 1076–0196.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals, private sector, government.

Total Estimated Number of Annual Respondents: 36.

Total Estimated Number of Annual Responses: 36.

Estimated Completion Time per Response: 0.5 hours.

Total Estimated Number of Annual Burden Hours: 19 hours (consisting of 10 hours for private sector respondents, 3 hours for individual respondents, and 6 hours for government respondents).

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per year for applications; 4 times per year for progress reports.

Total Estimated Annual Nonhour Burden Cost: \$500.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

*Information Collection Clearance Officer,
Office of Regulatory Affairs and Collaborative
Action—Indian Affairs.*

[FR Doc. 2024–15786 Filed 7–17–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

[242D0102DM, DS6CS00000,
DLSN00000.000000, DX6CS25; OMB Control
No. 1090–0013]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Watercraft Inspection and Decontamination Regional Data- Sharing for Trailered Boats

AGENCY: Department of the Interior.

ACTION: Notice of information collection;
request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Department of the Interior (Interior), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before August 19, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently Under 30-day Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to Mr. Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or via email to DOI-PRA@ios.doi.gov. Please reference OMB Control Number 1090–0013 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Heidi McMaster, Natural Resources Specialist, by email at hmcmaster@usbr.gov, or by telephone at (208) 860–9649. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's

reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 4, 2024 (89 FR 23606). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed information collection request that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Interior is authorized by the Lacey Act (18 U.S.C. 42, 16 U.S.C. 3371–3378 *et seq.*), the Fish and Wildlife Coordination Act (U.S.C. 661 *et seq.*, as amended by John D. Dingell, Jr. Conservation, Management, and Recreation Act, Title 25 U.S.C. 3701, *et seq.* sec. 7001(b)(2), Pub. L. 116–9) and the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701, *et seq.*, to collect this information. Interior is requesting approval to collect information from boaters entering or exiting water areas

managed by various bureaus under Interior. The data will help document the presence and evaluate any risks associated with the unintentional introduction of quagga/zebra mussels and other aquatic invasive species in waters managed by the various bureaus under Interior. Collection of this information is required for all watercrafts entering and exiting waters managed by the various bureaus under Interior that have an active watercraft inspection and decontamination program.

The Regional Watercraft Inspection Decontamination Data Sharing System (Regional Database) was developed by the State of Colorado and is currently being utilized by numerous entities within the Western Regional Panel on Aquatic Nuisance Species (WRP). The National Park Service (NPS), U.S. Fish and Wildlife Service, Bureau of Reclamation, and Bureau of Land Management are part of the WRP and the regional network of state and federal agencies working to prevent the spread of quagga/zebra mussels and other aquatic invasive species (AIS) in the western U.S. The success of this multi-agency effort relies in part upon timely availability of accurate information related to trailered boats at watercraft inspection/decontamination (WID) stations. The NPS already has OMB approval to use the Regional Database under OMB Control No. 1024–0285, but that collection will be discontinued and NPS will be rolled into this Interior-wide information collection once approved. The Regional Database makes this information available to staff at WID stations, allowing them to assess risk associated with quagga/zebra mussels and other AIS on trailered boats. States are asking federal partner agencies to begin using the Regional Database at their sites with WID programs.

Using the Regional Database requires that WID personnel ask boaters four questions and enter the responses via an app on a smartphone or tablet. Two of the four questions vary depending on whether a boater is entering or exiting the waterbody; the other two questions are the same for entering or exiting boaters:

Upon Entering:

1. Has the boat been out of the state in the last 30 days?

2. Where will the boat be launched next?

Upon Entering or Exiting:

1. What compartments or containers on the boat, including ballast tanks, hold water?

2. Does the boater have any live aquatic bait?

Proposed Revision—Watercraft owner or boat hauler/transporter zip code and changing response time from 4 minutes to 3 minutes.

Title of Collection: Watercraft Inspection Decontamination Regional Data-Sharing for Trailered Boats.

OMB Control Number: 1090–0013.

Form Number: None.

Type of Review: Revision of already approved information collection.

Respondents/Affected Public: Individuals/household; private sector; and State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 416,376.

Estimated Completion Time per Response: 3 minutes.

Total Estimated Number of Annual Burden Hours: 20,818 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion. (Upon entry, exit, or both).

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection, Clearance Officer.

[FR Doc. 2024–15803 Filed 7–17–24; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_UT_FRN_MO4500179314]

Notice of Public Meetings Utah Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah RAC will hold meetings on November 13, 2024, with a field tour on November 14, 2024, and a meeting on March 19, 2025, with a field tour on March 20, 2025. Each meeting

will be held in person, with an option for virtual participation during the public comment period. The meetings will occur from 8 a.m. to 4:30 p.m. Mountain Time (MT), and the field tours will occur from 8 a.m. to 2:30 p.m. MT. The November and March meetings and field tours are open to the public.

ADDRESSES: The November 13, 2024, meeting will be held at the Prehistoric Museum, 155 East Main, Price, Utah, 84501. The November 14, 2024, field tour will commence and conclude at the BLM Price Field Office, 125 South 600 West, Price, UT 84501. The March 19, 2025, meeting will be held at the Kanab Center, 20 N 100 East, Kanab, Utah, 84741. The March 20, 2025, field tour will commence and conclude at the BLM Paria River District Office, 669 S. Highway 89A, Kanab, UT 84741. Agendas and in-person meeting access information will be posted on the Utah RAC web page 30 days before each meeting at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/utah/RAC>. Participants wishing to virtually participate should register 24 hours in advance of the start time. Written comments to address the Utah RAC may be sent to the BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101, or via email to BLM_UT_External_Affairs@blm.gov with the subject line "Utah RAC Meeting."

FOR FURTHER INFORMATION CONTACT: Cindy Gallo, Public Affairs Specialist, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101; phone (801) 539-4014; or email cgallo@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the person listed above at least 14 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

SUPPLEMENTARY INFORMATION: The Utah RAC provides recommendations to the Secretary of the Interior, through the BLM, on a variety of public lands issues. Agenda topics for the November 13,

2024, meeting include updates and overview of BLM district and statewide planning efforts including hardrock mining, travel management plans, solar and geothermal energy development, and other issues as appropriate. The November 14, 2024, field tour will be to sites within the Price Field Office. Agenda topics for the March 19, 2025, meeting include updates and overview of BLM district and State planning efforts, including Administration priorities, the Grand Staircase-Escalante National Monument Resource Management Plan, recreation, and other issues as appropriate. The March 20, 2025, field tour will be to the Grand Staircase-Escalante National Monument. Members of the public are welcome on field tours but must provide their own transportation and meals. Individuals who plan to attend the field tour must RSVP at least 1 week in advance of the field tour with the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Additional details about the field tour will be posted to the Utah RAC web page at least 2 weeks prior to the tour date. A 30-minute public comment period will be held from 1 p.m. to 1:30 p.m. MT on November 13, 2024, and March 19, 2025. Depending on the number of people wishing to comment, the amount of time for individual oral comments may be limited. Written comments may also be submitted to the BLM Utah State Office at the address listed in the **ADDRESSES** section of this notice. All comments received will be provided to the Utah RAC members.

Public Disclosure of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Detailed minutes for the Utah RAC meeting will be maintained in the BLM Utah State Office and will be available for public inspection and reproduction during regular business hours within 90-days following the meeting. Minutes will also be posted to the Utah RAC web page.

(Authority: 43 CFR 1784.4-2).

Gregory Sheehan,
Utah State Director.

[FR Doc. 2024-15825 Filed 7-17-24; 8:45 am]

BILLING CODE 4331-25-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038288;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Arizona State University, School of Human Evolution and Social Change, Tempe, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Center for Archeology and Society Repository (acting in place of the Arizona State University School of Human Evolution and Social Change) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 19, 2024.

ADDRESSES: Allisen Dahlstedt, Arizona State University, School of Human Evolution and Social Change, P.O. Box 872402, Tempe, AZ 85287-2402, email Allisen.Dahlstedt@asu.edu and Christopher Caseldine, Arizona State University, School of Human Evolution and Social Change, P.O. Box 872402, Tempe, AZ 85287-2402, telephone (480) 965-6957, email Christopher.Caseldine@asu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Arizona State University (ASU) Center for Archaeology and Society Repository (CASR), and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 20 individuals have been reasonably identified. The 364 lots of associated funerary objects are: 98 lots of ceramics, 111 lots of chipped stone, 26 lots of groundstone, three lots of shell, 38 lots of faunal bone, 59 lots of samples, two

lots of botanicals, three lots of daub, 23 lots of other stone, and one lot of post/beam wood. In the spring semester of 1987, these human remains and associated funerary objects were removed from the Ranchería de Bernier site in Maricopa County, AZ during a field school conducted by Paul Minnis, then a research associate in the Department of Anthropology at Arizona State University (ASU). Archaeological evidence suggests the site was occupied between A.D. 630–870, during the Hohokam Pioneer to Colonial Periods. After the field season, the collection was curated by the then Department of Anthropology, now School of Human Evolution and Social Change, at ASU's CASR.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The Arizona State University CASR has determined that:

- The human remains described in this notice represent the physical remains of 20 individuals of Native American ancestry.
- The 364 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or

a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, the ASU Center for Archaeology and Society Repository must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The ASU Center for Archaeology and Society Repository is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15833 Filed 7–17–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038302;
PPWOCRADN0–PCU00RP14.R50000]

**Notice of Intended Repatriation:
University of Tennessee, Department
of Anthropology, Knoxville, TN, and
Tennessee Department of Environment
and Conservation, Division of
Archaeology, Nashville, TN**

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK) and the Tennessee Department of Environment and Conservation, Division of Archaeology (TDEC–DOA) intend to repatriate certain cultural items that meet the definition of sacred objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after August 19, 2024.

ADDRESSES: Dr. Ellen Lofaro, University of Tennessee, Office of Repatriation, 5723 Middlebrook Pike, Knoxville, TN 37921–6053, telephone (865) 974–3370, email nagpra@utk.edu and Phillip R.

Hodge, Tennessee Department of Environment and Conservation, Division of Archaeology, 1216 Foster Avenue, Cole Building #3, Nashville, TN 37243, telephone (615) 626–2025, email Phil.Hodge@tn.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK and TDEC–DOA, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of five cultural items have been requested for repatriation. The five sacred objects are five dog burials (remains and associated objects). These dog burials were removed from 40GL26, the Bailey site, in Giles County, TN. The Bailey site was identified during an archeological survey by the Tennessee Department of Transportation (TDOT) due to proposed replacement of a bridge over Sugar Creek and relocation of part of State Route 11. TDOT applied for and received the required permits from TDEC–DOA, and UTK was contracted to excavate. UTK excavated from May 20 to August 23, 1986. All cultural material and disinterred burials were transferred to UTK, where they have been housed since. To our knowledge, no known hazardous substances were used to treat any of the cultural items.

Giles County, TN is part of lands ceded to the United States by the Chickasaw, as recorded in, Treaty with the Chickasaw, 1805. Giles County, TN is also part of lands ceded to the United States by the Cherokee, as recorded in, Treaty with the Cherokee, 1806, and Treaty with the Cherokee, 1807. Tribal oral tradition also establishes that Muscogee (Creek) Ancestors once inhabited Giles County.

These objects were identified as sacred objects through consultation; specifically in reference to the role of the white dog Ofi' Tohbi Ishto' in the Chickasaw Migration story and the need of The Chickasaw Nation to venerate these animals alongside ancestral remains in current day reburial practices.

Determinations

UTK and TDEC–DOA have determined that:

- The five sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-

day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Cherokee Nation; Eastern Band of Cherokee Indians; Poarch Band of Creek Indians; The Chickasaw Nation; and The Muscogee (Creek) Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, UTK and TDEC-DOA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. UTK and TDEC-DOA are responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15831 Filed 7-17-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038300;
PPWOCRADN0-PCU00RP14.R50000]

**Notice of Inventory Completion:
University of Tennessee, Department
of Anthropology, Knoxville, TN, and
Tennessee Department of Environment
and Conservation, Division of
Archaeology, Nashville, TN**

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK) and the Tennessee Department of Environment and Conservation, Division of Archaeology (TDEC-DOA) have completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 19, 2024.

ADDRESSES: Dr. Ellen Lofaro, University of Tennessee, Office of Repatriation, 5723 Middlebrook Pike, Knoxville, TN 37921-6053, telephone (865) 974-3370, email nagpra@utk.edu and Phillip R. Hodge, Tennessee Department of Environment and Conservation, Division of Archaeology, 1216 Foster Avenue, Cole Building #3, Nashville, TN 37243, telephone (615) 626-2025, email Phil.Hodge@tn.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK and TDEC-DOA, and additional information on the determinations in this notice, including the results of consultation, can be found in their inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, 16 individuals have been identified. The 101 lots of associated funerary objects are 17 lots of lithics, 15 lots of faunal remains, 32 lots of floatation samples, 17 lots of charcoal, 15 lots of clay, three lots of hematite, and two lots of shell. These individuals were removed from 40GL26, the Bailey site, in Giles County, TN. The Bailey site was identified during an archeological survey by the Tennessee Department of Transportation (TDOT) due to proposed replacement of a bridge over Sugar Creek and relocation of part of State Route 11. TDOT applied for and received the required permits from TDEC-DOA. UTK was contracted to excavate and did so from May 20 to August 23, 1986. All cultural material and disinterred remains were

transferred to UTK, where they have been housed since. While some of the human remains have been "repaired" using glue, to our knowledge, no known hazardous substances were used to treat any of the remains or objects.

Human remains representing at least, two individuals have been identified. The single associated funerary object is one lot of faunal remains. These individuals were removed from a mound in Giles County, TN, around 1970 and donated to UTK by Greg Rost on an unknown date prior to 2016. Given the location and site type, this unknown site could be part of 40GL14, the Potts site. To our knowledge, no known hazardous substances were used to treat any of the remains or objects.

Cultural affiliation between these human remains and funerary objects, and the Indian Tribes listed in this notice was established via historical information, geographical information, and oral tradition. Giles County, TN is part of lands ceded to the United States by the Chickasaw, as recorded in, Treaty with the Chickasaw, 1805. Giles County, TN is also part of lands ceded to the United States by the Cherokee, as recorded in, Treaty with the Cherokee, 1806, and Treaty with the Cherokee, 1807. Tribal oral tradition also establishes that Muscogee (Creek) Ancestors once inhabited Giles County.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

UTK and TDEC-DOA have determined that:

- The human remains described in this notice represent the physical remains of 18 individuals of Native American ancestry.
- The 102 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Cherokee Nation; Eastern Band of Cherokee Indians; Poarch Band of Creek Indians; The Chickasaw Nation; and The Muscogee (Creek) Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the

authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, UTK and TDEC–DOA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UTK and TDEC–DOA are responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15830 Filed 7–17–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–OIA–DTS–37984;
PPWODIREIO–PIN00IO15.XI0000]

U.S. Nomination to the World Heritage List: U.S. Civil Rights Movement Sites

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces the decision to request that the Georgia State University's World Heritage Initiative prepare a draft nomination of U.S. Civil Rights Sites for inclusion on the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List. The decision is the result of consultation with the Federal Interagency Panel for World Heritage and the review of public comments submitted in response to an earlier notice. This notice complies with applicable World Heritage Program regulations.

ADDRESSES: To request paper copies of documents discussed in this notice,

contact April Brooks, Office of International Affairs, National Park Service, 1849 C St. NW, Room 2415, Washington, DC 20240, (202) 354–1808, or send electronic mail (Email) to: april_brooks@nps.gov.

FOR FURTHER INFORMATION CONTACT:

Jonathan Putnam, 202–354–1809. Information on the U.S. World Heritage program can be found at: https://www.nps.gov/subjects/international_cooperation/worldheritage.htm.

SUPPLEMENTARY INFORMATION:

Background

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The United States was the prime architect of the Convention, an international treaty for preservation of natural and cultural heritage sites of global significance. The World Heritage Committee, composed of representatives of 21 nations periodically elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List. There are 1,199 sites in 168 countries. Currently there are 25 World Heritage Sites in the United States. U.S. participation and the roles of the Department of the Interior (Department) and the National Park Service (NPS) are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR part 73—World Heritage Convention. Each State Party to the Convention maintains a Tentative List, periodically updated, of properties that are considered suitable for nomination. Only properties on the Tentative List are eligible to officially prepare nominations that the Department may consider for submission. An entry for U.S. Civil Rights Sites, including three churches in Alabama, has included on the U.S. Tentative List since 2008. Neither inclusion in the list nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject only to U.S. law.

The Assistant Secretary for Fish and Wildlife and Parks (Assistant Secretary) initiates the process to nominate U.S. sites to the World Heritage List by publishing a notice in the **Federal Register** seeking public comment on which properties on the U.S. Tentative List should be nominated next by the United States. The first notice (88 FR

37270, as required by 36 CFR 73.7(c) was published on June 7, 2023. Following the publication of the first notice, the Assistant Secretary consults the Federal Interagency Panel for World Heritage to review the public comments submitted and make a recommendation. If the Panel recommends that a property, or properties, be nominated and the recommendation is accepted by the Assistant Secretary, a second notice is issued. The Assistant Secretary authorized a draft nomination for the Okefenokee National Wildlife Refuge in 2023 and the U.S. Civil Rights Sites is the second nomination authorized (authorization was delayed pending completion of an assessment of the proposed nomination by the International Council on Monuments and Sites, see below). This is the second notice as required by 36 CFR 73.7(f) on the proposed nomination. The Panel assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary.

Decision To Request the Preparation of a New U.S. World Heritage Nomination

The Department received over 10,300 comments in response to the first notice, many of them regarding both the Okefenokee National Wildlife Refuge and the U.S. Civil Rights Sites, all of which were expressions of support from the property owners, elected representatives at local, state, and Federal levels, individuals, institutions, and museums. There were no comments against nominating any property, including this nomination.

The Department considered all comments received as well as the advice of the Federal Interagency Panel for World Heritage.

The Department has selected the U.S. Civil Rights Sites as a proposed U.S. serial nomination to the World Heritage List. With the assistance of the Department, including the completion of appropriate consultation with Native American Tribal governments, the Georgia State University World Heritage Initiative, along with supporting organizations and property owners, is encouraged to develop a complete nomination, in accordance with 36 CFR part 73 and the nomination format required by the World Heritage Committee.

The U.S. Civil Rights Sites nomination includes the three churches in Alabama that were included in the Tentative List in 2008: Dexter Avenue King Memorial Baptist Church, Montgomery, Alabama; Bethel Baptist

Church, Birmingham, Alabama; and, 16th Street Baptist Church, Birmingham, Alabama. Additional properties also authorized to be part of the nomination include: Robert Russa Moton High School/Museum, Farmville, Virginia; Monroe Elementary School, Topeka, Kansas (part of Brown v. Board of Education National Historical Park); Little Rock Central High School, Little Rock, Arkansas (Little Rock Central High School National Historic Site); Ebenezer Baptist Church (Heritage Sanctuary), Atlanta, Georgia (part of the Martin Luther King, Jr. National Historical Park); Greyhound Bus Terminal, Anniston, Alabama (part of Freedom Riders National Monument); Medgar and Myrlie Evers Home, Jackson, Mississippi (Medgar and Myrlie Evers Home National Monument); Lincoln Memorial and Grounds, Washington, District of Columbia (part of the National Mall and Memorial Parks); Edmund Pettus Bridge, Selma, Alabama, (part of Selma to Montgomery National Historical Trail).

The U.S. Civil Rights Sites proposal was evaluated on a preliminary basis by the International Council on Monuments and Sites (ICOMOS) in 2023 which provided an assessment report. The assessment was based on a visit by international experts to most of the proposed properties and desk reviews by experts of materials developed by Georgia State University. When the Federal Interagency Panel met to consider the proposal it recommended authorization of a draft nomination with the stipulation that the ICOMOS recommendations on the selection of properties and other matters be sufficiently addressed as the nomination is developed. Only eight of the ten additional properties are currently eligible for nomination. Two additional properties in the Georgia State proposal are not included in the authorization at this time. The Lorraine Motel in Memphis, Tennessee and the Woolworth's store in Greensboro, North Carolina are not currently National Historic Landmarks, but could be added to the nomination if they obtain the necessary designation of national significance. In the course of developing the nomination, a small number of additional properties could be added to respond to the ICOMOS recommendations.

The U.S. Civil Rights Sites are the locations of iconic events in the mid-20th century civil rights movement for African Americans in the United States of America. This movement both drew from and had a profound influence on human rights movements elsewhere in

the world, particularly insofar as they embody techniques of non-violent social change hitherto most powerfully expressed by Mahatma Gandhi. The current components in the draft nomination collectively played a preeminent role in the movement and will be nominated under criterion vi for association with events and ideas of outstanding universal value. Additional components will be considered for inclusion in keeping with the recommendations of ICOMOS.

Next Steps

A draft World Heritage nomination for U.S. Civil Rights Sites may now be prepared, in consultation with the National Park Service's Office of International Affairs. The NPS will coordinate the review and evaluation of the draft nomination to ensure it meets the requirements of 36 CFR part 73 and will cooperate with the Georgia State University World Heritage Initiative, the property owners, and other partners. Following NPS review of a complete draft nomination, the Department may submit it to the World Heritage Centre for technical review by September 30 of any year. The Centre will then provide comments by November 15 of that year. The Federal Interagency Panel for World Heritage will review a draft nomination following receipt of the Centre's comments and recommend to the Department whether the nomination should be formally submitted for consideration by the World Heritage Committee. Submittal to the World Heritage Centre by the Department through the Department of State can be made by February 1 of any year (prior to 2026, at which time a new procedure of the World Heritage Committee will take effect); the World Heritage Committee would then consider the nomination at its annual meeting in the summer of the following year, after an evaluation by ICOMOS, which is an official Advisory Body to the Committee.

Authority: 54 U.S.C. 307101; 36 CFR part 73.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2024-15806 Filed 7-17-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038292; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Chemawa (Salem) Indian School, Marion County, OR.

DATES: Repatriation of the human remains in this notice may occur on or after August 19, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-2374, email jpickering@fas.harvard.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at minimum, one individual was collected at the Chemawa (Salem) Indian School in Marion County, OR. The human remains are hair clippings collected from one individual, "Alasalsus Jefferson" who was recorded as being 14 years old and identified as "Tulalip." James T. Ryan took the hair clippings at the Sherman Institute between 1930 and 1933. Ryan sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the available information and the results of consultation, cultural

affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Lummi Tribe of the Lummi Reservation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15837 Filed 7–17–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038291;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Folsom History, Folsom, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and

Repatriation Act (NAGPRA), Folsom History intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after August 19, 2024.

ADDRESSES: Shelby Sorensen, Folsom History, 823 Sutter Street, Folsom, CA 95630, telephone (916) 985–2707, email shelby@folsomhistory.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Folsom History, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Two lots of cultural items have been requested for repatriation. The two lots of objects of cultural patrimony are two lots of modified stones. At an unknown date, one of modified stone was removed from Placer County, CA. At another unknown date, one lot of modified stones was removed from an unknown location that is believed to be somewhere in west Placer County, CA. Folsom History had acquired the two lots of modified stone in 2017. There is no noted presence of any potentially hazardous substances that have been used to treat the cultural items.

Determinations

Folsom History has determined that:

- The two lots of objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the United Auburn Indian Community of the Auburn Rancheria of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized

representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, Folsom History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Folsom History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15836 Filed 7–17–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038304;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 19, 2024.

ADDRESSES: Dr. Ellen Lofaro, University of Tennessee, Office of Repatriation, 5723 Middlebrook Pike, Knoxville, TN

37921–6053, telephone (865) 974–3370, email nagpra@utk.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least six individuals have been identified. The two associated funerary objects are one lot of ceramics and one lot of faunal remains. In February 2009, students from the Mars Hill Bible School in Florence, Lauderdale County, Alabama found remains while out around a bluff, and later found additional remains while they were looking in the same area. After the students removed the remains and took them to class, the Sheriff's Department was contacted to take possession of them. An investigator from the department sent the remains to Dr. Lee Jantz at UTK for examination. These remains were retained by the UTK Forensic Anthropology Center (FAC) as case 09–02. They were housed by the FAC until they were recently transferred to the UTK Office of Repatriation (OR). Some of the remains were “repaired” using an unknown, thick foam-like adhesive material.

Human remains representing, at least two individuals have been identified. No associated funerary objects are present. A scout leader found the remains in a cave in Franklin County, Tennessee, and alerted law enforcement officials. A police officer received the remains from the scout leader on September 20, 1997. The officer transferred them to the Franklin County Sheriff's Department two days later. A captain from the department contacted Dr. William Bass at UTK for assistance in determining if the remains were of medicolegal concern. The remains were transferred to UTK on September 26, 1997, and examined by Michelle Hamilton. Once determined to be of Native American origin, the remains were retained by the FAC as case 97–28. They remained at the FAC until they were recently transferred to the OR. To our knowledge, the remains were not treated with any potentially hazardous substances.

Human remains representing, at least one individual have been identified. The one associated funerary object is one lot of faunal remains. At an

unknown time, these remains were removed by an unknown party, from a cave in Franklin County, TN. On August 9, 2012, the remains were given to an investigator with the county Sheriff's Department. The investigator transferred them to a Tennessee Bureau of Investigation (TBI) Special Agent, who contacted Dr. Lee Meadows Jantz at UTK to have them examined. The remains were retained by the FAC as case 12–07. They remained at the FAC until they were recently transferred to the OR. To our knowledge, no potentially hazardous substances were used to treat any of the remains or objects.

Human remains representing, at least two individuals have been identified. No associated funerary objects are present. Cavers discovered the remains while exploring with a group of children in Grundy County, TN, on February 13, 1995, and alerted law enforcement officials. That same day, a TBI agent contacted Dr. Murray Marks at the FAC for his assistance, and a team of graduate students were sent to the site to investigate further. Once the examination of the remains was complete, they were determined to be Native American, and they were retained by the FAC as case 95–9. They remained at the FAC until they were recently transferred to the OR. Some of the remains were “repaired” using glue, but to our knowledge, no potentially hazardous substances were used to treat any of the remains.

Human remains representing, at least one individual have been identified. No associated funerary objects are present. On Saturday, January 7, 2006, a resident of Pelham, TN, was digging for projectile points when he found human remains below the surface. He removed them and took them to Grundy County law enforcement officials. On January 10, the remains were transferred to a TBI Special Agent, who subsequently sent them to UTK for examination, where they were received on February 26. After the remains were examined and determined not to be of medicolegal concern (not a missing person or crime victim), they were retained by the FAC as case 06–06. They remained at the FAC until they were recently transferred to the OR. To our knowledge, no potentially hazardous substances were used to treat any of the remains.

Human remains representing, at least two individuals have been identified. No associated funerary objects are present. The remains were found in a cave in Lawrenceburg, Lawrence County, TN, by an unknown party in February 1981, and local law enforcement officials were informed. A

TBI agent contacted Bass for assistance in identifying the remains, and subsequently sent them to UTK where they were examined by Patrick Willey in March 1981. Once determined to be Native American and not of recent origin, the remains were retained by the FAC as case 81–8. They remained at the FAC until they were recently transferred to the OR. To our knowledge, no potentially hazardous substances were used to treat any of the remains.

Human remains representing, at least two individuals have been identified. The four associated funerary objects are one lot of botanicals, one lot of faunal remains, one lot of lithics, and one lot of unidentified objects. At an unknown time, these remains and funerary objects were found by an unknown party in a cave in Lawrence County, TN. In January 1996, a TBI agent informed Bass of the discovery, and the remains were sent to Bass at UTK for examination, which was completed on February 8, 1996. Once determined not to be of recent origin, the remains were retained by the FAC as case 96–04. They remained at the FAC until they were recently transferred to the OR. To our knowledge, no potentially hazardous substances were used to treat any of the remains or objects.

Lauderdale County, Alabama, and Franklin, Grundy, and Lawrence Counties, Tennessee, are part of the aboriginal Homeland of the Chickasaw people, as documented in the Treaties with the United States and Chickasaw of 1805, 1816, and 1818. These counties are also part of the aboriginal Homeland of the Cherokee, as documented in Treaties with the Cherokee, 1806, 1807, and 1819.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

UTK has determined that:

- The human remains described in this notice represent the physical remains of 16 individuals of Native American ancestry.
- The seven objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the

Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15832 Filed 7-17-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038293; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Western Washington University, Department of Anthropology, Bellingham, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Western Washington University (WWU) has completed an inventory of human remains and associated funerary objects and has determined that there is a

cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from 45-WH-34 in Whatcom County, WA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 19, 2024.

ADDRESSES: Dr. Judith Pine, Western Washington University, Department of Anthropology, Arntzen Hall 340, 516 High Street, Bellingham, WA 98225, telephone (360) 650-4783, email pinej@www.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the WWU, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at minimum, four individuals and 59 associated funerary objects were removed from along the Nooksack River in Ferndale, Whatcom County, WA. Students from WWU worked at site 45-WH-34 under the direction of WWU professor Dr. Garland Grabert in spring and summer of 1972. As part of the field school, students excavated multiple one-meter by one-meter units. The 59 associated funerary objects consist of bone and tooth pendants, bone, stone and antler tools and fired clay. No known individuals were identified. No hazardous chemicals are known to have been used to treat the human remains while in the custody of WWU.

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archaeological information, geographical information, historical information, and oral tradition.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the

information available about the human remains and associated funerary objects described in this notice.

Determinations

The WWU has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.

- A total of 59 associated funerary objects are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a connection between the human remains described in this notice and the Lummi Tribe of the Lummi Reservation and the Nooksack Indian Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, the WWU must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The WWU is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15838 Filed 7-17-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS–WASO–NAGPRA–NPS0038289;
PPWOCRADNO–PCU00RP14.R50000]

**Notice of Intended Repatriation:
Museum of Us, San Diego, CA**

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of Us intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after August 19, 2024.

ADDRESSES: Carmen Mosley, NAGPRA Repatriation Manager, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 42, email cmosley@museumofus.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of Us, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 176 cultural items from five sites have been requested for repatriation. One object of cultural patrimony removed from Flint Mound (CV–17; CA–SAC–115) in lower Sacramento, Sacramento County, CA, includes one baked clay effigy. One object of cultural patrimony removed from Tamien Village Site (CV–21) in northern Sacramento, Sacramento County, CA, includes one string of stone disc beads. The 13 objects of cultural patrimony removed from Easter Mound (CV–23) near Elk Grove, Sacramento, Sacramento County, CA, includes one small set of disc beads, one set of *Olivella* beads, five *Haliotis* ornaments, one set of small miscellaneous ornaments, one bone button, and four miscellaneous stone pieces. The 159 objects of cultural patrimony removed from Jacobs Mound (CV–27) in Sacramento County, CA, include 159

clam shell disc bead blanks. The two objects of cultural patrimony from Jimeno Mound (CV–29) near Grand Island, Sacramento County, CA, include one string of clam shell disc beads, and one lot of loose glass trade beads.

Between 1930 and 1936, the 176 objects of cultural patrimony were removed by Henry Gibbs, a private collector and looter. In 1937, Paul A. Walker purchased Gibbs' Central Valley, California archeological collection. Walker was an amateur archeologist and collector who worked by himself and with other amateur archeologists, and in collaboration with the University of California and Sacramento Junior College. Over the course of his life, Walker amassed an extensive archeological collection from California's Central Valley and smaller collections from Northern and Southern California, and outside of California. In 1968, Walker's private archeological collection was acquired by the San Diego Museum of Man (now Museum of Us) through a purchase/donation transaction with Walker's widow, Bessie B. Walker.

Determinations

The Museum of Us has determined that:

- The 176 objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Wilton Rancheria, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, the Museum of Us must determine the most appropriate requestor prior to

repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Museum of Us is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15834 Filed 7–17–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS–SERO–NCPTT–37830;
PPWOCRADS2, PCU00PT14.GT0000]

**Request for Nominations for the
Preservation Technology and Training
Board**

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service (NPS), U.S. Department of the Interior, is requesting nominations for qualified persons to serve as members of the Preservation Technology and Training Board (Board).

DATES: Written nominations must be postmarked by August 19, 2024.

ADDRESSES: Nominations should be sent to Kirk A. Cordell, Executive Director, National Center for Preservation Technology and Training, National Park Service, 645 University Parkway, Natchitoches, Louisiana 71457, or email at ncptt@nps.gov.

FOR FURTHER INFORMATION CONTACT: Kirk A. Cordell, via telephone (318) 356–7444. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Established within the Department of the Interior, the National Center for Preservation Technology and Training (Center) is located at Northwestern State University of Louisiana in Natchitoches, Louisiana. Title IV, section 404 of Public Law 102–575, October 30, 1992,

established the Board to provide advice and professional oversight to the Secretary of the Interior and the Center regarding the activities of the Center and to submit an annual report to the President and the Congress.

The Board is comprised of 13 members appointed for 4-year terms, as follows: (a) one member serving as the Secretary's designee; (b) six members who represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and (c) six members on the basis of outstanding professional qualifications who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

We are currently seeking members in categories (b) and (c). Nominations should be typed and should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Board and permit the Department to contact a potential member. All documentation, including letters of recommendation, must be compiled and submitted in one complete package. All those interested in membership, including current members whose terms are expiring, must follow the nomination process. Members may not appoint deputies or alternates.

Members of the Board serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Board as approved by the NPS, members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under 5 U.S.C. 5703.

Authority: 5 U.S.C. ch. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2024-15841 Filed 7-17-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038294;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Missouri Department of Natural Resources, Jefferson City, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Missouri Department of Natural Resources (MoDNR) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after August 19, 2024.

ADDRESSES: Caroline Crecelius, Repatriation Coordinator, Missouri Department of Natural Resources, 1659 E. Elm Street, Jefferson City, MO 65101, telephone (573) 526-4249, email *Caroline.Crecelius@dnr.mo.gov*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the MoDNR, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. The inventory includes one partial human skull, representing one individual. The skull was discovered in a sand bar in a bend on the Missouri River in Sibley, Missouri, located in Ray County. The location of the discovery is across the river from Fort Osage National Historic Monument. Following examination on site by local law enforcement and medical examination staff, the Ray County coroner reached out to The Osage Nation to consult. The Osage Nation reached out to the MoDNR's repatriation coordinator about the case and, following consultation, the MoDNR took control of the remains from Ray County.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location of the human remains.

Determinations

The MoDNR has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, the MoDNR must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The MoDNR is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15839 Filed 7-17-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038290;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Museum of Us, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of Us has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after August 19, 2024.

ADDRESSES: Carmen Mosley, NAGPRA Repatriation Manager, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239-2001 Ext. 42, email cmosley@museumofus.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of Us, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

The 77 associated funerary objects are from two sites. The 18 associated funerary objects removed from Elliot Mound (CV-7; CA-SAC-88) in Sacramento County, CA, include 18 spool-shaped baked clay items. The 59 associated funerary objects removed from Willow Mound (CV-18) in Sacramento County, CA include 14 bone beads, one bone tube, seven *Haliotis* ornaments, two strings of clam shell beads, one string *Olivella* beads, two strings glass trade beads, one lot loose beads, one carbonized hair and textile material fragment, five charmstone fragments, three pieces miscellaneous stone; six pieces miscellaneous material, five perforated stone discoids, one obsidian projectile point, two brass buttons, one brass buckle, and seven metal objects.

Between 1930 and 1936, the 77 associated funerary objects were removed by Henry Gibbs, a private collector and looter. In 1937, Paul A. Walker purchased Gibbs' Central Valley, California archeological collection. Walker was an amateur archeologist and collector who worked by himself and with other amateur archeologists, and in collaboration with the University of California and Sacramento Junior College. Over the course of his life,

Walker amassed an extensive archeological collection from California's Central Valley and smaller collections from Northern and Southern California, and outside of California. In 1968, Walker's private archeological collection was acquired by the San Diego Museum of Man (now Museum of Us) through a purchase/donation transaction with Walker's widow, Bessie B. Walker.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the associated funerary objects described in this notice.

Determinations

The Museum of Us has determined that:

- The 77 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the associated funerary objects described in this notice and the Wilton Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, the Museum of Us must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. The Museum of Us is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15835 Filed 7-17-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

**[NPS-WASO-IEV-NPS0037617;
PPWOIEADC0 PPMVSIE1Y.Y00000 244 ;
OMB Control Number 1024-NEW]**

**Agency Information Collection
Activities; National Park Service
Education Program Feedback Form**

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 we, the National Park Service (NPS) are proposing a new information collection. **DATES:** Interested persons are invited to submit comments on or before September 16, 2024.

ADDRESSES: Written comments on this information collection request (ICR) can be sent to the NPS Information Collection Clearance Officer (ADIR-ICCO), 13461 Sunrise Valley Drive, (MS 244) Herndon, VA 20171 (mail); or phadrea_ponds@nps.gov (email). Please reference Office of Management and Budget (OMB) Control Number "1024-NEW (Education Feedback)" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Beth Wright, Chief of Interpretation, at Beth.Wright@nps.gov (email) or 229-815-5049 (telephone). Please reference OMB Control Number 1024-NEW (Education Feedback) in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection

requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary for the proper functions of the NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Authorized by 54 U.S.C. 100803(4), NPS will use an Education Feedback Form to evaluate education programs. The information collected will be used to improve programming, provide feedback to staff leading programs, and highlight success for management and partners. The Education Feedback Form will be made available to all NPS sites to distribute to participating schools for teachers to provide voluntary feedback. The number of potential respondents is based on NPS service-wide database of the education program services provided in 2023.

Title of Collection: National Park Service Education Program Feedback Form.

OMB Control Number: 1024–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 20,000.

Estimated Completion Time per Response: 10 Mins.

Total Estimated Number of Annual Burden Hours: 3,333 hrs.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor nor is a person required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

*Information Collection Clearance Officer,
National Park Service.*

[FR Doc. 2024–15867 Filed 7–17–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
245S180110; S2D2S SS08011000
SX064A000 24XS501520; OMB Control
Number 1029–0103]

Agency Information Collection Activities; Certification and Noncoal Reclamation

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 19, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 1544–MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0103 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at (202) 208–2716. Individuals in the United States who are deaf, deafblind,

hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 5, 2024 (89 FR 15892). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire

comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This Part establishes procedures and requirements for a Governor of a State or equivalent head of an Indian tribe to certify to the Secretary that the State/Indian tribe has achieved all known coal related reclamation objectives. It also established procedures for States and Indian tribes to implement a noncoal reclamation program as set forth in Section 411 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Title of Collection: Certification and Noncoal Reclamation.

OMB Control Number: 1029–0103.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 28.

Total Estimated Number of Annual Burden Hours: 28.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 2024–15864 Filed 7–17–24; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
245S180110; S2D2S SS08011000
SX064A000 24XS501520; OMB Control
Number 1029–0129]

Agency Information Collection Activities; Reclamation Awards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 19, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 1544–MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0129 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at (202) 208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised,

and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 5, 2024 (89 FR 15893). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Since 1986, the Office of Surface Mining Reclamation and Enforcement has presented awards to coal mine operators who completed exemplary active reclamation. A parallel award program for abandoned mine land reclamation began in 1992. The objective is to give public recognition to those responsible for the nation's most outstanding achievement in environmentally sound surface mining

and land reclamation and to encourage the exchange and transfer of successful reclamation technology.

Title of Collection: Reclamation Awards.

OMB Control Number: 1029–0129.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses and State governments.

Total Estimated Number of Annual Respondents: 33.

Total Estimated Number of Annual Responses: 37.

Estimated Completion Time per Response: Varies from 2 hours to 70 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 813.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$3,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Office of Surface Mining Reclamation and
Enforcement.*

[FR Doc. 2024–15863 Filed 7–17–24; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Network Switching and Routing Equipment Supporting Bit Indexed Explicit Replication (Bier)*, DN 3761; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC

20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Optimum Communications Services, Inc. on July 12, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network switching and routing equipment supporting bit indexed explicit replication (BIER). The complaint names as respondents: Beijing Tongruida Information Technology Co., Ltd. (Tongruida) of China; Ella Optoelectronic Technology Hebei Co., Ltd. (Ella) of China; Zhengzhou Qiongzhi Ceyu Network Technology Co., Ltd. (Qiongzhi) of China; and Beijing Morriss Technology Co., Ltd. (Morriss) of China. The complainant requests that the Commission issue a general exclusion order and cease and desist orders.

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3761") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 12, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–15756 Filed 7–17–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0365]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Death-in-Custody Reporting Act Program Collection

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Justice Assistance (BJA), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until August 19, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: James Steyee, Program Analyst (DCRA) at james.d.steyee@usdoj.gov or telephone: 202–880–7420.

SUPPLEMENTARY INFORMATION:

The proposed information collection was previously published in the **Federal Register** on May 7, 2024, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

A. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

B. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

C. Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

D. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of currently approved collection.

2. *The Title of the Form/Collection:* Death in Custody Reporting Act Program Collection.

3. *Form number:* DCR–1 and DCR–1A. DCR–1 (Quarterly Summary). This summary form requires States to either (1) identify all known reportable deaths that occurred in their jurisdiction during the corresponding quarter, or (2) affirm that no reportable deaths occurred in the State during the reporting period.

For each quarter in a fiscal year, a State must complete the Quarterly Summary (Form DCR–1) and submit it by the reporting deadline. The Quarterly Summary an accounting of all reportable deaths that occurred in the State during the corresponding quarter. If a State did not have a reportable death during the quarter, the State must so indicate on the Quarterly Summary. The reporting deadline to submit the Quarterly Summary is the last day of the month following the close of the quarter. For each quarter, BJA will send two reminders prior to the reporting deadline. Example. The second quarter of a fiscal year is January 1–March 31. The deadline to submit the second quarter Quarterly Summary (DCR–1) is April 30. BJA will send a reminder to States on or around March 31 and April 15.

DCR–1A (Incident Report). This incident report form requires States to provide additional information for each reportable death identified in the Quarterly Summary that occurred during interactions with law enforcement personnel or while in their custody.

For each reportable death identified in the Quarterly Summary, a State must complete and submit by the same reporting deadline an Incident Report (Form DCR–1A), which contains specific information on the circumstances of the death and additional characteristics of the decedent. These include:

- The decedent's name, year of birth, gender, race, and ethnicity.
- The date of facility admission/arrest
- Date of death and time of death
- Location of the death including location name and address and facility type

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

- Name of the department or agency that detained, arrested, or was in the process of arresting the deceased
- Manner of death (or if unavailable due to and ongoing investigation, the name of the agency conducting the investigation)
- Description of the circumstances leading to the death.

States must answer all questions on the Incident Report before they can submit the form. If the State does not have sufficient information to complete one of the questions, then the State may select the “unknown” answer, if available, and then identify when the information is anticipated to be obtained.

4. *Component:* Bureau Justice Assistance, U.S. Department of Justice.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number [1121–0365]. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension.
2. *Title of the Form/Collection:* Death in Custody Reporting Act Program Collection.
3. *Agency form number:* DCR–1 and DCR–1A; Department of Justice, Office of Justice Program, Bureau of Justice Assistance.
4. *Affected public who will be asked or required to respond:* State (primary); Local units of government (secondary).
5. *Abstract:* To comply with the mandate of the Death in Custody Reporting Act (Pub. L. 113–242), BJA is requesting an extension of its DCRA data collection form (which has been in place since the beginning of FY 2020 and requires states to report certain

information about each reportable death in their state to the BJA. The DCRA Program requires State Administering Agencies (SAA) to collect and submit information regarding *the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, State-run boot camp prison, boot camp prison that is contracted out by the State, any State or local contract facility, or other local or State correctional facility (including any juvenile facility)* (Pub. L. 113–242).

For purposes of this notice, the term “reportable death” means any death that the DCRA Program or the Department’s guidelines require States to report. Generally, these are deaths that occurred during interactions with law enforcement personnel or while the decedent was in their custody or in the custody, under the supervision, or under the jurisdiction of a State or local law enforcement or correctional agency, such as a jail or prison and further defined in BJA’s DCRA Reporting Guidance and FAQ as well as its DCRA Compliance Guidelines.

The DCRA requires states to submit all known reportable deaths on a quarterly basis using an online data collection form in the Performance Measurement Tool (PMT). States may back-report deaths not previously known to them as well as correct and revising records with missing or unknown information each quarter.

Affected public who will be asked or required to respond, as well as the obligation to respond: State (Primary) and Local Agencies (secondary). The obligation to respond is mandatory to comply with the DCRA (Pub. L. 113–242).

6. *Total Estimated Number of Respondents:* For purposes of this collection, the term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. Thus, the affected public that will be asked to respond on a quarterly basis each federal fiscal year includes the State Administering Agencies in each of the 56 States and Territories. These SAAs will be requesting information from approximately 19,450 state and local law enforcement agencies (LEAs), 56 state and territorial departments of corrections, and about 2,800 local adult jail jurisdictions. Not all jurisdictions will be required to report a death every quarter dependent upon whether they experience any reportable deaths.

7. *Estimated Time per Respondent:* For purposes of this burden calculation, it is estimated that for each fiscal year there will be a total of 1,481 reportable deaths by 950 LEAs, 919 reportable deaths by about 335 jails, and 3,360 reportable deaths by nearly 540 prisons.

For FY 2024 and beyond, the total projected respondent burden is:

States estimated time to complete DCR–1 each quarter: 4 hrs. * 4 quarters * 56 state = 896 hours.

State estimated time to review and submit DCR–1A each quarter for each death: .25 hrs. * 7500 estimated deaths per year = 1875 hours.

LEAs estimated time to complete DCR–1A on behalf of state: 950 estimated LEA * 4 quarters * .75 hours = 2850 hours.

Jails estimated time to complete DCR–1A on behalf of state: 335 estimated jails * 4 quarters * .75 hours = 1005 hours.

Prison estimated time to complete DCR–1A on behalf of state: 540 estimated prisons * 4 quarters * .75 hours = 1620 hours.

8. *Frequency:* Quarterly.

9. *Total Estimated Annual Time Burden:* 8246 hours.

10. *Total Estimated Annual Other Costs Burden:* \$294,134 (\$35.67/hour * 8246 hours).

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: July 15, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–15861 Filed 7–17–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB 1140–0117]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Financial Responsibility Acknowledgement—ATF Form 8620.28

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of

Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 16, 2024

FOR FURTHER INFORMATION CONTACT:

If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Jacklyn Wiltshire/Taiya Jarrett, Personnel Security Division, either by mail at U.S. Department of Justice, PSD—Room (1E–300), 99 New York Ave. NE, Washington, DC 20226, by email at Jacklyn.Wiltshire@atf.gov, or telephone at 202–648–9260.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

- including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Abstract: The proposed information collection (IC) OMB # 1140–0117—Financial Responsibility Acknowledgement—ATF Form 8620.28 (previously titled 'Financial History Questionnaire') is being revised to remove the requirement for a candidate to provide specific financial obligation information to ATF and replace it with an acknowledgment that the candidate understands the financial obligation information provided on the form, acknowledges that ATF will conduct a review of the candidate's financial records, and agrees to provide proof of resolution to ATF if requested to do so.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Financial Responsibility Acknowledgement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 8620.28.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Individuals or households.

The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will respond to this collection once annually, and it will take each respondent approximately 3 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 100 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * 0.05 (3 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
ATF Form 8620.28	2,000	1/annually	100	3	100

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: July 15, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–15860 Filed 7–17–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There

will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at ACVETEO@dol.gov. Additional information regarding the Committee, including its charter, current membership list, annual reports, meeting minutes, and meeting updates may be found at <https://www.dol.gov/agencies/vets/about/advisorycommittee>. This notice also describes the functions of the ACVETEO. This document is intended to notify the general public.

DATES: Wednesday, August 7, 2024 beginning at 9 a.m. and ending at approximately 12 p.m. (EDT).

ADDRESSES: This ACVETEO meeting will be held via TEAMS and teleconference. Meeting information will be posted at the link below under

the Meeting Updates tab. <https://www.dol.gov/agencies/vets/about/advisorycommittee>.

Notice of Intent to Attend the Meeting: All meeting participants should submit a notice of intent to attend by Wednesday, July 24, 2024, via email to Mr. Gregory Green at ACVETEO@dol.gov, subject line “August 2024 ACVETEO Meeting.” Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Wednesday, July 31, 2024, by contacting Mr. Gregory Green at ACVETEO@dol.gov. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Designated Federal Official for the ACVETEO, ACVETEO@dol.gov, (202) 693-4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. 10. The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for Veterans’ Employment and Training Service, with respect to outreach activities and employment and training needs of veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

- 9:00 a.m.—Welcome and remarks, James D. Rodriguez, Assistant Secretary, Veterans’ Employment and Training Service
- 9:10 a.m.—Administrative Business, Gregory Green, Designated Federal Official
- 9:15 a.m.—Service Delivery, Underserved Population and Innovative Veteran Training and Employment Subcommittee breakout rooms
- 11:45 p.m.—Public Forum, Gregory Green, Designated Federal Official
- 12:00 p.m.—Adjourn

Signed in Washington, DC, this 15th day of July 2024.

James D. Rodriguez,
Assistant Secretary, Veterans’ Employment and Training Service.

[FR Doc. 2024–15822 Filed 7–17–24; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2024–045]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that it has submitted to OMB for approval the information collection described in this notice. We invite you to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: OMB must receive written comments at the address below on or before August 19, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the proposed information collection and supporting statement to Tamee Fechhelm by phone at 301–837–1694.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on May 8, 2024 (89 FR 38920); and we received no comments. We have therefore submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for NARA to properly perform its functions; (b) NARA’s estimate of the burden of the proposed information collection and its accuracy; (c) ways NARA could enhance

the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including the through information technology; and (e) whether the collection affects small businesses. In this notice, NARA solicits comments concerning the following information collection:

Title: Use of NARA Official Seals and/or Logos.

OMB number: 3095–0052.

Agency form number: N/A.

Type of review: Regular.

Affected public: Business or other for-profit, Not-for-profit institutions, Federal government.

Estimated number of respondents: 37.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 9 hours.

Abstract: The authority for this information collection is contained in 36 CFR 1200.8. NARA’s three official seals are the National Archives and Records Administration seal; the National Archives seal; and the National Archives Trust Fund Board seal. The official seals are used to authenticate various copies of official records in our custody and for other official NARA business. We also have an official NARA logo, and other official program and office logos (such as the **Federal Register** logo, Presidential library logos, Controlled Unclassified Information logo, National Historical Publications and Records Center logo, and more). Occasionally, when criteria are met, we will permit the public or other federal agencies to use our official seals and logs. The requestor must submit a written request, that includes certain information outlined in 36 CFR part 1200, to use the official seals and logos. We approve or deny the requests using specific criteria, also outlined in the regulation.

Sheena Burrell,

Executive for Information Services/CIO.

[FR Doc. 2024–15751 Filed 7–17–24; 8:45 am]

BILLING CODE 7515–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Mergers and Transfers Between Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained in PBGC's regulation on Mergers and Transfers Between Multiemployer Plans. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted on or before August 19, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

All comments received will be posted without change to PBGC's website, www.pbgc.gov, including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

A copy of the request will be posted on PBGC's website at www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment. It may also be obtained without charge by writing to the Disclosure Division (disclosure@pbgc.gov), Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024-2101; or, calling 202-229-4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Monica O'Donnell (odonnell.monica@pbgc.gov), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024-2101, 202-229-8706. If you are deaf or hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Section 4231(a) and (b) of the Employee Retirement Income Security Act of 1974 (ERISA) requires plans that are involved in a merger or transfer to give PBGC 120 days notice of the transaction and provides that if PBGC determines that specified requirements are satisfied, the

transaction will be deemed not to be in violation of ERISA section 406(a) or (b)(2) (dealing with prohibited transactions).

PBGC's regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231) sets forth the procedures for giving notice of a merger or transfer under section 4231 and for requesting a compliance determination. The regulations specify the information that must be included in a merger or transfer notice. A request for a compliance determination must provide additional information to enable PBGC to make an explicit finding that the merger/transfer requirements have been satisfied.

Section 4231(e) of ERISA clarifies PBGC's authority to facilitate a merger (a "facilitated merger") of two or more multiemployer plans if certain statutory requirements are met. For purposes of section 4231(e), "facilitation" may include training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies. In addition, subject to the requirements of section 4231(e)(2), PBGC may provide financial assistance (within the meaning of section 4261 of ERISA) to facilitate a merger (a "financial assistance merger") it determines is necessary to enable one or more of the plans involved to avoid or postpone insolvency. PBGC's regulations specify the information requirements for a voluntary request for a facilitated merger under section 4231(e) of ERISA, including a financial assistance merger.

PBGC uses information submitted by plan sponsors under the regulation to determine whether mergers and transfers conform to the requirements of ERISA section 4231 and the regulation.

The collection of information under the regulation has been approved by OMB under control number 1212-0022 (expires October 31, 2024). On May 9, 2024, PBGC published in the **Federal Register** (at 89 FR 39663) a notice informing the public of its intent to request an extension of this collection of information. No comments were received. PBGC is requesting that OMB extend approval of the collection for 3 years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that there are 15 transactions each year (excluding financial assistance mergers). The estimated annual burden of the collection of information for 15 transactions (excluding financial assistance mergers) is 15 fund office

hours and \$74,400 in contractor costs for work by attorneys and actuaries. PBGC further estimates that there is one request each year for a financial assistance merger. The annual burden of the collection of information for financial assistance mergers is 10 fund office hours and \$36,000 in contractor costs. The total annual burden of the collection of information is approximately 25 fund office hours and \$110,400 in contractor costs.

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2024-15791 Filed 7-17-24; 8:45 am]

BILLING CODE 7709-02-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 10, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 156 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-422, CP2024-429.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-15781 Filed 7-17-24; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 12, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 161 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-427, CP2024-434.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-15759 Filed 7-17-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 10, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 153 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-419, CP2024-426.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-15778 Filed 7-17-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 11, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 157 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-423, CP2024-430.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-15782 Filed 7-17-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 10, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 154 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024-420, CP2024-427.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-15779 Filed 7-17-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 12, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 160 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024-426, CP2024-433.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-15758 Filed 7-17-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 10, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 155 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–421, CP2024–428.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15780 Filed 7–17–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 151 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–416, CP2024–423.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15776 Filed 7–17–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 12, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 159 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–425, CP2024–432.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15757 Filed 7–17–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 12, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 158 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–424, CP2024–431.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15784 Filed 7–17–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 150 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–415, CP2024–422.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15775 Filed 7–17–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 18, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 10, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 152 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024–418, CP2024–425.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–15777 Filed 7–17–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100519; File No. SR–CboeEDGX–2024–044]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Strike Interval for Options on SPDR® Gold Shares

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 2, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend the strike interval for options on SPDR® Gold Shares (“GLD”). The text of the proposed rule change is provided below. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

* * * * *

Rule 19.6. Series of Options Contracts Open for Trading

* * * * *

(d) The interval between strike prices of series of options on individual stocks will be:

* * * * *

(4) The interval between strike prices of series of options on Fund Shares approved for options trading pursuant to Rule 19.3(i) shall be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on EDGX Options, or at such intervals as may have been established on another options exchange prior to the initiation of trading on EDGX Options. Notwithstanding any other provision regarding the interval between strike prices of series of options on Fund Shares in this Rule, the interval between strike prices of series of options on Standard & Poor’s Depository Receipts Trust (“SPY”), iShares S&P 500 Index ETF (“IVV”), [and] the DIAMONDS Trust (“DIA”), and SPDR® Gold Shares (“GLD”) will be \$1 or greater.

* * * * *

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 19.6, “Series of Options Contracts Open for Trading.” Specifically, the Exchange proposes to amend Rule 19.6(d)(4) to allow for the interval between strike prices of series of options on Fund Shares of SPDR® Gold Shares or “GLD” to be \$1 or greater, including where the strike price is greater than \$200.

Currently Rule 19.6, Interpretation and Policy .01 provides, in relevant part, that for series of options on Exchange-Traded Fund Shares that

satisfy the criteria set forth in Rule 19.3(i), the interval of strike prices may be \$1 or greater where the strike price is \$200 or less or \$5 or greater where the strike price is over \$200, subject to certain exceptions set forth in Rule 19.3 [sic], Interpretations and Policies .02 and .03.

Further, current Rule 19.6(d)(4) provides that notwithstanding any other provision regarding the interval between strike prices of series of options on Fund Shares in Rule 19.6, the interval between strike prices of series of options on Standard & Poor’s Depository Receipts Trust (“SPY”), iShares S&P 500 Index ETF (“IVV”), and the DIAMONDS Trust (“DIA”) will be \$1 or greater. At this time, the Exchange proposes to modify the interval setting regime to be \$1 or greater for GLD options, similar to SPY, IVV, and DIA. The Exchange believes that the proposed rule change would make GLD options easier for investors and traders to use and more tailored to their investment needs. GLD is an Exchange-Traded Fund Share designed to closely track the price and performance of the price of gold bullion. GLD is widely quoted as an indicator of gold stock prices and is a significant indicator of overall economic health. Investors use GLD to diversify their portfolios and benefit from market trends. Additionally, GLD is a leading product in its asset class that trades within a “complex” where, in addition to the underlying security, there are multiple instruments available for hedging such as, COMEX Gold Futures; Gold Daily Futures; iShares GOLD Trust; SPDR GOLD Minishares Trust; Aberdeen Physical Gold Trust; and GraniteShares Gold Shares. Accordingly, the Exchange believes that offering a wider base of GLD options affords traders and investors important hedging and trading opportunities, particularly in the midst of current price trends. The Exchange believes that not having the proposed \$1 strike price intervals above \$200 in GLD significantly constricts investors’ hedging and trading possibilities. The Exchange therefore believes that by having smaller strike intervals in GLD, investors would have more efficient hedging and trading opportunities due to the lower \$1 interval ascension. The proposed \$1 interval above the \$200 strike price, will result in having at-the-money series based upon the underlying ETF moving less than 1%. The Exchange believes that the proposed strike setting regime is in line with the slower movements of broad-based indices. Considering the fact that \$1 intervals already exist below the \$200

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

price point and that GLD have consistently inclined in price toward the \$200 level, the Exchange believes that continuing to maintain the current \$200 level (above which intervals increase 500% to \$5), may have a negative effect on investing, trading and hedging opportunities, and volume. The Exchange believes that the investing, trading, and hedging opportunities available with GLD options far outweighs any potential negative impact of allowing GLD options to trade in more finely tailored intervals above the \$200 price point. The proposed strike setting regime would permit strikes to be set to more closely reflect the increasing value in the underlying and allows investors and traders to roll open positions from a lower strike to a higher strike in conjunction with the price movements of the underlying ETF. Under the current rule, where the next higher available series would be \$5 away above a \$200 strike price, the ability to roll such positions would be impaired. Accordingly, to move a position from a \$200 strike to a \$205 strike under the current rule, an investor would need for the underlying product to move 2.5%, and would not be able to execute a roll up until such a large movement occurred. The Exchange believes that with the proposed rule change, the investor would be in a significantly safer position of being able to roll his open options position from a \$200 to a \$201 strike price, which is only a 0.5% move for the underlying. As a result, the proposed rule change will allow the Exchange to better respond to customer demand for GLD strike price more precisely aligned with the smaller, longer-term incremental increases in the underlying ETF. The Exchange believes that the proposed rule change, like the other strike price programs currently offered by the Exchange, will benefit investors by providing investors the flexibility to more closely tailor their investment and hedging decisions using GLD options. Moreover, by allowing series of GLD options to be listed in \$1 intervals between strike prices over \$200, the proposal will moderately augment the potential total number of options series available on the Exchange. However, the Exchange believes it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange also believes that Members will not have a capacity issue due to the proposed rule change. In addition, the Exchange represents that it does not believe that this expansion will

cause fragmentation of liquidity, but rather, believes that finer strike intervals will serve to increase liquidity available as well as price efficiency by providing more trading opportunities for all market participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,⁸ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange’s Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the proposed rule change will allow investors to more easily use GLD options. Moreover, the proposed rule change would allow investors to better trade and hedge positions in GLD options where the strike price is greater than \$200, and ensure that investors in both options are not at a disadvantage simply because of the strike price. The Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and

the rules of the Exchange. The proposal allows the Exchange to respond to customer demand to allow GLD options to trade in \$1 intervals above a \$200 strike price. The Exchange does not believe that the proposed rule would create additional capacity issues or affect market functionality. As noted above, ETF options trade in wider \$5 intervals above a \$200 strike price, whereby options at or below a \$200 strike price trade in \$1 intervals. This creates a situation where contracts on the same option class effectively may not be able to execute certain strategies such as, for example, rolling to a higher strike price, simply because of the \$200 strike price above which options intervals increase by 500%. This proposal remedies the situation by establishing an exception to the current ETF interval regime for GLD options to allow such options to trade in \$1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change, like other strike price programs currently offered by the Exchange, will benefit investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. By way of example, GLD is a leading product in its asset class and it trades within a “complex” where, in addition to the underlying security, there are multiple instruments available for hedging such as, COMEX Gold Futures; Gold Daily Futures; iShares GOLD Trust; SPDR GOLD Minishares Trust; Aberdeen Physical Gold Trust; and GraniteShares Gold Shares.

With regard to the impact of this proposal on system capacity, the Exchange believes it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its Members will not have a capacity issue as a result of this proposal. Further, the Exchange does not believe the proposal does not unfairly discriminate among market participants, as all market participants will be treated in the same manner under this proposal.

Finally, the Exchange notes the proposed rule change is substantively the same as a rule change proposed by Nasdaq ISE, LLC (“ISE”) which the Commission recently approved.⁹

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

⁸ 15 U.S.C. 78f(b)(1).

⁹ See Securities Exchange Act Release No. 100447 (June 28, 2024) (SR-ISE-2024-17).

necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. Specifically, the Exchange believes that GLD options investors and traders will significantly benefit from the availability of finer strike price intervals above a \$200 price point. In addition, the interval setting regime the Exchange proposes to apply to GLD options is currently applied to SPY, IVV, and DIA options, which are similarly popular and widely traded ETF products and track indexes at similarly high price levels. Thus, the proposed strike setting regime for GLD options will allow options on this an actively traded ETF with index levels at corresponding price levels to trade pursuant to the same strike setting regime. This will permit investors to employ similar investment and hedging strategies for each of these options.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to make a finer strike price intervals above a \$200 price point available for GLD options. The Exchange notes that the proposed rule change is not a novel proposal, as the Commission recently approved a substantively identical proposal of another exchange.¹⁰ Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the foregoing proposed rule change does

not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change is a competitive response to a filing submitted by ISE that was recently approved by the Commission.¹⁷ The Exchange has stated that waiver of the 30-day operative delay would allow the Exchange to implement the proposal at the same time as its competitor exchange, thus creating competition among GLD options. The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-044 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-CboeEDGX-2024-044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2024-044 and should be submitted on or before August 8, 2024.

¹⁰ See Securities Exchange Act Release No. 100447 (June 28, 2024) (SR-ISE-2024-17).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ See *supra* note 9.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–15768 Filed 7–17–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100510; File No. SR–BX–2024–020]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on June 27, 2024, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange’s fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8, fees assessed for remote multi-cast ITCH (“MITCH”) Wave Ports in Equity 7, Section 115, and certain fees related to its Testing Facilities in Equity 7, Section 130 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange’s fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange’s fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange’s GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Equity 7. First, the Exchange proposes to increase the installation and recurring monthly fees assessed for remote MITCH Wave Ports⁵ in Equity 7, Section 115 by 5.5%.

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–BX–2024–008). On April 29, 2024, the Exchange withdrew that filing and submitted SR–BX–2024–020. The instant filing replaces SR–BX–2024–020, which was withdrawn on June 27, 2024.

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34–99124 (December 8, 2023), 88 FR 86715 (December 14, 2023) (SR–BX–2023–033). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34–100195 (May 21, 2024), 89 FR 46180 (May 28, 2024) (SR–BX–2024–017).

⁵ Remote MITCH Wave Ports are for clients co-located at other third-party data centers, through

In addition, the Exchange proposes to increase certain fees in Section 130(d), which relate to the Testing Facility. Equity 7, Section 130(d)(2) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Equity 7, Section 130(d)(2) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. With the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. However, since 2015, there has been notable inflation. Between 2015 and 2024, the dollar had an average inflation rate of 2.97% per year, producing a cumulative price increase of 30.12%.⁶ Moreover, a more specific and pertinent gauge of inflation—the Producer Price Index (“PPI”) for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 15.9% from 2015 to 2024.⁷ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.⁸

The proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI since 2015.⁹ Although the Exchange

which NASDAQ TotalView ITCH market data is distributed after delivery to those data centers via wireless network.

⁶ See <https://www.officialdata.org/us/inflation/2015?amount=1> (Last updated February 27, 2024).

⁷ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

⁸ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

⁹ Between 2017 and 2024, CPI inflation exceeded 25%. See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

Between 2017 and 2024, the PPI for data processing, Continued

¹⁹ 17 CFR 200.30–3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 30%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2015. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.¹⁰

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

hosting and related services, active services pages, and other IT infrastructure provisioning services increased 16.1%. See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

¹⁰ See, e.g., Securities Exchange Act Release No. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 16 different venues for equities trading and 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. This means that such fees have fallen in real terms due to inflation, which has been notable. Between 2015 and 2024, the dollar had an average inflation rate of 2.97% per year, producing a cumulative price increase of 30.12%.¹³ Moreover, the PPI for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 15.9% from 2015 to 2024.¹⁴ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.

As noted above, the Exchange has not increased the fees in this proposal for over 8 years (or in the case of services introduced in 2017, for over 6 years since the services were introduced). The proposed fees represent a 5.5% increase from the current fees, which is far below

the rates of inflation, as measured by either the CPI or the PPI since 2015. Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 30%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2015. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade both equities and options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ See <https://www.officialdata.org/us/inflation/2015?amount=1> (Last updated February 27, 2024).

¹⁴ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets.

There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share.¹⁵ No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.¹⁶ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."¹⁷ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly

discriminatory."¹⁸ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2024-020 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-BX-2024-020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

¹⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

¹⁶ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

¹⁷ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

¹⁸ *Id.*

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2024-020 and should be submitted on or before August 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100524; File No. SR-CBOE-2024-031]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reduce the Length of Time Between the End of Its Current Global Trading Hours ("Global Trading Hours" or "GTH") Session and the Beginning of Its Regular Trading Hours ("Regular Trading Hours" or "RTH") Session

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 3, 2024, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule

19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to reduce the length of time between the end of its current global trading hours ("Global Trading Hours" or "GTH") session and the beginning of its regular trading hours ("Regular Trading Hours" or "RTH") session. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the hours of its GTH session, thereby reducing the length of time between the end of its current GTH session and the beginning of its RTH session.

By way of background, the Exchange currently offers three trading sessions,⁵ RTH, Curb Trading Hours ("Curb"), and GTH. Rule 5.1 sets forth the trading hours for the Exchange's RTH, Curb, and GTH trading sessions. Particularly,

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The term "trading session" means the hours during which the Exchange is open for trading for Regular Trading Hours, Global Trading Hours or Curb Trading Hours (each of which may referred to as a trading session), each as set forth in Rule 5.1. Unless otherwise specified in the Rules or the context otherwise indicates, all Rules apply in the same manner during each trading session. See Rule 1.1 (Definitions).

RTH for transactions in equity options (including options on individual stocks, ETFs, ETNs, and other securities) are the normal business days and hours set forth in the rules of the primary market currently trading the securities underlying the options, except for options on ETFs, ETNs, Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts the Exchange designates to remain open for trading beyond 4:00 p.m.⁶ but in no case later than 4:15 p.m.⁷ RTH for transactions in index options are from 9:30 a.m. to 4:15 p.m., subject to certain exceptions.⁸ The Curb session is from 4:15 p.m. to 5:00 p.m., for designated classes, Monday through Friday.⁹ The Exchange's Rules provide that the Exchange may designate as eligible for trading during Curb any exclusively listed option that the Exchange has designated for trading under Chapter 4, Section B. Currently, S&P 500 Index options ("SPX"), Cboe Volatility Index options ("VIX"), and Mini-SPX Index options ("XSP") are approved for trading during Curb.¹⁰

The GTH session currently begins at 8:15 p.m. (previous day) and goes until 9:15 a.m. on Monday through Friday.¹¹ The Exchange's Rules provide that the Exchange may designate as eligible for trading during GTH any exclusively listed index option designated for trading under Chapter 4, Section B. Currently, SPX, VIX and XSP are approved for trading during GTH.¹²

By way of further background, the Exchange originally adopted the GTH trading session due to global demand from investors to trade SPX and VIX options, as alternatives for hedging and other investment purposes, particularly as a complementary investment tool to VIX futures.¹³ In response to customer demand for additional options to trade during the GTH trading session for similar purposes, the Exchange later designated XSP options to be eligible for

⁶ All times referenced herein are Eastern Time, unless otherwise specifically noted.

⁷ See Rule 5.1(b)(1).

⁸ See Rule 5.1(b)(2).

⁹ See Rule 5.1(d).

¹⁰ If the Exchange designates a class of index options as eligible for trading during Curb, FLEX Options with the same underlying index are also deemed eligible for trading during Curb. See Rule 5.1(d)(1).

¹¹ See Rule 5.1(c).

¹² If the Exchange designates a class of index options as eligible for trading during GTH, FLEX Options with the same underlying index are also deemed eligible for trading during GTH. See Rule 5.1(c)(1).

¹³ See Securities Exchange Act Release No. 34-73017 (September 8, 2014), 79 FR 54758 (September 12, 2014) (SR-CBOE-2014-062).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

trading during GTH.¹⁴ The current GTH session allows market participants to engage in trading SPX, XSP and VIX options in conjunction with trading VIX futures on Cboe Futures Exchange, LLC (“CFE”) during extended hours, as VIX futures are open for trading on CFE nearly 23 hours a day, 5 days a week.¹⁵

The Exchange proposes to extend the ending time of the GTH session, from 9:15 a.m. to 9:25 a.m. The proposed change minimizes the gap between the end of GTH and the beginning of RTH, thereby providing an extra ten-minute electronic only session for trading, which will be added Monday through Friday. The proposed rule change otherwise makes no changes to the trading rules applicable to GTH. Transactions effected during the extended GTH session will continue to have the same trade date as the RTH session that immediately follows it. The extended GTH trading session will continue to be a separate trading session from RTH and Curb and the rules that currently apply (or don’t apply) to the current GTH session will continue to apply (or not apply) to the lengthened GTH session.¹⁶ The Exchange will continue to use the same servers and hardware during the extended GTH session as it uses for GTH (and RTH and Curb) today. Further, Trading Permit Holders (“TPHs”) may continue to use the same ports and connections to the Exchange for all trading sessions. The Book used during the extended GTH session will also be the same Book used currently during RTH, Curb, and GTH. The Exchange proposes to amend and conform various rules relating to the proposed expanded GTH, as described more fully below.

Trading Days and Hours

As noted above, Rule 5.1 currently sets forth the trading hours for RTH, Curb, and GTH. The Exchange proposes to amend Rule 5.1 in connection with its proposal to reduce the time between the end of the GTH session and the beginning of the RTH session. Particularly, the Exchange proposes to amend Rule 5.1(c), which sets forth the trading hours for the GTH session, to

provide that except under unusual conditions as may be determined by the Exchange, GTH hours are from 8:15 p.m. (previous day) to 9:25 a.m. (rather than 9:15 a.m.) on Monday through Friday.

The Exchange also proposes a clarifying change to Rule 5.1(c)(2). Rule 5.1(c)(2) states that the Exchange may list for trading during GTH any series in eligible classes that it may list pursuant to Rule 4.13. Rule 5.1(c)(2) further provides that any series in eligible classes that are expected to be open for trading during RTH will be open for trading during GTH on that same trading day (subject to Rule 5.31). The Exchange now proposes to revise Rule 5.1(c)(2) to clarify language regarding series that may be listed during GTH. Specifically, the Exchange proposes revising Rule 5.1(c)(2) to state that any non-expired series in eligible classes that were open for trading on the previous trading day (as of the close of the previous day’s Curb session) will be open for trading during GTH on that following trading day (subject to Rules 4.13 and 5.31). This would exclude from trading new series that may be listed for that following trading day’s RTH session that were not listed on the prior trading day, which new series are unknown to the Exchange at the start of the GTH session.¹⁷

Index Values

The Exchange next proposes to amend Rule 5.1(c)(3) which currently provides that while it may not be calculated and disseminated at all times, between 3:00 a.m. to 9:15 a.m. during GTH, current values of VIX (*i.e.*, intraday/spot values of the VIX Index) will be widely disseminated at least once every fifteen (15) seconds by the Options Price Reporting Authority (“OPRA”) or one or more major market vendors during that trading session. Rule 5.1(c)(3) also provides that the Exchange will not report a value of VIX during Global Trading Hours from 8:15 p.m. (previous day) to 3:00 a.m., because the value of the underlying index will not be recalculated during this time, and that no current index value underlying any other index option trading during GTH is disseminated during or at the close of that trading session.

In light of the proposal to end the GTH session at 9:25 a.m. (instead of 9:15

a.m.), the Exchange proposes to amend Rule 5.1(c)(3) to state that while it may not be calculated and disseminated at all times, between 3:00 a.m. to 9:25 a.m. (rather than 9:15 a.m.) during GTH, current values of VIX will be widely disseminated at least once every fifteen (15) seconds by the OPRA or one or more major market vendors during that trading session.

Holiday Hours

The Exchange further proposes to amend Rule 5.1(e), which sets forth the modified trading schedules for domestic¹⁸ and international¹⁹ holidays. First, the Exchange proposes to amend Rule 5.1(e)(1), which outlines the trading hours schedule for domestic holidays, and currently provides that for Martin Luther King, Jr. Day, Presidents’ Day, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, and Thanksgiving Day (*i.e.*, domestic holidays), the trading day following the day a holiday is observed will consist of the following four trading sessions: (i) a GTH session from 8:15 p.m. on the calendar day preceding the holiday (observed) to 11:30 a.m. on the holiday (observed), (ii) a GTH session from 8:15 p.m. on the holiday (observed), or if the holiday is observed on a Friday, on the Sunday following the holiday, to 9:15 a.m. on the trading day, (iii) a RTH session on the trading day, and (iv) a Curb session on the trading day. The Exchange proposes to amend Rule 5.1(e)(1)(ii), in relevant part, to state that, if the holiday is observed on a Friday, the trading day following the holiday will include a GTH session from 8:15 p.m. on the Sunday following the holiday, to 9:25 a.m. (rather than 9:15 a.m.) on the trading day.

The Exchange next proposes to amend Rule 5.1(e)(2), which outlines the trading hours schedule for international holidays, and currently provides that for Good Friday, Christmas Day and New Year’s Day (*i.e.*, international holidays), the trading day following the day the holiday is observed will consist of the following three trading sessions: (i) a GTH session from 8:15 p.m. on the holiday (observed), or if the holiday is observed on a Friday, on the Sunday following the holiday, to 9:15 a.m. on the trading day, (ii) a RTH session on the trading day, and (iii) a Curb session on the trading day. The Exchange proposes to amend Rule 5.1(e)(2)(i), in

¹⁴ See Securities Exchange Act Release No. 34–75914 (September 14, 2015), 80 FR 56522 (September 18, 2015) (SR–CBOE–2015–079).

¹⁵ See CFE Rule 1202(b).

¹⁶ For example, business conduct rules in Chapter 8 and rules related to doing business with the public in Chapter 9 will continue to apply during the GTH session. Additionally, a broker-dealer’s due diligence and best execution obligations apply during the GTH trading session. As there will still be no open outcry trading on the floor during the GTH trading, Chapter 5, Section G will continue not to apply as such rules pertain to manual order handling and open-outcry trading.

¹⁷ See Rule 1.1, which defines “trading day” as a day on which the Exchange is open for trading during Regular Trading Hours. A business day or trading day includes the RTH session, the Curb session that immediately follows it and the GTH session that immediately precedes it. This proposed change codifies current operations and will have no impact on series available for trading during the GTH session.

¹⁸ Domestic holidays include Martin Luther King, Jr. Day, Presidents’ Day, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day and Thanksgiving Day.

¹⁹ International holidays include Good Friday, Christmas Day and New Year’s Day.

relevant part, to state that, if the holiday is observed on a Friday, the trading day following the holiday will include a GTH session from 8:15 p.m. on the Sunday following the holiday, to 9:25 a.m. (rather than 9:15 a.m.) on the trading day.

Opening Auction Process

The Exchange proposes to amend Rule 5.31(j), which describes the opening auction process for S&P 500 options (“SPX”) that are constituent option series on exercise settlement value determination days.²⁰ All provisions set forth in Rule 5.31 apply to the opening of SPX constituent option series²¹ for RTH on exercise settlement value determination days, except as otherwise provided in Rule 5.31(j) (the “modified opening auction process”), which the Exchange uses in connection with calculating exercise or final settlement values for VIX derivatives. The Exchange uses the opening trade prices of SPX option series that comprise the settlement strip²² (or the average of a series’ opening bid and ask (which ask price equals \$0.05 if the series opens with unexecuted sell market orders) if there is no opening trade in that series) established by the modified opening auction process to calculate the exercise or final settlement value, as applicable, of expiring VIX derivatives.

Rule 5.31(j)(3) sets forth order entry cut off times for the modified opening auction process. Pursuant to Rule 5.31(j)(3), during the Queuing Period²³ prior to 9:20 a.m., the System accepts all orders and quotes (except Settlement Liquidity Opening Orders, or SLOOs,²⁴

which the System rejects), and any changes to or cancellations of those orders and quotes. After the 9:20 a.m. cut-off time (until the opening of trading in a series), the System only accepts SLOOs (including changes to and cancellations of SLOOs) and bulk message bids and offers (including changes to and cancellations of bulk message bids and offers submitted before and after the cut-off time) from Market-Makers with an SPX appointment. After that cut-off, the System rejects all other orders and quotes (and all other changes to and cancellations of orders and quotes submitted prior to the cut-off time).

Given the proposal to end the GTH session at 9:25 a.m., the Exchange proposes to update the cut-off time set forth in Rule 5.31(j)(3), from 9:20 a.m., to refer to one minute following the close of GTH, so that it continues to occur after the close of GTH (as it does today). There are no other changes to the modified opening auction process as part of the proposed changes.

Complex Orders

The Exchange finally proposes to amend Rule 5.33. Particularly, the Exchange proposes to amend Rule 5.33(c), which describes the Complex Order Book (“COB”) Opening Process, which occurs at the beginning of the RTH and GTH trading sessions and after a trading halt. The System accepts complex orders for inclusion in the COB Opening Process at the times and in the manner set forth in Rules 5.7 and 5.31(b), except the order entry period for complex orders ends when the complex strategy opens. Complex orders entered during the order entry period are not eligible for execution until the initiation of the COB Opening Process. Rule 5.33(c)(1) currently states that the Exchange will disseminate indicative prices and order imbalance information based on complex orders queued in the System for the COB Opening Process beginning at (A) 8:00 p.m. (previous day) for All Sessions classes for the GTH session and (B) 8:30 a.m. for RTH Only classes and 9:15 a.m. for All Sessions classes for the RTH session, and updated every five seconds thereafter until the initiation of the COB Opening Process. This functionality provides users with information regarding the expected COB opening, which the Exchange believes may contribute additional transparency and price discovery to the COB Opening Process.

option series designated with an OPG Time-in-Force that Users may only submit to the Exchange on exercise settlement value determination days following the cut-off time described in this Rule 5.31(j)(3).

The Exchange proposes to amend Rule 5.33(c)(1) to reflect that in light of the proposed changes, indicative prices and order imbalance information will be disseminated beginning at 9:25 a.m. (instead of 9:15 a.m.) for All Sessions classes for the RTH session.

Fees Schedule

Finally, the Exchange proposes changes to its Fees Schedule to reflect the proposed change to end the GTH session at 9:25 a.m. Specifically, the Exchange proposes to amend references to the end of the GTH session in the “GTH VIX/VIXW LMM Incentive Program”, “GTH2 SPX/SPXW LMM Incentive Program”, “GTH2 XSP LMM Incentive Program”, and Footnote 37, to 8:25 a.m. CST (from 8:15 a.m. CST).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to reduce the time period between the end of current GTH and beginning of RTH will remove impediments to and perfect the mechanism of a free and open market and a national market system. Particularly, the expansion of GTH is a competitive initiative designed to improve the Exchange’s marketplace for the benefit of investors and allow the Exchange to provide a competitive marketplace for market participants to trade certain products for a longer

²⁰ The term “exercise settlement value determination day” means a day on which the Exchange determines the exercise or final settlement value, as applicable, of expiring VIX derivatives. See Rule 5.31(j)(1).

²¹ The term “constituent option series” means all SPX (including SPXW) option series listed on the Exchange with the expirations the Exchange uses to calculate the exercise or final settlement value of the expiring VIX derivative on exercise settlement value determination days. The term “VIX derivatives” means VIX options listed for trading on the Exchange (as determined under Rule 4.11), VIX futures listed for trading on an affiliated designated contract market, or over-the-counter derivatives overlying VIX whose exercise or final settlement values, as applicable, are calculated pursuant to, or by reference to, as applicable, the modified opening auction process. See Rule 5.31(j)(1).

²² The term “settlement strip” means the constituent option series used to calculate the exercise or final settlement value, as applicable, of expiring VIX derivatives. See Rule 5.31(j)(1).

²³ The term “Queuing Period” means the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes in the Queuing Book for participation in the opening rotation for the applicable trading session. See Rule 5.31(a).

²⁴ The terms “settlement liquidity opening order” and “SLOO” mean a limit order in a constituent

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ *Id.*

period of time towards the end of GTH and beginning of RTH. As such, the Exchange believes the proposed rule change provides Users with additional flexibility to manage their orders in all classes that trade during GTH and remain in the Book towards the end of GTH market close, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The GTH trading session is designed to increase the overlap in time that SPX, VIX, and XSP options are open alongside the related futures contracts and further aims to provide global market participants with an expanded timeframe to trade the products offered during GTH. As discussed above, extending the GTH session is designed to provide investors the ability to manage risk more efficiently, react to global macroeconomic events as they are happening and adjust SPX, VIX and XSP options positions nearly around the clock, including in the time period towards the end of current GTH and beginning of RTH. The Exchange therefore believes that the proposed rule change is reasonably designed to provide an appropriate mechanism for additional trading time within its current GTH session, while providing for appropriate Exchange oversight pursuant to the Act, trade reporting, and surveillance.

The Exchange also notes that it, along with some of its affiliated options exchanges, already allow for trading outside of the hours of RTH (*i.e.*, during the current GTH trading session).²⁸ Thus, the proposed rule change to expand the GTH session by ten minutes is not novel or unique. Additionally, futures exchanges also operate during the timeframe proposed to be added to the GTH trading session, including the Exchange's affiliate, CFE²⁹, and the Chicago Mercantile Exchange, which offers E-mini S&P 500 Options for trading during the proposed timeframe.

Further, the Exchange believes that maintaining a five-minute time period between the end of current GTH and beginning of RTH will continue to be an adequate and sufficient amount of time. The pause between GTH and RTH allows liquidity providers to assess their risk exposure on volatility settlement days. Following several years of trading within the current hours for RTH and

GTH, the Exchange understands from industry participants that reducing the time between GTH and RTH, from fifteen minutes to five minutes, will still allow ample time for liquidity providers to continue to do so, while also eliminating unnecessary closure time, which may serve to benefit investors through additional trading opportunities closer to the opening of RTH. The proposed change will result in minimal impact to current trading systems and may in fact assist some order flow providers in their transition between the two trading sessions by reducing unnecessary pause times.

Other than the change in the time at which the GTH session will end, trading during GTH will continue in the same manner as it does today. Additionally, the Exchange notes that it will continue to require that disclosures be made to customers describing potential risks, which will continue to further protect investors from any additional risks related to trading during GTH.³⁰ The Exchange believes that, with these disclosures, GTH, as amended, remain appropriate and beneficial. The All Sessions order³¹ and RTH Only order³² will continue to protect investors by permitting investors who wish only to trade during RTH from having orders or quotes execute outside of the RTH session, including during the extended GTH session.

The Exchange believes the change to order entry cut-off time under the modified opening auction process is reasonable. Market participants will still be able to submit SLOOs until after the close of GTH and prior to the opening of RTH, and continue to have the opportunity to provide liquidity to offset order imbalances and contribute to a fair and orderly modified opening auction process for a given series, to the benefit of investors. The proposed rule change has no impact on how the modified opening auction process will occur.

The proposed rule change further removes impediments to a free and open market and does not unfairly discriminate among market participants, as all TPHs with access to the Exchange may participate in GTH and continue to trade during GTH using the same connection lines, message formats, data feeds, and EFIDs they use during

current GTH, eliminating or minimizing any preparation efforts necessary to continue to participate. As is today, TPHs will not be required to trade during GTH.

Finally, the Exchange believes the change to Rule 5.1(c)(2) to clarify which series may be listed for trading during GTH is reasonable, as the proposed change is designed to make the Rulebook more accurate and mitigate any potential confusion. The Exchange believes revising the language will provide certainty regarding series listed for trading during GTH, to the benefit of investors and the public. This proposed change merely codifies current operations and will have no impact on series available for trading during the GTH session.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change to extend the closing time of the GTH session by ten minutes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because all TPHs will be able, but not be required, to participate during the extended GTH session, and will be able to do so using the same connectivity as they use during RTH, Curb and current GTH. As discussed, participation in the extended GTH will be voluntary and within the discretion of TPHs. Further, the Exchange does not believe the proposed rule change to Rule 5.1(c)(2) to clarify which series may be listed for trading during GTH will have any impact on competition, as the change is not expected to have an impact on trading, but rather clarify existing processes.

The Exchange does not believe that the proposed rule change to extend GTH will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change is a competitive initiative that will benefit the marketplace and investors. Additionally, all options exchanges are free to compete in the same manner. Further, futures exchanges operate during the timeframe proposed to be added to the GTH trading session, including the Exchange's affiliate,

²⁸ See Cboe Options Rule 5.1, Cboe C2 Exchange, Inc. Rule 5.1 and Cboe EDGX Exchange, Inc. Rule 21.2.

²⁹ See, *e.g.*, CFE Rule 1202, which outlines the trading schedule for futures on the Cboe Volatility Index.

³⁰ See Cboe Options Rule 9.20.

³¹ An "All Sessions" order (including a bulk message) is an order a User designates as eligible to trade during all trading sessions. See Cboe Options Rule 5.6(c).

³² An "RTH Only" order is an order (including a bulk message) a User designates as eligible to trade only during RTH or not designated as All Sessions or RTH and Curb. See Cboe Options Rule 5.6(c).

CFE,³³ and the Chicago Mercantile Exchange, which offers E-mini S&P 500 Options for trading during the proposed timeframe. The Exchange further believes that the same level of competition among options exchanges will continue during RTH, regardless of the proposed change. Because the Exchange will continue to make only exclusively listed products available for trading during GTH, and because any All Sessions orders that do not trade during GTH will be eligible to trade during the RTH trading sessions in the same manner as all other orders submitted during RTH, the proposed rule change will have no effect on the national best prices or trading during RTH.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁴ and Rule 19b-4(f)(6)³⁵ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-031 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-CBOE-2024-031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2024-031 and should be submitted on or before August 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-15773 Filed 7-17-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100517; File No. SR-NASDAQ-2024-035]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Equity 7, Section 114(h)

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 1, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's pricing schedule at Equity 7, Section 114(h), as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

³³ See, e.g., CFE Rule 1202, which outlines the trading schedule for futures on the Cboe Volatility Index.

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide an additional calculation for purposes of determining whether a member qualifies for fees that pertain to accessing liquidity set forth in Section 114(e) and rebates that pertain to providing liquidity set forth in Section 114(g).

Presently, the Exchange provides its members with several market quality incentive programs in Equity 7, Section 114. One of these programs is the Qualified Market Maker ("QMM") Program, which provides supplemental incentives to members that meet certain quality standards in acting as market makers for securities on the Exchange. Pursuant to Equity 7, Section 114(e), a member that qualifies as a QMM is entitled to receive a rebate per share executed with respect to all displayed orders (other than Designated Retail Orders, as defined in Equity 7, Section 118) in securities priced at \$1 or more per share that provide liquidity in each of Tapes A, B, and C. Such a rebate is in addition to any rebate payable under Equity 7, Section 118(a). Specifically, the Exchange offers two tiers of rebates to QMMs ("Tier 1" and "Tier 2").

Among other incentives, the QMM Program also provides for fee incentives in Equity 7, Section 114(e). Specifically, Nasdaq will charge a QMM a fee of \$0.0030 per share executed for orders in Nasdaq-listed securities priced at \$1 or more per share that access liquidity on the Nasdaq Market Center, and charge a QMM a fee of \$0.00295 per share executed for orders in securities listed on exchanges other than Nasdaq priced at \$1 or more per share that access liquidity on the Nasdaq Market Center; provided, however, that the QMM's volume of liquidity added through one or more of its Nasdaq Market Center MPIDs during the month (as a percentage of Consolidated Volume) is not less than 1.00%. Nasdaq will charge a QMM that meets the criteria of Tier 2 a fee of \$0.0029 per share executed for orders in securities listed on exchanges other than Nasdaq priced at \$1 or more per share that access liquidity on the Nasdaq Market Center if the QMM has a combined Consolidated Volume (adding and removing liquidity) of at least 3.70%, MOC/LOC volume greater than 0.35% of Consolidated Volume, and provides 0.15% or more of

Consolidated Volume through midpoint orders.

Another market quality incentive program provided by the Exchange is the NBBO Program, in Equity 7, Section 114(g). Under the NBBO Program, Nasdaq provides a rebate per share executed with respect to all other displayed orders (other than Designated Retail Orders, as defined in Equity 7, Section 118) in securities priced at \$1 or more per share that provide liquidity, establish the NBBO, and displayed a quantity of at least one round lot at the time of execution. The rebate is in addition to any rebate or credit payable under Equity 7, Section 118(a) and other programs under Equity 7, Section 114. This rebate is provided to executions from orders originating on ports meeting the following requirements. To qualify for the \$0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in securities listed on exchanges other than Nasdaq and NYSE, a member must execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 1.0% or more of Consolidated Volume during the month and the order must have been entered on a port that has a ratio of at least 25% NBBO liquidity provided³ to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month.

Members may qualify for QMM Program and NBBO Program incentives described above based, in part, upon their volume on the Exchange as a percentage of total "Consolidated Volume." Pursuant to Equity 7, Section 114(h)(5), the term "Consolidated Volume" shares the meaning of that term set forth in Equity 7, Section 118(a). Equity 7, Section 118(a) defines "Consolidated Volume" to mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, the following shall be excluded from both total Consolidated Volume and the member's trading activity: (1) the date of the annual reconstitution of the Russell Investments Indexes; (2) the dates on which stock options, stock index options, and stock index futures expire

³ NBBO liquidity provided means liquidity provided from orders (other than Designated Retail Orders, as defined in Equity 7, Section 118), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution.

(i.e., the third Friday of March, June, September, and December); (3) the dates of the rebalance of the MSCI Equities Indexes (i.e., on a quarterly basis); (4) the dates of the rebalance of the S&P 400, S&P 500, and S&P 600 Indexes (i.e., on a quarterly basis); and (5) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes.

Equity 7, Section 114(h)(5) also provides that, for purposes of calculating a member's qualifications for Tiers 1 and 2 of the QMM Program credits set forth in paragraph (e) of Section 114, the Exchange will calculate a member's volume and total Consolidated Volume twice. First, the Exchange will calculate a member's volume and total Consolidated Volume inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate a member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than \$1, while also applying distinct qualifying volume thresholds to each Tier, as set forth in paragraph (e). The Exchange will then assess which of these two calculations would qualify the member for the most advantageous credits for the month and then it will apply those credits to the member.

The Exchange proposes to make clarifying and formatting changes to Equity 7, Section 114(h)(5). First, the Exchange proposes to clarify that the statement that "Consolidated Volume" shall have the same meaning as the term has under Equity 7, Section 118(a) is subject to certain qualifications that follow. In addition, the Exchange proposes to add subsection (A) before the existing language regarding the calculations for a member's qualifications for Tiers 1 and 2 of the QMM Program credits and remove existing parentheses surrounding such language.

In Equity 7, Section 114(h)(5)(B), the Exchange proposes to provide an additional calculation for purposes of determining whether a member qualifies for fees that pertain to accessing liquidity set forth in Section 114(e) and rebates that pertain to providing liquidity set forth in Section 114(g). Specifically, the Exchange proposes to provide that, for purposes of calculating a member's qualifications for fees that pertain to accessing liquidity set forth in Section 114(e) and rebates that pertain to providing liquidity set forth in Section 114(g), the Exchange will calculate a member's volume and total Consolidated Volume twice. First, the Exchange will calculate a member's volume and total Consolidated Volume

inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate a member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than \$1, while also increasing the distinct qualifying volume percentage thresholds by 10%. The Exchange will then assess which of these two calculations would qualify the member for the most advantageous fees/rebates for the month and then it will apply those to the member. Currently, the Exchange uses these calculations for purposes of calculating a member's qualifications for credits that pertain to providing liquidity set forth in Equity 7, Section 118(a).

Generally, the ratio of consolidated volumes in securities priced at or above \$1 ("dollar plus volume") relative to consolidated volumes inclusive of securities priced below a dollar is usually stable from month to month, such that "Consolidated Volume" has been a reasonable baseline for determining tiered incentives for members that execute dollar plus volume on the Exchange. However, there have been a few months where volumes in securities priced below a dollar ("sub-dollar volume") have been elevated, thereby impacting the ratio mentioned above.

Anomalous rises in sub-dollar volume stand to have a material adverse impact on members' qualifications for pricing tiers/incentives because such qualifications depend members upon achieving threshold percentages of volumes as a percentage of Consolidated Volume, and an extraordinary rise in sub-dollar volume stands to elevate Consolidated Volume. As a result, members may find it more difficult, if not practically impossible, to qualify for or to continue to qualify for their existing incentives during months where there are such rises in sub-dollar volumes, even if their dollar plus volumes have not diminished relative to prior months.

The Exchange believes that it would be unfair for its members that execute significant dollar plus volumes on the Exchange to fail to achieve or to lose their existing incentives for such volumes due to anomalous behavior that is extraneous to them. Therefore, the Exchange wishes to amend its Rules to help avoid extraordinary spikes in sub-dollar volumes from adversely affecting a member's qualification of incentives for their dollar plus stock executions.

Although the Exchange wishes to avoid extraordinary spikes in sub-dollar volumes from adversely affecting a member's qualification of incentives for

their dollar plus stock executions, the Exchange proposes to include certain limits on the proposal to efficiently allocate the Exchange's limited resources for incentives. Specifically, as noted above, the Exchange proposes to limit the application of the proposed calculation excluding sub-dollar volumes to those fees that pertain to accessing liquidity set forth in Section 114(e) and rebates that pertain to providing liquidity set forth in Section 114(g). In addition, as noted above, the Exchange proposes to increase the distinct qualifying volume percentage thresholds by 10% for purposes of the proposed calculation excluding sub-dollar volumes.⁴ The Exchange wishes to impose such limitations in order to limit the cost impact on the Exchange, while still providing some relief to members in months with extraordinary spikes in sub-dollar volumes. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of fees and credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its

pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'"⁷

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures and market quality incentive programs to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes that the proposal is reasonable and equitable because, in its absence, members may experience material adverse impacts on their ability to qualify for certain incentives during a month with an

⁴ For example, the Exchange charges a QMM a fee of \$0.00295 per share executed for orders in securities listed on exchanges other than Nasdaq priced at \$1 or more per share that access liquidity on the Nasdaq Market Center; provided, however, that the QMM's volume of liquidity added through one or more of its Nasdaq Market Center MPIDs during the month (as a percentage of Consolidated Volume) is not less than 1.00%. See Equity 7, Section 114(e). Under the proposal, in addition to calculating the member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than \$1, the distinct qualifying volume percentage threshold would be increased by 10%. Therefore, for purposes of this example, in order to qualify for the fee using volumes excluding sub-dollar activity, the member would need to provide 1.1% or more of total Consolidated Volume during the month (i.e., 1% + (10%)(1%)).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

anomalous rise in sub-dollar volumes. The Exchange does not wish to penalize members that execute significant volumes on the Exchange due to anomalous and extraneous trading activities of a small number of firms in sub-dollar securities. The proposed rule would seek to provide a means for members to avoid such a penalty by determining whether calculating member volume and total Consolidated Volume to include or exclude sub-dollar volume⁹ would result in Exchange members qualifying for the most advantageous incentives, and then applying the calculations that would result in the incentives that are most advantageous to each member. The Exchange believes it is reasonable to limit the proposal by (1) applying the proposed calculation to incentives that pertain to accessing liquidity set forth in Section 114(e) and rebates that pertain to providing liquidity set forth in Section 114(g), and (2) increasing the distinct qualifying volume percentage thresholds by 10% when using the proposed calculation excluding sub-dollar volumes because the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives. The Exchange also believes that it is appropriate to make the clarifying and formatting changes described above to increase clarity and transparency in the Rules, consistent with the public interest and the protection of investors. The Exchange believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange does not intend for the proposal to advantage any particular member and the Exchange will apply the proposed calculation to all similarly situated members.

Those participants that are dissatisfied with the changes to the Exchange's schedule of fees and credits are free to shift their order flow to competing venues that provide more favorable fees or generous incentives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

⁹ As noted above, in considering whether a member meets qualifying credit criteria using the proposed calculation excluding sub-dollar volumes, the distinct qualifying volume percentage thresholds would be increased by 10%.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposal to help avoid pricing disadvantages due to anomalous spikes in sub-dollar volumes and is not intended to provide a competitive advantage to any particular member. The Exchange also intends for its proposal to reallocate its limited resources more efficiently and to align them with the Exchange's overall mix of objectives. The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposal is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even the largest U.S. equities exchange by volume has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 40% of industry volume.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the

Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-035 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NASDAQ-2024-035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-035 and should be submitted on or before August 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100515; File No. SR-ISE-2024-23]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 27, 2024, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 8 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit

connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 8, which relate to the Testing Facility. Options 7, Section 8(I) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 8(I) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the proposal since 2017.⁵ However, since 2017, there has been notable inflation. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.⁶ Moreover, a more specific and pertinent gauge of inflation—the Producer Price Index ("PPI") for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 16.1% from 2017 to 2024.⁷ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99131 (December 11, 2023), 88 FR 86979 (December 15, 2023) (SR-ISE-2023-33). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100209 (May 22, 2024), 89 FR 46512 (May 29, 2024) (SR-ISE-2024-19).

⁵ See Securities Exchange Act Release No. 34-81903 (October 19, 2017), 82 FR 49450 (October 25, 2017) (SR-ISE-2017-91).

⁶ See <https://www officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

⁷ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-ISE-2024-09). On April 29, 2024, the Exchange withdrew that filing and submitted SR-ISE-2024-16. The instant filing replaces SR-ISE-2024-16, which was withdrawn on June 27, 2024.

this time, thereby eroding the value of the revenue it collects through such fees.⁸

The proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI since 2017. Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 25%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.⁹

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the

future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, the Exchange has not increased any of the fees included in the proposal since 2017. This means that such fees have fallen in real terms due to inflation, which has been notable. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.¹² Moreover, the PPI for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 16.1% from 2017 to 2024.¹³ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.

As noted above, the Exchange has not increased the fees in this proposal for over 6 years. The proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI since 2017. Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of

inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 25%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an

⁸ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

⁹ See, e.g., Securities Exchange Act Release No. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² See <https://www officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

¹³ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets.

There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.¹⁴ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."¹⁵ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."¹⁶ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable

dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁷ At any time within 60 days of the filing of the

proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2024-23 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-ISE-2024-23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

¹⁴ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

¹⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

¹⁶ *Id.*

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2024–23 and should be submitted on or before August 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–15764 Filed 7–17–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100514; File No. SR–MRX–2024–18]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on June 27, 2024, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange’s fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 7 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange’s fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange’s fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange’s GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 7, which relate to the Testing Facility. Options 7, Section 7 provides

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–MRX–2024–04). On April 29, 2024, the Exchange withdrew that filing and submitted SR–MRX–2024–10. The instant filing replaces SR–MRX–2024–10, which was withdrawn on June 27, 2024.

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34–99130 (December 11, 2023), 88 FR 87009 (December 15, 2023) (SR–MRX–2023–24). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34–100200 (May 21, 2024), 89 FR 46183 (May 28, 2024) (SR–MRX–2024–12).

that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 7 provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the proposal since 2017.⁵ However, since 2017, there has been notable inflation. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.⁶ Moreover, a more specific and pertinent gauge of inflation—the Producer Price Index (“PPI”) for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 16.1% from 2017 to 2024.⁷ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.⁸

The proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI since 2017. Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 25%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than

⁵ See Securities Exchange Act Release No. 34–81907 (October 19, 2017), 82 FR 49447 (October 25, 2017) (SRMRX–2017–21).

⁶ See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

⁷ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

⁸ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

¹⁸ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.⁹

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services

and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, the Exchange has not increased any of the fees included in the proposal since 2017. This means that such fees have fallen in real terms due to inflation, which has been notable. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.¹² Moreover, the PPI for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 16.1% from 2017 to 2024.¹³ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.

As noted above, the Exchange has not increased the fees in this proposal for over 6 years. The proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI since 2017. Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 25%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is

independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets.

There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options

⁹ See, e.g., Securities Exchange Act Release No. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-ChoeBYX-2024-012).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

¹³ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

exchanges has a market share over 10 percent.¹⁴ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."¹⁵ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."¹⁶ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not

necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁷ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2024-18 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-MRX-2024-18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MRX-2024-18 and should be submitted on or before August 8, 2024].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-15763 Filed 7-17-24; 8:45 am]

BILLING CODE 8011-01-P

¹⁴ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

¹⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

¹⁶ *Id.*

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100520; File No. SR–CBOE–2024–030]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Strike Interval for Options on SPDR® Gold Shares

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 1, 2024, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend the strike interval for options on SPDR® Gold Shares (“GLD”). The text of the proposed rule change is provided below.]

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 4.5. Series of Option Contracts Open for Trading

* * * * *

Interpretations and Policies

* * * * *

.07

* * * * *

(b) Notwithstanding Interpretation and Policy .01 and Interpretation and Policy .07(a) above, the interval between strike prices of series of options on Units of the Standard & Poor’s Depository Receipts Trust (“SPY”), iShares S&P 500 Index ETF (“IVV”), PowerShares QQQ Trust (“QQQ”), iShares Russell 2000 Index Fund

(“IWM”), [and] The DIAMONDS Trust (“DIA”), and SPDR® Gold Shares (“GLD”) will be \$1 or greater.

* * * * *

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4.5, “Series of Options Contracts Open for Trading.” Specifically, the Exchange proposes to amend Rule 4.5, Interpretation and Policy .07(b) to allow for the interval between strike prices of series of options on Exchange-Traded Fund Shares (“ETFs” or “Units”) of SPDR® Gold Shares or “GLD” to be \$1 or greater, including where the strike price is greater than \$200.

Currently Rule 4.5, Interpretation and Policy .07(a) provides that,

Notwithstanding Interpretation and Policy .01 above, and except for options on Units covered under Interpretation and Policies .05 and .06 above, the interval between strike prices of series of options on Units, as defined under Interpretation and Policy .06 to Rule 4.3, will be \$1 or greater where the strike price is \$200 or less and \$5.00 or greater where the strike price is greater than \$200. For options on Units that are used to calculate a volatility index, the Exchange may open for trading \$0.50 strike price intervals as provided for in Interpretation and Policy .15 to this Rule 4.5.

Further, current Rule 4.5, Interpretation and Policy .07(b) provides that the interval between strike prices of series of options on Units of the SPDR S&P 500 ETF (“SPY”), iShares Core S&P 500 ETF (“IVV”), PowerShares QQQ Trust (“QQQ”), iShares Russell 2000 Index Fund (“IWM”), and The

DIAMONDS Trust (“DIA”) will be \$1 or greater. At this time, the Exchange proposes to modify the interval setting regime to be \$1 or greater for GLD options, similar to SPY, IVV, QQQ, IWM and DIA. The Exchange believes that the proposed rule change would make GLD options easier for investors and traders to use and more tailored to their investment needs. GLD is an Exchange-Traded Fund Share designed to closely track the price and performance of the price of gold bullion. GLD is widely quoted as an indicator of gold stock prices and is a significant indicator of overall economic health. Investors use GLD to diversify their portfolios and benefit from market trends.

Additionally, GLD is a leading product in its asset class that trades within a “complex” where, in addition to the underlying security, there are multiple instruments available for hedging such as, COMEX Gold Futures; Gold Daily Futures; iShares GOLD Trust; SPDR GOLD Minishares Trust; Aberdeen Physical Gold Trust; and GraniteShares Gold Shares. Accordingly, the Exchange believes that offering a wider base of GLD options affords traders and investors important hedging and trading opportunities, particularly in the midst of current price trends. The Exchange believes that not having the proposed \$1 strike price intervals above \$200 in GLD significantly constricts investors’ hedging and trading possibilities. The Exchange therefore believes that by having smaller strike intervals in GLD, investors would have more efficient hedging and trading opportunities due to the lower \$1 interval ascension. The proposed \$1 interval above the \$200 strike price, will result in having at-the-money series based upon the underlying ETF moving less than 1%. The Exchange believes that the proposed strike setting regime is in line with the slower movements of broad-based indices. Considering the fact that \$1 intervals already exist below the \$200 price point and that GLD have consistently inclined in price toward the \$200 level, the Exchange believes that continuing to maintain the current \$200 level (above which intervals increase 500% to \$5), may have a negative effect on investing, trading and hedging opportunities, and volume. The Exchange believes that the investing, trading, and hedging opportunities available with GLD options far outweighs any potential negative impact of allowing GLD options to trade in more finely tailored intervals above the \$200 price point. The proposed strike setting regime would permit strikes to be set to more closely reflect the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

increasing value in the underlying and allows investors and traders to roll open positions from a lower strike to a higher strike in conjunction with the price movements of the underlying ETF. Under the current rule, where the next higher available series would be \$5 away above a \$200 strike price, the ability to roll such positions would be impaired. Accordingly, to move a position from a \$200 strike to a \$205 strike under the current rule, an investor would need for the underlying product to move 2.5%, and would not be able to execute a roll up until such a large movement occurred. The Exchange believes that with the proposed rule change, the investor would be in a significantly safer position of being able to roll his open options position from a \$200 to a \$201 strike price, which is only a 0.5% move for the underlying. As a result, the proposed rule change will allow the Exchange to better respond to customer demand for GLD strike price more precisely aligned with the smaller, longer-term incremental increases in the underlying ETF. The Exchange believes that the proposed rule change, like the other strike price programs currently offered by the Exchange, will benefit investors by providing investors the flexibility to more closely tailor their investment and hedging decisions using GLD options. Moreover, by allowing series of GLD options to be listed in \$1 intervals between strike prices over \$200, the proposal will moderately augment the potential total number of options series available on the Exchange. However, the Exchange believes it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange also believes that Trading Permit Holders (“TPHs”) will not have a capacity issue due to the proposed rule change. In addition, the Exchange represents that it does not believe that this expansion will cause fragmentation of liquidity, but rather, believes that finer strike intervals will serve to increase liquidity available as well as price efficiency by providing more trading opportunities for all market participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically,

the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,⁸ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange’s TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the proposed rule change will allow investors to more easily use GLD options. Moreover, the proposed rule change would allow investors to better trade and hedge positions in GLD options where the strike price is greater than \$200, and ensure that investors in both options are not at a disadvantage simply because of the strike price. The Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The proposal allows the Exchange to respond to customer demand to allow GLD options to trade in \$1 intervals above a \$200 strike price. The Exchange does not believe that the proposed rule would create additional capacity issues or affect market functionality. As noted above, ETF options trade in wider \$5 intervals above a \$200 strike price, whereby options at or below a \$200 strike price trade in \$1 intervals. This creates a situation where contracts on the same option class effectively may not be able to execute certain strategies such as, for example, rolling to a higher

strike price, simply because of the \$200 strike price above which options intervals increase by 500%. This proposal remedies the situation by establishing an exception to the current ETF interval regime for GLD options to allow such options to trade in \$1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change, like other strike price programs currently offered by the Exchange, will benefit investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. By way of example, GLD is a leading product in its asset class and it trades within a “complex” where, in addition to the underlying security, there are multiple instruments available for hedging such as, COMEX Gold Futures; Gold Daily Futures; iShares GOLD Trust; SPDR GOLD Minishares Trust; Aberdeen Physical Gold Trust; and GraniteShares Gold Shares.

With regard to the impact of this proposal on system capacity, the Exchange believes it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its TPHs will not have a capacity issue as a result of this proposal. Further, the Exchange does not believe the proposal does not unfairly discriminate among market participants, as all market participants will be treated in the same manner under this proposal.

Finally, the Exchange notes the proposed rule change is substantively the same as a rule change proposed by Nasdaq ISE, LLC (“ISE”) which the Commission recently approved.⁹

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. Specifically, the Exchange believes that GLD options investors and traders will significantly benefit from the availability of finer strike price intervals above a \$200 price point. In addition, the interval setting regime the

⁵ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

⁸ 15 U.S.C. 78f(b)(1).

⁹ See Securities Exchange Act Release No. 100447 (June 28, 2024) (SR-ISE-2024-17).

⁵ 15 U.S.C. 78f(b).

Exchange proposes to apply to GLD options is currently applied to SPY, IVV, QQQ, IWM and DIA options, which are similarly popular and widely traded ETF products and track indexes at similarly high price levels. Thus, the proposed strike setting regime for GLD options will allow options on this an actively traded ETF with index levels at corresponding price levels to trade pursuant to the same strike setting regime. This will permit investors to employ similar investment and hedging strategies for each of these options.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to make a finer strike price intervals above a \$200 price point available for GLD options. The Exchange notes that the proposed rule change is not a novel proposal, as the Commission recently approved a substantively identical proposal of another exchange.¹⁰ Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change is a competitive response to a filing submitted by ISE that was recently approved by the Commission.¹⁷ The Exchange has stated that waiver of the 30-day operative delay would allow the Exchange to implement the proposal at the same time as its competitor exchange, thus creating competition among GLD options. The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ See *supra* note 9.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-030 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-CBOE-2024-030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2024-030 and should be submitted on or before August 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,

Deputy Secretary.

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¹⁹ 17 CFR 200.30-3(a)(12), (59).

¹⁰ See Securities Exchange Act Release No. 100447 (June 28, 2024) (SR-ISE-2024-17).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100518; File No. SR–NASDAQ–2024–031]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Fee for Requests for Review of Membership Decisions and Decisions Related to Changes in Ownership, Control, or Material Business Operations

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b–4 thereunder,² notice is hereby given that on June 28, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a fee for requests for review of membership decisions and decisions related to changes in ownership, control, or material business operations, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to General 3, Rule 1015, Applicants³ may seek review of a decision by the Exchange’s Membership Department regarding an application for membership under General 3, Rule 1014 (“Membership Decisions”). In addition, pursuant to Rule 1015, Members may seek review of a decision by the Exchange’s Membership Department (“Department”) regarding changes to its ownership, control, or business operations under Rule 1017 (“Change Decisions”). Rule 1015(a) provides that, to initiate a review, an Applicant must, within 25 days after service of a decision under Rule 1014 or 1017, file a written request for review with the Exchange Review Council.⁴ Rule 1015(a) specifies that a request for review shall state with specificity why the Applicant believes that the Department’s decision is inconsistent with the bases for denial set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. Rule 1015(a) also specifies that the Applicant must simultaneously file a copy of the request with the Department.

Nasdaq proposes to establish a fee of \$15,000 for review of Membership Decisions and Change Decisions by the Exchange Review Council (“ERC”). Nasdaq proposes to establish a fee for review by the ERC to offset some of the costs that the Exchange incurs in preparing for and conducting reviews of Membership Decisions and Change Decisions, as described further below.

The costs of the review process include significant time and resources to maintain the infrastructure for the processes and to prepare for and conduct hearings (if requested). For example, with respect to review by the ERC, Nasdaq incurs expenses related to the Nasdaq staff that facilitates the hearings and provides support to the ERC members, expenses related to regulatory services provided by FINRA, the honorarium paid to the ERC

members, and the cost of maintaining a transcript of the hearing. Nasdaq staff and FINRA are involved in reviewing Applicant submissions, requesting and reviewing additional documents and information provided by Applicants, preparing and reviewing briefs, and preparing exhibits and evidence for hearings. In addition, Nasdaq staff may attend hearings and other meetings related to these reviews. Where hearings are held in person, Nasdaq also incurs expenses related to securing and maintaining a location for the hearings and travel expenses for ERC members. Nasdaq staff must manage and coordinate the membership application dockets, maintain the systems that track membership matters, and draft initial decisions for review by the ERC members.

The Exchange Board has authority to call the ERC decision for review. There are related costs associated with the Exchange Board review of every ERC decision in determining whether to call a decision for review as described in General 3, Rule 1016. In that regard, Nasdaq incurs expenses related to the Nasdaq staff that facilitates the call for review process and that provides legal counsel and support to the Exchange Board members, as well as the honorarium paid to the Exchange Board. In addition, to the extent a decision is appealed to the SEC, the Exchange would incur additional costs in connection with such an appeal.

The Exchange estimates that the expenses incurred in such reviews are comparable to or greater than the expenses incurred during reviews before a Hearings Panel⁵ or appeals to the Nasdaq Listing and Hearing Review Council (“NLHRC”).⁶ Nasdaq charges a fee of \$20,000 for review by a Hearings Panel⁷ and a fee of \$15,000 to appeal a Hearings Panel decision to the NLHRC.⁸ Accordingly, Nasdaq proposes to establish a fee of \$15,000 for reviews of Membership Decisions and Change Decisions by the ERC to offset expenses associated with such reviews. The new fee will allow Nasdaq to recoup a portion of the expenses it incurs in the review process. The Exchange has reviewed all costs associated with ERC reviews and does not expect or intend

³ The term “Applicant” means a person that applies for membership in the Exchange under Rule 1013 or a Member that files an application for approval of a change in ownership, control, or business operations under Rule 1017. See General 3, Rule 1011(a).

⁴ The Exchange Review Council serves as the appellate body for disciplinary actions appealed from FINRA Hearings Panels, Nasdaq Membership Department determinations, decisions made by the Exchange relating to market maker withdrawal/reinstatement and obvious error and catastrophic error petitions, and Nasdaq Phlx floor-based rules.

⁵ When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. See Rule 5815.

⁶ A Company may appeal a Hearings Panel Decision to the NLHRC. See Rule 5820.

⁷ See Rule 5815(a)(3).

⁸ See Rule 5820(a).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

that the proposed fee will exceed the costs.⁹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, establishing the proposed fee is reasonable because it will help offset Nasdaq's costs related to reviews of Membership Decisions and Change Decisions, which serve to ensure that Nasdaq's membership standards are properly enforced for the protection of investors. The proposed changes are equitable and not unfairly discriminatory because they would apply equally to all Applicants that choose to request a review of a Membership Decision or Change Decision. In addition, aligning the fee for reviews with the underlying costs of the review process is equitable because doing so will help minimize the extent that Applicants that meet all membership standards may subsidize the costs of review for Applicants that fail to meet the membership standards.

Nasdaq also believes that the proposed fee is consistent with the investor protection objectives of Section 6(b)(5) of the Act¹² in that it is designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market systems, and in general to protect investors and the public interest. Specifically, the fee is designed to provide adequate resources for appropriate preparation to conduct reviews of Membership Decisions and Change Decisions, which help to assure that the Exchanges' membership standards are properly enforced and investors are protected.

Nasdaq also believes that the proposed fee is consistent with Section 6(b)(7) of the Act,¹³ in that the proposed fee is consistent with the provision by the Exchange of fair procedures for the prohibition or limitation by the

Exchange of any person with respect to access to services offered by the Exchange. In particular, the Exchange believes that the new fee should not deter Applicants from availing themselves of the right to appeal because the fee will still be set at a level that will be affordable for Applicants. Nasdaq does not believe that the proposed fee is unduly burdensome or would discourage any Applicant from seeking a review.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As discussed above, this proposed fee is based on the costs to the Exchange to provide a review process for Membership Decisions and Change Decisions, which is in turn necessary to ensure investor protection as well as a transparent process for Applicants. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fees at a particular venue to be excessive or opportunities available at other venues to be more favorable. Applicants may freely choose alternative venues based on the aggregate fees assessed. This rule proposal does not burden competition with other venues, which are similarly free to align their fees based on the costs incurred by the process they offer. For this reason, and the reasons discussed in connection with the statutory basis for the proposed rule change, Nasdaq does not believe that the proposed rule change will result in any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection

of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NASDAQ-2024-031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-031 and should be submitted on or before August 8, 2024.

⁹ A precise cost-per-appeal analysis is not possible given the need to maintain an infrastructure for which the Exchange incurs expenses irrespective of the number of reviews requested in a given year.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(7).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15767 Filed 7–17–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100521; File No. SR–CboeBZX–2024–064]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Strike Interval for Options on SPDR® Gold Shares

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 2, 2024, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend the strike interval for options on SPDR® Gold Shares (“GLD”). The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe BZX Exchange, Inc.

* * * * *

Rule 19.6. Series of Options Contracts Open for Trading

* * * * *

(d) The interval between strike prices of series of options on individual stocks will be:

* * * * *

(4) The interval between strike prices of series of options on Fund Shares approved for options trading pursuant to Rule 19.3(i) shall be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on BZX Options, or at such intervals as may have been established on another options exchange prior to the initiation of trading on BZX Options. Notwithstanding any other provision regarding the interval between strike prices of series of options on Fund Shares in this Rule, the interval between strike prices of series of options on Standard & Poor’s Depository Receipts Trust (“SPY”), iShares S&P 500 Index ETF (“IVV”), [and] the DIAMONDS Trust (“DIA”), and SPDR® Gold Shares (“GLD”) will be \$1 or greater.

* * * * *

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 19.6, “Series of Options Contracts Open for Trading.” Specifically, the Exchange proposes to amend Rule 19.6(d)(4) to allow for the interval between strike prices of series of options on Fund Shares of SPDR® Gold Shares or “GLD” to be \$1 or greater, including where the strike price is greater than \$200.

Currently Rule 19.6, Interpretation and Policy .01 provides, in relevant part, that for series of options on Exchange-Traded Fund Shares that satisfy the criteria set forth in Rule

19.3(i), the interval of strike prices may be \$1 or greater where the strike price is \$200 or less or \$5 or greater where the strike price is over \$200, subject to certain exceptions set forth in Rule 19.3 [sic], Interpretations and Policies .02 and .03.

Further, current Rule 19.6(d)(4) provides that notwithstanding any other provision regarding the interval between strike prices of series of options on Fund Shares in Rule 19.6, the interval between strike prices of series of options on Standard & Poor’s Depository Receipts Trust (“SPY”), iShares S&P 500 Index ETF (“IVV”), and the DIAMONDS Trust (“DIA”) will be \$1 or greater. At this time, the Exchange proposes to modify the interval setting regime to be \$1 or greater for GLD options, similar to SPY, IVV, and DIA. The Exchange believes that the proposed rule change would make GLD options easier for investors and traders to use and more tailored to their investment needs. GLD is an Exchange-Traded Fund Share designed to closely track the price and performance of the price of gold bullion. GLD is widely quoted as an indicator of gold stock prices and is a significant indicator of overall economic health. Investors use GLD to diversify their portfolios and benefit from market trends. Additionally, GLD is a leading product in its asset class that trades within a “complex” where, in addition to the underlying security, there are multiple instruments available for hedging such as, COMEX Gold Futures; Gold Daily Futures; iShares GOLD Trust; SPDR GOLD Minishares Trust; Aberdeen Physical Gold Trust; and GraniteShares Gold Shares.

Accordingly, the Exchange believes that offering a wider base of GLD options affords traders and investors important hedging and trading opportunities, particularly in the midst of current price trends. The Exchange believes that not having the proposed \$1 strike price intervals above \$200 in GLD significantly constricts investors’ hedging and trading possibilities. The Exchange therefore believes that by having smaller strike intervals in GLD, investors would have more efficient hedging and trading opportunities due to the lower \$1 interval ascension. The proposed \$1 interval above the \$200 strike price, will result in having at-the-money series based upon the underlying ETF moving less than 1%. The Exchange believes that the proposed strike setting regime is in line with the slower movements of broad-based indices. Considering the fact that \$1 intervals already exist below the \$200 price point and that GLD have

¹⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

consistently inclined in price toward the \$200 level, the Exchange believes that continuing to maintain the current \$200 level (above which intervals increase 500% to \$5), may have a negative effect on investing, trading and hedging opportunities, and volume. The Exchange believes that the investing, trading, and hedging opportunities available with GLD options far outweighs any potential negative impact of allowing GLD options to trade in more finely tailored intervals above the \$200 price point. The proposed strike setting regime would permit strikes to be set to more closely reflect the increasing value in the underlying and allows investors and traders to roll open positions from a lower strike to a higher strike in conjunction with the price movements of the underlying ETF. Under the current rule, where the next higher available series would be \$5 away above a \$200 strike price, the ability to roll such positions would be impaired. Accordingly, to move a position from a \$200 strike to a \$205 strike under the current rule, an investor would need for the underlying product to move 2.5%, and would not be able to execute a roll up until such a large movement occurred. The Exchange believes that with the proposed rule change, the investor would be in a significantly safer position of being able to roll his open options position from a \$200 to a \$201 strike price, which is only a 0.5% move for the underlying. As a result, the proposed rule change will allow the Exchange to better respond to customer demand for GLD strike price more precisely aligned with the smaller, longer-term incremental increases in the underlying ETF. The Exchange believes that the proposed rule change, like the other strike price programs currently offered by the Exchange, will benefit investors by providing investors the flexibility to more closely tailor their investment and hedging decisions using GLD options. Moreover, by allowing series of GLD options to be listed in \$1 intervals between strike prices over \$200, the proposal will moderately augment the potential total number of options series available on the Exchange. However, the Exchange believes it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange also believes that Members will not have a capacity issue due to the proposed rule change. In addition, the Exchange represents that it does not believe that this expansion will cause fragmentation of liquidity, but

rather, believes that finer strike intervals will serve to increase liquidity available as well as price efficiency by providing more trading opportunities for all market participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,⁸ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the proposed rule change will allow investors to more easily use GLD options. Moreover, the proposed rule change would allow investors to better trade and hedge positions in GLD options where the strike price is greater than \$200, and ensure that investors in both options are not at a disadvantage simply because of the strike price. The Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The proposal

allows the Exchange to respond to customer demand to allow GLD options to trade in \$1 intervals above a \$200 strike price. The Exchange does not believe that the proposed rule would create additional capacity issues or affect market functionality. As noted above, ETF options trade in wider \$5 intervals above a \$200 strike price, whereby options at or below a \$200 strike price trade in \$1 intervals. This creates a situation where contracts on the same option class effectively may not be able to execute certain strategies such as, for example, rolling to a higher strike price, simply because of the \$200 strike price above which options intervals increase by 500%. This proposal remedies the situation by establishing an exception to the current ETF interval regime for GLD options to allow such options to trade in \$1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change, like other strike price programs currently offered by the Exchange, will benefit investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. By way of example, GLD is a leading product in its asset class and it trades within a "complex" where, in addition to the underlying security, there are multiple instruments available for hedging such as, COMEX Gold Futures; Gold Daily Futures; iShares GOLD Trust; SPDR GOLD Minishares Trust; Aberdeen Physical Gold Trust; and GraniteShares Gold Shares.

With regard to the impact of this proposal on system capacity, the Exchange believes it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its Members will not have a capacity issue as a result of this proposal. Further, the Exchange does not believe the proposal does not unfairly discriminate among market participants, as all market participants will be treated in the same manner under this proposal.

Finally, the Exchange notes the proposed rule change is substantively the same as a rule change proposed by Nasdaq ISE, LLC ("ISE") which the Commission recently approved.⁹

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

⁸ 15 U.S.C. 78f(b)(1).

⁹ See Securities Exchange Act Release No. 100447 (June 28, 2024) (SR-ISE-2024-17).

of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. Specifically, the Exchange believes that GLD options investors and traders will significantly benefit from the availability of finer strike price intervals above a \$200 price point. In addition, the interval setting regime the Exchange proposes to apply to GLD options is currently applied to SPY, IVV, and DIA options, which are similarly popular and widely traded ETF products and track indexes at similarly high price levels. Thus, the proposed strike setting regime for GLD options will allow options on this an actively traded ETF with index levels at corresponding price levels to trade pursuant to the same strike setting regime. This will permit investors to employ similar investment and hedging strategies for each of these options.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to make a finer strike price intervals above a \$200 price point available for GLD options. The Exchange notes that the proposed rule change is not a novel proposal, as the Commission recently approved a substantively identical proposal of another exchange.¹⁰ Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the foregoing proposed rule change does not: (i) significantly affect the protection

of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change is a competitive response to a filing submitted by ISE that was recently approved by the Commission.¹⁷ The Exchange has stated that waiver of the 30-day operative delay would allow the Exchange to implement the proposal at the same time as its competitor exchange, thus creating competition among GLD options. The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-064 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-CboeBZX-2024-064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2024-064 and should be submitted on or before August 8, 2024.

¹⁰ See Securities Exchange Act Release No. 100447 (June 28, 2024) (SR-ISE-2024-17).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ See *supra* note 9.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–15770 Filed 7–17–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100523; File No. SR–NASDAQ–2024–019]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change to Rules 5605, 5615 and 5810 To Clarify and Modify Phase-In Schedules for Certain Corporate Governance Requirements and Clarify Applicability of Certain Cure Periods

July 12, 2024.

On May 8, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² a proposed rule change to Exchange Rules 5605, 5615 and 5810 to clarify and modify phase-in schedules for certain corporate governance requirements and clarify the applicability of certain cure periods. The proposed rule change was published for comment in the **Federal Register** on May 29, 2024.³ The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice for this proposed rule change is July 13, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within

which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates August 27, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2024–019).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–15772 Filed 7–17–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100516; File No. SR–GEMX–2024–15]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Fees for Connectivity and Co-Location Services

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on June 27, 2024, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 6 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–GEMX–2024–05). On April 29, 2024, the Exchange withdrew that filing and submitted SR–GEMX–2024–09. The instant filing replaces SR–GEMX–2024–09, which was withdrawn on June 27, 2024.

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34–99129 (December 11, 2023), 88 FR 87017 (December 15, 2023) (SR–GEMX–2023–17). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34–100210 (May 22,

¹⁹ 17 CFR 200.30–3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 100208 (May 22, 2024), 89 FR 46528 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30–3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

proposes to increase its fees throughout General 8 by 5.5%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 6, which relate to the Testing Facility. Options 7, Section 6(H) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 6(H) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the proposal since 2017.⁵ However, since 2017, there has been notable inflation. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.⁶ Moreover, a more specific and pertinent gauge of inflation—the Producer Price Index (“PPI”) for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 16.1% from 2017 to 2024.⁷ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.⁸

The proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI since 2017. Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees,

the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 25%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange’s costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.⁹

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange’s existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange’s competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other

persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, the Exchange has not increased any of the fees included in the proposal since 2017. This means that such fees have fallen in real terms due to inflation, which has been notable. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.¹² Moreover, the PPI for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 16.1% from 2017 to 2024.¹³ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.

As noted above, the Exchange has not increased the fees in this proposal for over 6 years. The proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI since 2017. Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 25%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to

2024), 89 FR 46476 (May 29, 2024) (SR-GEMX-2024-11).

⁵ See Securities Exchange Act Release No. 34-81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR-GEMX-2017-48).

⁶ See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

⁷ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

⁸ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

⁹ See, e.g., Securities Exchange Act Release No. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-ChoeBYX-2024-012).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

¹³ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within

markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets.

There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.¹⁴ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."¹⁵ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."¹⁶ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-

location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁷ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹⁴ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

¹⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

¹⁶ *Id.*

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2024-15 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-GEMX-2024-15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-GEMX-2024-15 and should be submitted on or before August 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-15765 Filed 7-17-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100512; File No. SR-NASDAQ-2024-032]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 27, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8, fees assessed for remote multi-cast ITCH ("MITCH") Wave Ports in Equity 7, Section 115, and certain fees related to Nasdaq Testing Facilities in Equity 7, Section 130 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Equity 7. First, the Exchange proposes to increase the installation and recurring monthly fees assessed for remote MITCH Wave

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-NASDAQ-2024-008). On April 29, 2024, the Exchange withdrew that filing and submitted SR-NASDAQ-2024-020. The instant filing replaces SR-NASDAQ-2024-020, which was withdrawn on June 27, 2024.

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99126 (December 8, 2023), 88 FR 86712 (December 14, 2023) (SR-NASDAQ-2023-052). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100196 (May 21, 2024), 89 FR 46199 (May 28, 2024) (SR-NASDAQ-2024-022).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Ports⁵ in Equity 7, Section 115(g)(1) by 5.5%. In addition, the Exchange proposes to increase certain fees in Section 130(d), which relate to the Nasdaq Testing Facility. Equity 7, Section 130(d)(1)(C) provides that subscribers to the Nasdaq Testing Facility (“NTF”) located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the NTF. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the NTF. In addition, Equity 7, Section 130(d)(1)(C) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the NTF shall pay a fee of \$1,055 per hand-off, per month for connection to the NTF and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. With the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. However, since 2015, there has been notable inflation. Between 2015 and 2024, the dollar had an average inflation rate of 2.97% per year, producing a cumulative price increase of 30.12%.⁶ Moreover, a more specific and pertinent gauge of inflation—the Producer Price Index (“PPI”) for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 15.9% from 2015 to 2024.⁷ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.⁸

The proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI

since 2015.⁹ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 30%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2015. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange’s costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.¹⁰

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq’s existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange’s

competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 16 different venues for equities trading and 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. This means that such fees have fallen in real terms due to inflation, which has been notable. Between 2015 and 2024, the dollar had an average inflation rate of 2.97% per year, producing a cumulative price increase of 30.12%.¹³ Moreover, the PPI for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 15.9% from 2015 to 2024.¹⁴ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.

As noted above, the Exchange has not increased the fees in this proposal for over 8 years (or in the case of services introduced in 2017, for over 6 years since the services were introduced). The

⁵ Remote MITCH Wave Ports are for clients co-located at other third-party data centers, through which NASDAQ TotalView ITCH market data is distributed after delivery to those data centers via wireless network.

⁶ See <https://www.officialdata.org/us/inflation/2015?amount=1> (Last updated February 27, 2024).

⁷ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

⁸ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

⁹ Between 2017 and 2024, CPI inflation exceeded 25%. See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024). Between 2017 and 2024, the PPI for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services increased 16.1%. See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

¹⁰ See, e.g., Securities Exchange Act Release No. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ See <https://www.officialdata.org/us/inflation/2015?amount=1> (Last updated February 27, 2024).

¹⁴ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI since 2015. Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 30%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2015. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade both equities and options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the

Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets.

There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share.¹⁵ No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.¹⁶ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."¹⁷ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable,

and not unreasonably or unfairly discriminatory."¹⁸ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services can do so on a non-discriminatory basis.

¹⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

¹⁶ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

¹⁷ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

¹⁸ *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NASDAQ-2024-032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-032 and should be submitted on or before August 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-15761 Filed 7-17-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-172, OMB Control No. 3235-0169]

Proposed Collection; Comment Request; Extension: Form N-5

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Form N-5 (17 CFR 239.24 and 274.5) is the form used by small business investment companies ("SBICs") to register their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act") and the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Investment Company Act"). Form N-5 is the registration statement form adopted by the Commission for use by an SBIC that

has been licensed as such under the Small Business Investment Act of 1958 or which has received the preliminary approval of the Small Business Administration ("SBA") and has been notified by the SBA that the company may submit a license application Form N-5 is an integrated registration form and may be used as the registration statement under both the Securities Act and the Investment Company Act. The purpose of Form N-5 is to meet the filing and disclosure requirements of both the Securities Act and Investment Company Act, and to provide investors with information sufficient to evaluate an investment in an SBIC. The information that is required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The Commission did not receive any filings on Form N-5 in the last three years (or in the three years before that). Nevertheless, for purposes of this PRA, we conservatively estimate that at least one Form N-5 will be filed in the next three years, which translates to about 0.333 filings on Form N-5 per year. The currently approved internal burden of Form N-5 is 352 hours per response. We continue to believe this estimate for Form N-5's internal hour burden is appropriate. Therefore, the number of currently approved aggregate burden hours, when calculated using the current estimate for number of filings, is about 117 internal hours per year. The currently approved external cost burden of Form N-5 is \$12,524 per filing. The requested external cost burden for filing one Form N-5 would be \$14,746 per year. This estimated burden is based on the estimated wage rate of \$584/hour, for 25.25 hours, for outside legal services to complete the form and provide the required hyperlinks.

Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of Form N-5 is mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 200.30-3(a)(12).

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 16, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: July 15, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-15823 Filed 7-17-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100525; File No. SR-CboeBZX-2024-062]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 1, 2024, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to

amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/BZX/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("BZX Equities") by introducing a new Non-Displayed Add Volume Tier. The Exchange proposes to implement this change effective July 1, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the "Act"), to which market participants may direct their order flow. Based on publicly available information,³ no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a

"Maker-Taker" model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.⁴ For orders in securities priced below \$1.00, the Exchange does not provide a rebate for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.⁵ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Add/Remove Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange offers various Add/Remove Volume Tiers. In particular, the Exchange offers four Non-Displayed Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes HB,⁶ HV,⁷ or HY,⁸ where a Member reaches certain volume-based criteria offered in each tier. The Exchange now proposes to introduce a new Non-Displayed Add Volume Tier 5. The proposed criteria for Non-Displayed Add Volume Tier 5 is as follows:

- Non-Displayed Add Volume Tier 5 provides a rebate of \$0.0027 per share in securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes HB, HV, or HY) where a Member adds a Step-Up ADV⁹ from

⁴ See BZX Equities Fee Schedule, Standard Rates.

⁵ *Id.*

⁶ Fee code HB is appended to non-displayed orders that add liquidity to BZX in Tape B securities.

⁷ Fee code HV is appended to non-displayed orders that add liquidity to BZX in Tape A securities.

⁸ Fee code HY is appended to non-displayed orders that add liquidity to BZX in Tape C securities.

⁹ Step-Up ADV means ADV in the relevant baseline month subtracted from current day ADV. ADV means average daily volume calculated as the number of shares added or removed, combined, per day and is calculated on a monthly basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 21, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

May 2024 $\geq 0.10\%$ of the TCV¹⁰ as Midpoint Peg, Non-Displayed orders that yield fee codes HB, HI,¹¹ HV or HY.

Additionally, the Exchange notes that proposed Non-Displayed Add Volume Tier 5 will expire no later than November 30, 2024, which the Exchange will indicate on the Exchange's fee schedule.

The proposed Non-Displayed Add Volume Tier 5, like other Add/Remove Volume Tiers and Step-Up Tiers,¹² is intended to provide an additional opportunity to incentivize Members to earn an enhanced rebate by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Incentivizing an increase in liquidity adding volume through enhanced rebate opportunities encourages liquidity-adding Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the

proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)¹⁶ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to introduce Non-Displayed Add Volume Tier 5 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Specifically, the Exchange's proposal to introduce Non-Displayed Add Volume Tier 5 is not a significant departure from existing criteria, is reasonably correlated to the enhanced rebate offered by the Exchange and other competing exchanges,¹⁷ and will continue to incentivize Members to submit order flow to the Exchange. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹⁸ including the Exchange,¹⁹ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules or rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to introduce Non-Displayed

Add Volume Tier 5 is reasonable because the proposed tier will be available to all Members and provide all Members with an opportunity to receive an enhanced rebate. The Exchange further believes its proposal to introduce Non-Displayed Add Volume Tier 5 will provide a reasonable means to encourage liquidity adding non-displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding and liquidity removing volume to the Exchange by offering them an opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offer additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that its proposal to introduce Non-Displayed Add Volume Tier 5 is reasonable as the proposed criteria does not represent a significant departure from the criteria currently offered in the Fee Schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed Non-Displayed Add Volume Tier 5 and have the opportunity to meet the tier's criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for proposed Non-Displayed Add Volume Tier 5. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior month's volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Non-Displayed Add Volume Tier 5. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would

¹⁰ TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹¹ Fee code HI is appended to non-displayed orders that add liquidity to BZX and receive price improvement.

¹² See BZX Equities Fee Schedule, Footnote 2, Step-Up Tiers.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *Id.*

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ See Nasdaq Price List, Add and Remove Rates, Rebate to Add Other Non-Displayed Liquidity, available at <https://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>; see also MEMX Equities Fee Schedule, Non-Display Add Tiers, available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/>.

¹⁸ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

¹⁹ See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the Exchange's proposal to introduce Non-Displayed Add Volume Tier 5 will apply to all Members equally in that all Members are eligible for the new tier, have a reasonable opportunity to meet the proposed tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.²⁰ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed,

participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²¹ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"²² Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²³ and paragraph (f) of Rule 19b-4²⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-062 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-CboeBZX-2024-062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

²⁰ *Supra* note 3.

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²² *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f).

subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2024–062 and should be submitted on or before August 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–15774 Filed 7–17–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100509]

Availability of SEC Online Comment Form Option

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: Due to a technological error, members of the public who sought to submit a comment to the Securities and Exchange Commission (“Commission”) using the online comment form option on the Commission website may have received a message indicating that they were unable to complete a submission using the online form. The technological error, which occurred from May 30 until June 26, 2024, has been resolved. Interested parties that wish to submit a comment using the online comment form option may do so by visiting <https://www.sec.gov/rules-regulations/how-submit-comment>. Comments already received and posted on the Commission website need not be resubmitted.

FOR FURTHER INFORMATION CONTACT: J. Matthew DeLesDernier, Deputy Secretary, Office of the Secretary, at (202) 551–5400, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, or by email at rule-comments@sec.gov.

SUPPLEMENTARY INFORMATION: Due to a technological error, members of the public who sought to submit a comment to the Commission using the online comment form option on the Commission website from May 30 until June 26, 2024, may have received a message indicating that they were unable to complete a submission using the online form. The technological error affected online forms that can be used to submit comments on Commission rulemakings, self-regulatory organization matters, Public Company Accounting Oversight Board proposed rule changes, and other matters open for

public comment. During the time that the online comment form option was unavailable, affected commenters were able to submit a comment by alternative means, such as by sending an email to rule-comments@sec.gov or by sending a paper comment to the Commission’s mailing address at 100 F Street NE, Washington, DC, 20549–1090.

The technological error has been resolved. Interested parties that wish to submit a comment using the online comment form option may do so by visiting <https://www.sec.gov/rules-regulations/how-submit-comment>. Comments already received and posted on the Commission website need not be resubmitted. If members of the public have questions or concerns about whether their comment was received by the Commission, they should contact the Commission staff at the address, telephone number, or email address listed above.

By the Commission.¹

Dated: July 12, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–15946 Filed 7–16–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100513; File No. SR–Phlx–2024–27]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

July 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on June 27, 2024, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s fees for connectivity and co-

location services, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange’s fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Equity 7, Section 3 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange’s fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange’s fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange’s GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–Phlx–2024–08). On April 29, 2024, the Exchange withdrew that filing and submitted SR–Phlx–2024–019. The instant filing replaces SR–Phlx–2024–019, which was withdrawn on June 27, 2024.

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase

²⁵ 17 CFR 200.30–3(a)(12).

¹ Authority: 15 U.S.C. 78w(a)(3).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

proposes to increase its fees throughout General 8 by 5.5%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Equity 7, Section 3, which relate to the Testing Facility. Equity 7, Section 3 provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Equity 7, Section 3 provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. With the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. However, since 2015, there has been notable inflation. Between 2015 and 2024, the dollar had an average inflation rate of 2.97% per year, producing a cumulative price increase of 30.12%.⁵ Moreover, a more specific and pertinent gauge of inflation—the Producer Price Index (“PPI”) for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 15.9% from 2015 to 2024.⁶ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.⁷

because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34–99125 (December 8, 2023), 88 FR 86705 (December 14, 2023) (SR–Phlx–2023–53). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34–100197 (May 21, 2024), 89 FR 46185 (May 28, 2024) (SR–Phlx–2024–23).

⁵ See <https://www.officialdata.org/us/inflation/2015?amount=1> (Last updated February 27, 2024).

⁶ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

⁷ Unregulated competitors providing connectivity and co-location services often have annual price

The proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI since 2015.⁸ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 30%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2015. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange’s costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.⁹

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange’s existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments

increases written into their agreements with customers to account for inflation and rising costs.

⁸ Between 2017 and 2024, CPI inflation exceeded 25%. See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024). Between 2017 and 2024, the PPI for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services increased 16.1%. See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

⁹ See, e.g., Securities Exchange Act Release No. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012).

by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange’s competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 16 different venues for equities trading and 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. This means that such fees have fallen in real terms due to inflation, which has been notable. Between 2015 and 2024, the dollar had an average inflation rate of 2.97% per year, producing a cumulative price increase of 30.12%.¹² Moreover, the PPI for data processing, hosting and related services, active services pages, and other IT infrastructure provisioning services—increased 15.9% from 2015 to 2024.¹³ Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² See <https://www.officialdata.org/us/inflation/2015?amount=1> (Last updated February 27, 2024).

¹³ See <https://data.bls.gov/timeseries/PCU5182105182105> (Last updated June 24, 2024).

the revenue it collects through such fees.

As noted above, the Exchange has not increased the fees in this proposal for over 8 years (or in the case of services introduced in 2017, for over 6 years since the services were introduced). The proposed fees represent a 5.5% increase from the current fees, which is far below the rates of inflation, as measured by either the CPI or the PPI since 2015. Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 30%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2015. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade both equities and options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets.

There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share.¹⁴ No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.¹⁵ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of

the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."¹⁶ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."¹⁷ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the

¹⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

¹⁵ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

¹⁶ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

¹⁷ *Id.*

competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2024-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-Phlx-2024-27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/>

[rules/sro.shtml](https://www.sec.gov/rules/sro.shtml)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2024-27 and should be submitted on or before August 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-15762 Filed 7-17-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100522; File No. SR-CboeBZX-2024-026]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Permit the Generic Listing and Trading of Multi-Class ETF Shares

July 12, 2024.

I. Introduction

On April 15, 2024, Cboe BZX Exchange, Inc. ("BZX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend BZX Rule 14.11(l) to permit the generic listing and trading of

Multi-Class ETF Shares. The proposed rule change was published for comment in the **Federal Register** on May 1, 2024.³

On May 30, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to disapprove the proposed rule change.

II. Description of the Proposed Rule Change

BZX Rule 14.11(l) governs the generic listing and trading of Exchange-Traded Fund Shares ("ETF Shares")⁷ on the Exchange. BZX Rule 14.11(l)(4) currently provides that the Exchange may approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act,⁸ provided such series of ETF Shares is eligible to operate in reliance on Rule 6c-11 under the 1940 Act, and must satisfy the requirements of BZX Rule 14.11(l) on an initial and continued listing basis.⁹ BZX Rule 14.11(l)(4)(A) also specifically requires that the requirements of Rule 6c-11

³ See Securities Exchange Act Release No. 100034 (April 25, 2024), 89 FR 35255 ("Notice"). Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboebzx-2024-026/sr-cboebzx2024026.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 100248, 89 FR 48202 (June 5, 2024). The Commission designated July 30, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ ETF Shares are shares of stock issued by an Exchange-Traded Fund. See BZX Rule 14.11(l)(3)(A). Exchange-Traded Fund means "exchange-traded fund" as defined in Rule 6c-11 under the Investment Company Act of 1940 ("1940 Act"). See BZX Rule 14.11(l)(3)(B).

⁸ Rule 19b-4(e)(1) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to section 19(b) of the Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class. See 17 CFR 19b-4(e)(1). Rule 19b-4(e) defines "new derivative securities product" as any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. See 17 CFR 19b-4(e).

⁹ See BZX Rule 14.11(l)(4).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

under the 1940 Act must be satisfied by a series of ETF Shares on an initial and continued listing basis.¹⁰ In addition, BZX Rule 14.11(l)(4)(B)(i) provides that, if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c–11 under the 1940 Act, the Exchange will consider suspending trading in, and will commence delisting proceedings under BZX Rule 14.12 for, the series of ETF Shares.¹¹

The Exchange proposes to expand BZX Rule 14.11(l) to allow the Exchange to also approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b–4(e) under the Act, provided such series of ETF Shares is eligible to operate in reliance on any exemptive relief under Rule 6c–11 under the 1940 Act that permits the fund to offer a class of ETF Shares in addition to classes of shares that are not exchange-traded (“Multi-class ETF Shares”). Similarly, as proposed, such series also must satisfy the requirements of BZX Rule 14.11(l) on an initial and continued listing basis. The Exchange also proposes that the requirements of Rule 6c–11, including the requirements of any exemptive relief applicable to Multi-class ETF Shares, must be satisfied by a series of ETF Shares on an initial and continued listing basis. Lastly, the Exchange proposes to amend BZX Rule 14.11(l)(4)(B)(i)(a) to provide that, if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c–11 under the 1940 Act or any exemptive relief applicable to Multi-class ETF Shares, the Exchange will consider suspending trading in the series and will commence delisting proceedings under BZX Rule 14.12.

The Exchange states that there are numerous applications for exemptive relief for Multi-class ETF Shares currently before the Commission.¹² As a result, the Exchange states that the proposed amendment would provide for the generic listing and/or trading of Multi-class ETF Shares under BZX Rule 14.11(l) on the Exchange immediately upon the Commission’s applicable order granting exemptive relief.¹³ The Exchange further states that it submits the proposal only to prevent any unnecessary delay in listing Multi-class ETF Shares when and if such requests

for exemptive relief are granted by the Commission.¹⁴

The Exchange states that “permitting Multi-class ETF Shares to list on the Exchange is consistent with the applicable exemptive relief and will help perfect the mechanism of a free and open market and, in general, will protect investors and the public interest in that it will permit the listing and trading of Multi-class ETF Shares, consistent with the applicable exemptive relief, and in a manner that will benefit investors.”¹⁵ Specifically, the Exchange believes that the exemptive relief proposed in the applications and the expected benefits of the Multi-class ETF Shares would be to the benefit of investors, and that eliminating any unnecessary delay for Multi-class ETF Shares listing on the Exchange will simply help accrue those benefits to investors more expeditiously.¹⁶ The Exchange concludes that, to the extent that the Commission does not grant Multi-class ETF Shares relief, the proposed change to BZX Rule 14.11(l) will have no impact on series of ETF Shares listed on the Exchange.¹⁷

The Exchange also believes that amending BZX Rule 14.11(l) to explicitly provide that the initial and continued listing standards applicable to ETF Shares, including the suspension of trading or removal standards, which would be applicable to Multi-class ETF Shares operating under any applicable exemptive relief, is designed to promote transparency and clarity in the Exchange’s rules.¹⁸ The Exchange believes that these amendments would clearly allow Multi-class ETF Shares to list and trade upon the Commission’s order of exemptive relief.¹⁹

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2024–026 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁰ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is

appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²¹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”²²

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on whether the proposal is consistent with Section 6(b)(5) of the Act,²³ and specifically, whether the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. According to the Exchange, a number of applications for exemptive relief to permit the applicable fund to offer Multi-class ETF Shares have been submitted to the Commission.²⁴ However, the Exchange provides no indication that any exemptive relief to such applicants has yet been granted or from what elements of either Rule 6c–11 or sections of or particular rules under the 1940 Act issuers would be exempt.

Correspondingly, it is unclear whether the proposed rule change actually would allow for the generic listing of shares of any funds authorized to offer a class of ETF Shares in addition to classes of shares that are not exchange-traded. In addition, although the Exchange states that its proposed rule change is to prevent any unnecessary delay in listing Multi-class ETF Shares when and if the requested prospective exemptive relief is granted by the Commission, the rule as proposed would allow the Exchange to generically list and trade ETF Shares issued by a fund that has received any exemptive

¹⁰ See BZX Rule 14.11(l)(4)(A).

¹¹ See BZX Rule 14.11(l)(4)(B)(i).

¹² See Notice, *supra* note 3, 89 FR at 35255.

¹³ See *id.*

¹⁴ See *id.* The Exchange also restates that it “is only proposing to amend its rules to allow such a series of Multi-class ETF Shares to list on the Exchange pursuant to Rule 14.11(l), a change to its rules that will only be meaningful if and when the Commission grants such relief to an [applicant].” *Id.*, 89 FR at 35256.

¹⁵ See Notice, *supra* note 3, 89 FR at 35256.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.* See also *supra* note 14 and accompanying text.

²⁰ 15 U.S.C. 78s(b)(2)(B).

²¹ *Id.*

²² 15 U.S.C. 78f(b)(5).

²³ *Id.*

²⁴ See Notice, *supra* note 3, 89 FR at 35256.

relief under Rule 6c–11 under the 1940 Act to offer Multi-class ETF Shares, not only the requested prospective exemptive relief referenced in the proposed rule change. Accordingly, the Commission also seeks comment on whether the Exchange has provided sufficient information and explanation regarding either the requested proposed exemptive relief referenced in the proposed rule change or other future exemptive relief that has not yet been requested, and the relationship between any such exemptive relief and its proposed rule change, to allow an evaluation of whether the proposed rule change is consistent with Section 6 of the Act. In particular, the Commission requests comment on whether the Exchange has provided sufficient explanation of how its proposed rule change is designed to prevent fraudulent and manipulative practices in light of the scope of the exemptive relief under Rule 6c–11 potentially available to the Multi-class ETF Shares that may be generically listed under the proposed rule change.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.²⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by August 8, 2024. Any person who wishes to file a rebuttal to any other person's

submission must file that rebuttal by August 22, 2024.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–CboeBZX–2024–026 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–CboeBZX–2024–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2024–026 and should be submitted on or before August 8, 2024. Rebuttal comments should be submitted by August 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–15771 Filed 7–17–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20448 and #20449; NEW HAMPSHIRE Disaster Number NH–20005]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of New Hampshire

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Hampshire (FEMA–4799–DR), dated 07/10/2024.

Incident: Severe Winter Storm and Flooding.

Incident Period: 04/03/2024 through 04/05/2024.

DATES: Issued on 07/10/2024.

Physical Loan Application Deadline Date: 09/09/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 04/10/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/10/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Belknap, Carroll, Rockingham, Sullivan.

The Interest Rates are:

²⁵ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁶ 17 CFR 200.30–3(a)(57).

	Percent
<i>For Physical Damage:</i> Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations with- out Credit Available Else- where	3.250
<i>For Economic Injury:</i> Non-Profit Organizations with- out Credit Available Else- where	3.250

The number assigned to this disaster for physical damage is 20448B and for economic injury is 204490.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster Recovery & Resilience.
[FR Doc. 2024–15801 Filed 7–17–24; 8:45 am]
BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION
[Disaster Declaration # 20451 and # 20452; NEW MEXICO Disaster Number NM–20006]
Presidential Declaration of a Major Disaster for Public Assistance Only for the State of New Mexico

AGENCY: U.S. Small Business Administration.
ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Mexico (FEMA—4795–DR), dated 07/11/2024.
Incident: South Fork Fire, Salt Fire, and Flooding.
Incident Period: 06/17/2024 and continuing.

DATES: Issued on 07/11/2024.
Physical Loan Application Deadline Date: 09/09/2024.
Economic Injury (EIDL) Loan Application Deadline Date: 04/11/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President’s major disaster declaration on 07/11/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:
Primary Counties: Lincoln, Otero, Rio Arriba, San Juan and the Mescalero Apache Tribe.
The Interest Rates are:

	Percent
<i>For Physical Damage:</i> Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations with- out Credit Available Else- where	3.250
<i>For Economic Injury:</i> Non-Profit Organizations with- out Credit Available Else- where	3.250

The number assigned to this disaster for physical damage is 204515 and for economic injury is 204520.
(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster Recovery & Resilience.
[FR Doc. 2024–15799 Filed 7–17–24; 8:45 am]
BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION
[Disaster Declaration #20407 and #20408; NEW MEXICO Disaster Number NM–20004]

Presidential Declaration Amendment of a Major Disaster for the State of New Mexico

AGENCY: Small Business Administration.
ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–4795–DR), dated 06/20/2024.
Incident: South Fork Fire, Salt Fire, and Flooding.
Incident Period: 06/17/2024 and continuing.

DATES: Issued on 07/11/2024.
Physical Loan Application Deadline Date: 08/19/2024.
Economic Injury (EIDL) Loan Application Deadline Date: 03/20/2025.
ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.
FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster

Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President’s major disaster declaration for the State of New Mexico, dated 06/20/2024, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Rio Arriba, San Juan.

Contiguous Counties (Economic Injury Loans Only):

New Mexico: Los Alamos, McKinley, Mora, Sandoval, Santa Fe, Taos.
Arizona: Apache.
Colorado: Archuleta, Conejos, La Plata, Montezuma.
Utah: San Juan.

All other information in the original declaration remains unchanged.
(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster Recovery & Resilience.
[FR Doc. 2024–15813 Filed 7–17–24; 8:45 am]
BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION
[Disaster Declaration #20450; IDAHO Disaster Number ID–20006 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Idaho

AGENCY: U.S. Small Business Administration.
ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of IDAHO dated 07/12/2024.
Incident: Teton Pass Landslide and Closure of Highway 22.
Incident Period: 06/08/2024 and continuing.

DATES: Issued on 07/12/2024.
Economic Injury (EIDL) Loan Application Deadline Date: 04/14/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

Administrator's EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Teton.

Contiguous Counties:

Idaho: Bonneville, Fremont, Madison
Wyoming: Teton

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for economic injury is 204500.

The States which received an EIDL Declaration are Idaho, Wyoming.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2024-15798 Filed 7-17-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

**Prompt Payment Interest Rate;
Contract Disputes Act**

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of Prompt Payment Interest Rate; Contract Disputes Act.

SUMMARY: For the period beginning July 1, 2024, and ending on December 31, 2024, the prompt payment interest rate is 4⅞ per centum per annum.

DATES: Applicable July 1, 2024, to December 31, 2024.

ADDRESSES: Comments or inquiries may be mailed to: E-Commerce Division, Bureau of the Fiscal Service, 401 14th Street SW, Room 306F, Washington, DC 20227. Comments or inquiries may also be emailed to PromptPayment@fiscal.treasury.gov.

FOR FURTHER INFORMATION CONTACT: Thomas M. Burnum, E-Commerce Division, (202) 874-6430; or Ashlee Adams, Senior Counsel, Office of the Chief Counsel, (304) 480-8692.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, sec. 12, Public Law 95-563, 92 Stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). "The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made." 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning July 1, 2024, and ending on December 31, 2024, is 4⅞ per centum per annum.

Timothy E. Gribben,
Commissioner, Bureau of the Fiscal Service.
[FR Doc. 2024-15721 Filed 7-17-24; 8:45 am]
BILLING CODE 4810-AS-P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

**Proposed Collection of Information:
Schedule of Excess Risks**

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments

concerning the Schedule of Excess Risks.

DATES: Written comments should be received on or before September 16, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006-A, PO Box 1328, Parkersburg, WV 26106-1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Schedule of Excess Risks.

OMB Number: 1530-0062.

Form Number: FS Form 285-A.

Abstract: This information is collected from insurance companies to assist the Treasury Department in determining whether a certified or applicant company is solvent and able to carry out its contracts, and whether the company complies with Treasury excess risk regulations for writing Federal surety bonds.

Current Actions: Revision of a currently approved collection.

Type of Review: Existing Collection in use without OMB Control Number.

Affected Public: Extension of a currently approved collection.

Estimated Number of Respondents: 1,072 total.

Estimated Time per Respondent: New Applicants—20 hours; Renewals—5 hours.

Estimated Total Annual Burden Hours: 5,660.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 15, 2024.

Bruce A. Sharp,
Bureau PRA Clearance Officer.

[FR Doc. 2024-15818 Filed 7-17-24; 8:45 am]

BILLING CODE 4810-AS-P



FEDERAL REGISTER

Vol. 89

Thursday,

No. 138

July 18, 2024

Part II

Commodity Futures Trading Commission

17 CFR Chapter I

Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan, by the United Kingdom Prudential Regulation Authority, by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico, and Domiciled in the French Republic and Federal Republic of Germany and Subject to Regulation in the European Union; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: On August 8, 2022, the Commodity Futures Trading Commission issued a notice and request for comment on an application submitted by the Financial Services Agency of Japan requesting that the Commission determine that registered nonbank swap dealers organized and domiciled in Japan may comply with certain capital and financial reporting requirements under the Commodity Exchange Act and Commission regulations by being subject to, and complying with, corresponding capital and financial reporting requirements of Japan. The Commission also solicited public comment on a proposed comparability determination and related order providing for the conditional availability of substituted compliance in connection with the application.

The Commission is adopting the proposed order with certain modifications and clarifications to address comments. The final order provides that a nonbank swap dealer organized and domiciled in Japan may satisfy the capital requirements under the Commodity Exchange Act and applicable Commission regulations and the financial reporting rules under the Commodity Exchange Act and applicable Commission regulations by complying with certain specified Japanese laws and regulations and conditions set forth in the order.

DATES: This determination was made by the Commission on June 24, 2024.

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Participants Division; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is issuing an order providing that registered nonbank swap dealers organized and domiciled in Japan (“Japanese nonbank SDs”) may satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (“CEA”) ¹ and Commission regulations ² by being subject to, and complying with, comparable capital and financial reporting requirements under relevant Japanese laws and regulations, subject to certain conditions set forth in the order below. The order is based on the proposed comparability determination and related proposed order published by the Commission on August 8, 2022,³ as modified in certain aspects to address comments and to clarify its terms.

I. Introduction

A. Regulatory Background—CFTC Capital, Margin, and Financial Reporting Requirements for Swap Dealers and Major Swap Participants

Section 4s(e) of the CEA ⁴ directs the Commission and “prudential regulators” ⁵ to impose capital requirements on swap dealers (“SDs”) and major swap participants (“MSPs”) registered with the Commission.⁶

¹ 7 U.S.C. 1 *et seq.* The CEA may be accessed through the Commission’s website, www.cftc.gov.

² 17 CFR Chapter I. Commission regulations may be accessed through the Commission’s website, www.cftc.gov.

³ Notice of Proposed Order and Request for Comment on an Application for Capital Comparability Determination from the Financial Services Agency of Japan, 87 FR 48092 (Aug. 8, 2022) (“2022 Proposal”).

⁴ 7 U.S.C. 6s(e).

⁵ The term “prudential regulators” is defined in the CEA to mean the Board of Governors of the Federal Reserve System (“Federal Reserve Board”); the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency. 7 U.S.C. 1a(39).

⁶ Subject to certain exceptions, the term “swap dealer” is generally defined as any person that: (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. 7 U.S.C. 1a(49).

The term “major swap participant” is generally defined as any person who is not an SD, and: (i) subject to certain exclusions, maintains a substantial position in swaps for any of the major swap categories as determined by the Commission; (ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S.

Section 4s(e) also directs the Commission and prudential regulators to adopt regulations imposing initial and variation margin requirements on swaps entered into by SDs and MSPs that are not cleared by a registered derivatives clearing organization (“uncleared swaps”).

Section 4s(e) applies a bifurcated approach with respect to the above Congressional directives, requiring each SD and MSP that is subject to the regulation of a prudential regulator (“bank SD” and “bank MSP,” respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the applicable prudential regulator, and requiring each SD and MSP that is not subject to the regulation of a prudential regulator (“nonbank SD” and “nonbank MSP,” respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the Commission.⁷ Therefore, the Commission’s authority to impose capital requirements and margin requirements for uncleared swap transactions extends to nonbank SDs and nonbank MSPs, including nonbanking subsidiaries of bank holding companies regulated by the Federal Reserve Board.⁸

The prudential regulators implemented Section 4s(e) in 2015 by amending existing capital requirements applicable to bank SDs and bank MSPs to incorporate swap transactions into their respective bank capital frameworks, and by adopting rules imposing initial and variation margin requirements on bank SDs and bank MSPs that engage in uncleared swap transactions.⁹ The Commission adopted final rules imposing initial and variation margin obligations on nonbank SDs and nonbank MSPs for uncleared swap transactions on January 6, 2016.¹⁰ The Commission also approved final capital requirements for nonbank SDs and nonbank MSPs on July 24, 2020, which were published in the **Federal Register** on September 15, 2020 with a

banking system or financial markets; or (iii) is a financial entity that: (a) is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and (b) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission. 7 U.S.C. 1a(33).

⁷ 7 U.S.C. 6s(e)(2).

⁸ 7 U.S.C. 6s(e)(1) and (2).

⁹ *Margin and Capital Requirements for Covered Swap Entities*, 80 FR 74840 (Nov. 30, 2015).

¹⁰ *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 81 FR 636 (Jan. 6, 2016).

compliance date of October 6, 2021 (“CFTC Capital Rules”).¹¹

Section 4s(f) of the CEA addresses SD and MSP financial reporting requirements.¹² Section 4s(f) authorizes the Commission to adopt rules imposing financial condition reporting obligations on all SDs and MSPs (*i.e.*, nonbank SDs, nonbank MSPs, bank SDs, and bank MSPs). Specifically, Section 4s(f)(1)(A) provides, in relevant part, that each registered SD and MSP must make financial condition reports as required by regulations adopted by the Commission.¹³ The Commission’s financial reporting obligations were adopted with the Commission’s nonbank SD and nonbank MSP capital requirements, and also had a compliance date of October 6, 2021 (“CFTC Financial Reporting Rules”).¹⁴

B. Commission Capital Comparability Determinations for Non-U.S. Nonbank Swap Dealers and Non-U.S. Nonbank Major Swap Participants

Commission Regulation 23.106 establishes a substituted compliance framework whereby the Commission may determine that compliance by a non-U.S. domiciled nonbank SD or non-U.S. domiciled nonbank MSP with its home country’s capital and financial reporting requirements will satisfy all or parts of the CFTC Capital Rules and all or parts of the CFTC Financial Reporting Rules (such a determination referred to as a “Comparability Determination”).¹⁵

¹¹ *Capital Requirements of Swap Dealers and Major Swap Participants*, 85 FR 57462 (Sept. 15, 2020). On April 30, 2024, the Commission amended the capital and financial reporting requirements to revise certain financial reporting obligations, among other changes. See *Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants*, 89 FR 45569 (May 23, 2024). The amendments have limited impact on nonbank SDs covered by this order.

¹² 7 U.S.C. 6s(f).

¹³ 7 U.S.C. 6s(f)(1)(A).

¹⁴ 85 FR 57462.

¹⁵ 17 CFR 23.106. Commission Regulation 23.106(a)(1) provides that a request for a Comparability Determination may be submitted by a non-U.S. nonbank SD or non-U.S. nonbank MSP, a trade association or other similar group on behalf of its SD or MSP members, or a foreign regulatory authority that has direct supervisory authority over one or more non-US nonbank SDs or non-U.S. nonbank MSPs. However, Commission regulations also provide that any non-U.S. nonbank SD or non-U.S. nonbank MSP that is dually-registered with the Commission as a futures commission merchant (“FCM”) is subject to the capital requirements of Commission Regulation 1.17 (17 CFR 1.17) and may not petition the Commission for a Comparability Determination. 17 CFR 23.101(a)(5) and (b)(4), respectively.

Furthermore, substituted compliance is not available to non-U.S. bank SDs and non-U.S. bank MSPs with respect to their respective financial reporting requirements under Commission Regulation 23.105(p). Commission Regulation 23.105(p), however, permits non-U.S. bank SDs and

The Commission’s capital adequacy and financial reporting requirements are designed to address and manage risks that arise from a firm’s operation as an SD or MSP. Given their functions, both sets of requirements and rules must be applied on an entity-level basis (meaning that the rules apply on a firm-wide basis, irrespective of the type of transactions involved) to effectively address risk to the firm as a whole. The availability of such substituted compliance is conditioned upon the Commission issuing a Comparability Determination finding that the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements for non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs are comparable to the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules. The Commission would issue a Comparability Determination in the form of an order (“Comparability Order”).¹⁶

The Commission’s approach for conducting a Comparability Determination with respect to the CFTC Capital Rules and the CFTC Financial Reporting Rules is a principles-based, holistic approach that focuses on assessing whether the applicable foreign jurisdiction’s capital and financial reporting requirements have comparable objectives with, and achieve comparable outcomes to, corresponding CFTC requirements.¹⁷ The Commission’s assessment is not a line-by-line evaluation or comparison of a foreign jurisdiction’s regulatory requirements with the Commission’s requirements.¹⁸ In performing the analysis, the Commission recognizes that jurisdictions may adopt differing approaches to achieving regulatory objectives and outcomes, and the Commission will focus on whether the foreign jurisdiction’s capital and financial reporting requirements are based on regulatory objectives, and produce regulatory outcomes, that are comparable to the Commission’s in purpose and effect, and not whether they are comparable in every aspect or contain identical elements.

non-U.S. bank MSPs that do not submit financial reports to a U.S. prudential regulator to file with the Commission a statement of financial condition, certain regulatory capital information, and Schedule 1 of Appendix C to Subpart E of Part 23 of the Commission’s regulations prepared and presented in accordance with the accounting standards permitted by the non-U.S. bank SD’s or non-U.S. bank MSP’s home country regulatory authorities. 17 CFR 23.105(p)(2).

¹⁶ 17 CFR 23.106(a)(3).

¹⁷ 17 CFR 23.106(a)(3)(ii). See also 85 FR 57462 at 57521.

¹⁸ See 85 FR 57462 at 57521.

A person requesting a Comparability Determination is required to submit an application to the Commission containing: (i) a description of the objectives of the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements applicable to entities that are subject to the CFTC Capital Rules and the CFTC Financial Reporting Rules; (ii) a description (including specific legal and regulatory provisions) of how the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements address the elements of the CFTC Capital Rules and CFTC Financial Reporting Rules, including, at a minimum, the methodologies for establishing and calculating capital adequacy requirements and whether such methodologies comport with international standards; and (iii) a description of the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements. The applicant must also submit, upon request, such other information and documentation as the Commission deems necessary to evaluate the comparability of the capital adequacy and financial reporting requirements of the foreign jurisdiction.¹⁹

The Commission will consider an application for a Comparability Determination to be a representation by the applicant that the laws and regulations of the foreign jurisdiction that are submitted in support of the application are finalized and in force, that the description of such laws and regulations is accurate and complete, and that, unless otherwise noted, the scope of such laws and regulations encompasses the relevant non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs domiciled in the foreign jurisdiction.²⁰ Each non-U.S. nonbank SD or non-U.S. nonbank MSP that seeks to rely on a Comparability Order is responsible for determining whether it is subject to the foreign laws and regulations found comparable in the Comparability Order. A non-U.S. nonbank SD or non-U.S. nonbank MSP

¹⁹ 17 CFR 23.106(a)(2).

²⁰ The Commission provides the applicant with an opportunity to review for accuracy and completeness the Commission’s description of relevant home country laws and regulations on which a proposed Comparability Determination and a proposed Comparability Order are based. The Commission relies on this review, and any corrections or feedback received, as part of the comparability assessment. A Comparability Determination and Comparability Order based on an inaccurate description of foreign laws and regulations may not be valid.

that is not legally required to comply with a foreign jurisdiction's laws and/or regulations determined to be comparable in a Comparability Order may not voluntarily comply with such laws and/or regulations in lieu of compliance with the CFTC Capital Rules or the CFTC Financial Reporting Rules.

The Commission may consider all relevant factors in making a Comparability Determination, including: (i) the scope and objectives of the relevant foreign jurisdiction's capital and financial reporting requirements; (ii) whether the relevant foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital requirements and financial reporting requirements; (iii) the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements; and (iv) any other facts or circumstances the Commission deems relevant, including whether the Commission and foreign regulatory authority or authorities have a memorandum of understanding or similar arrangement that would facilitate supervisory cooperation.²¹

In performing the comparability assessment for foreign nonbank SDs, the Commission's review will include the extent to which the foreign jurisdiction's requirements address: (i) the process of establishing minimum capital requirements for nonbank SDs and how such process addresses risk, including market risk and credit risk of the nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting minimum requirements; (iii) the financial reports and other financial information submitted by a nonbank SD to its relevant regulatory authority and whether such information provides the regulatory authority with the means necessary to effectively monitor the financial condition of the nonbank SD; and (iv) the regulatory notices and other communications between a nonbank SD and its foreign regulatory authority that address potential adverse financial or operational issues that may impact the firm. With respect to the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the foreign jurisdiction's capital adequacy and financial reporting requirements, the Commission's review

will include an assessment of the foreign jurisdiction's surveillance program for monitoring nonbank SDs' compliance with such capital adequacy and financial reporting requirements, and the disciplinary process imposed on firms that fail to comply with such requirements.²²

Commission Regulation 23.106 further provides that the Commission may impose any terms or conditions that it deems appropriate in issuing a Comparability Determination.²³ Any specific terms or conditions with respect to capital adequacy or financial reporting requirements will be set forth in the Commission's Comparability Order. As a general condition to all Comparability Orders, the Commission will require notification from the applicants of any material changes to information submitted by the applicants in support of a comparability finding, including, but not limited to, changes in the foreign jurisdiction's relevant laws and regulations, as well as changes to the relevant supervisory or regulatory regime.

To rely on a Comparability Order, a nonbank SD or nonbank MSP domiciled in the foreign jurisdiction and subject to supervision by the relevant regulatory authority (or authorities) in the foreign jurisdiction must file a notice with the Commission of its intent to comply with the applicable capital adequacy and financial reporting requirements of the foreign jurisdiction set forth in the Comparability Order in lieu of all or parts of the CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁴ Notices must be filed electronically with the Commission's Market Participants Division ("MPD").²⁵ The filing of a notice by a non-U.S. nonbank SD or non-U.S. nonbank MSP provides MPD staff with the opportunity to engage with the firm and to obtain representations that it is subject to, and complies with, the laws and regulations cited in the Comparability Order and that it will comply with any listed conditions. MPD will issue a letter under delegated authority from the Commission confirming that the non-U.S. nonbank SD or non-U.S. nonbank MSP may comply with the foreign laws

and regulations cited in the Comparability Order in lieu of complying with the CFTC Capital Rules and CFTC Financial Reporting Rules upon MPD's confirmation through discussions with the non-U.S. nonbank SD or non-U.S. nonbank MSP that the firm is subject to, and complies with, such foreign laws and regulations, is subject to the jurisdiction of the applicable foreign regulatory authority (or authorities), and can meet the conditions in the Comparability Order.²⁶

Each non-U.S. nonbank SD and each non-U.S. nonbank MSP that receives confirmation from the Commission that it may comply with a foreign jurisdiction's capital adequacy and financial reporting requirements will be deemed by the Commission to be in compliance with the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁷ A non-U.S. nonbank SD or non-U.S. nonbank MSP that receives confirmation of substituted compliance remains subject, however, to the Commission's examination and enforcement authority.²⁸ Accordingly, if a nonbank SD or nonbank MSP fails to comply with the foreign jurisdiction's capital adequacy and/or financial reporting requirements, the Commission may initiate an action for a violation of the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁹ In addition, a finding of a violation by a foreign jurisdiction's regulatory authority is not a prerequisite for the exercise of such examination and enforcement authority by the Commission.

C. Japan Financial Services Agency's Application for a Comparability Determination for Japan-Domiciled Nonbank Swap Dealers

On September 30, 2021, the Financial Services Agency of Japan ("FSA") submitted an application ("FSA Application") requesting that the Commission conduct a Comparability Determination and issue a Comparability Order finding that compliance with certain designated capital requirements of Japan (the "Japanese Capital Rules") and certain designated financial reporting requirements of Japan (the "Japanese Financial Reporting Rules") by a Japanese nonbank SD registered with

²² The Commission would conduct a similar analysis, adjusted as appropriate to account for regulatory distinctions, in performing a comparability assessment for foreign nonbank MSPs. Commission Regulation 23.101(b) requires a nonbank MSP to maintain positive tangible net worth. There are no MSPs currently registered with the Commission. 17 CFR 23.101(b).

²³ 17 CFR 23.106(a)(5).

²⁴ 17 CFR 23.106(a)(4)(i).

²⁵ Notices must be filed in electronic form to the following email address: MPDFinancialRequirements@cftc.gov.

²⁶ 17 CFR 23.106(a)(4)(ii) and 17 CFR 140.91(a)(11).

²⁷ 17 CFR 23.106(a)(4)(ii). Confirmation will be issued by MPD under authority delegated by the Commission. Commission Regulation 140.91(a)(11). 17 CFR 140.91(a)(11).

²⁸ 17 CFR 23.106(a)(4)(ii).

²⁹ *Id.*

²¹ 17 CFR 23.106(a)(3) and 85 FR 57462 at 57520–57522.

the FSA as a Type I Financial Instruments Business Operator (“FIBO”) satisfies corresponding CFTC Capital Rules and CFTC Financial Reporting Rules applicable to a nonbank SD under Sections 4s(e) and (f) of the CEA and Commission Regulations 23.101 and 23.105.³⁰ There are currently three Japanese nonbank SDs registered with the Commission, and the FSA represented in its application that each of the three Japanese nonbank SDs are FSA-registered and regulated FIBOs.³¹

The FSA represented that the capital adequacy and financial reporting requirements for swap activities in Japan are governed by the Japanese legal framework for financial regulation, which is mainly composed of Acts, Cabinet Orders, Ministerial Orders, and FSA Notices.³² With regard to the Japanese Capital Rules and the Japanese Financial Reporting Rules, the Financial Instruments and Exchange Act (Act No. 25 of 1948) (“FIEA”) and its related order, Cabinet Office Order on Financial Instruments Business (Cabinet Office Order No. 52 of 2007) (“COO”), set forth the prudential capital and financial reporting requirements applicable to FIBOs, including the Japanese nonbank SDs.³³ FIEA, COO, and related FSA Notices impose mandatory capital and reporting requirements on FIBOs, including Japanese nonbank SDs. Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc. (“Supervisory Guidelines for FIBO”) also supplement the framework.³⁴ The technical

requirements for FIBOs, including Japanese nonbank SDs, to calculate capital adequacy ratios are specified in the FSA Notice No. 59 of 2007 (“Notice on Capital”) in accordance with Article 177(8) and Article 178(1) of the COO.

D. Proposed Comparability Determination and Proposed Comparability Order for Japan-Domiciled Nonbank Swap Dealers

On August 8, 2022, the Commission published the 2022 Proposal, seeking comment on the FSA Application and the Commission’s proposed Comparability Determination and related Comparability Order.³⁵ The 2022 Proposal set forth the Commission’s preliminary Comparability Determination and proposed Comparability Order providing that, based on its review of the FSA Application and applicable Japanese laws and regulations, the Commission preliminarily found that the Japanese Capital Rules and the Japanese Financial Reporting Rules, subject to the conditions set forth in the proposed Comparability Order, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules.³⁶ The Commission, however, noted that there were certain differences between the Japanese Capital Rules and CFTC Capital Rules and certain differences between the Japanese Financial Reporting Rules and the CFTC Financial Reporting Rules. As such, the Commission proposed certain conditions to the Comparability Order.³⁷ The proposed conditions were designed to promote consistency in regulatory outcomes, to reflect the scope of substituted compliance that would be available notwithstanding the differences, and to ensure that the Commission and National Futures Association (“NFA”) receive information to monitor Japanese

nonbank SDs for ongoing compliance with the Comparability Order.³⁸ The Commission further stated that, in its preliminary view, the identified differences would not be inconsistent with providing a substituted compliance framework for Japanese nonbank SDs subject to the conditions specified in the proposed Comparability Order.³⁹

The proposed Comparability Order was limited to the comparison of the Japanese Capital Rules to the CFTC Capital Rules’ Bank-Based Capital Approach (“Bank-Based Approach”) for computing regulatory capital for nonbank SDs, which is based on certain capital requirements imposed by the Federal Reserve Board for bank holding companies.⁴⁰ As noted by the Commission in the 2022 Proposal, the FSA had not requested, nor has the Commission performed, a comparison of the Japanese Capital Rules to the Commission’s TNW Approach or NLA Approach.⁴¹

³⁸ NFA is a registered futures association under section 17 of the CEA (7 U.S.C. 21). Each SD registered with the Commission is required to be an NFA member. 17 CFR 170.16. NFA, as a registered futures association, is also required by the CEA to adopt rules imposing minimum capital, segregation, and other financial requirements, as applicable, to its members, including SDs, that are at least as stringent as the Commission’s minimum capital, segregation, and other financial requirements for such registrants, and to implement a program to audit and enforce such requirements. 7 U.S.C. 21(p). Therefore, the Commission’s proposed Comparability Order required Japanese nonbank SDs to file certain financial reports and notices with NFA so that it may perform oversight of such firms as required under section 17 of the CEA. The Commission will refer to NFA in this Comparability Determination when referring to the requirements or obligations of a registered futures association.

³⁹ 2022 Proposal at 48114.

⁴⁰ *Id.* As described in the 2022 Proposal, the CFTC Capital Rules provide nonbank SDs with three alternative capital approaches: (i) the Tangible Net Worth Capital Approach (“TNW Approach”); (ii) the Net Liquid Assets Capital Approach (“NLA Approach”); and (iii) the Bank-Based Approach. See 2022 Proposal at 48095–48096, and 17 CFR 23.101. The Bank-Based Approach is consistent with the Basel Committee on Banking Supervision’s (“BCBS”) international framework for bank capital requirements (“BCBS framework” or “Basel standards”). The BCBS is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Institutions represented on the BCBS include the Federal Reserve Board, the European Central Bank, Deutsche Bundesbank, Bank of England, Bank of France, Bank of Japan, Banco de Mexico, and Bank of Canada. The BCBS framework is available at https://www.bis.org/basel_framework/index.htm.

⁴¹ See 2022 Proposal at 48114.

³⁰ Letter from Yuji Yamashita, Deputy Commissioner for International Affairs, Financial Services Agency of Japan, dated September 30, 2021, pp. 4–5 (fn. 11). The FSA Application is available on the Commission’s website at: <https://www.cftc.gov/LawRegulation/DoddFrankAct/CDS/CP/index.htm>.

³¹ The three Japanese nonbank SDs currently registered with the Commission are: BofA Securities Japan Co., Ltd.; Goldman Sachs Japan Co., Ltd.; and Morgan Stanley MUFG Securities Co., Ltd. The FSA’s application did not request a Comparability Determination with respect to nonbank MSPs as currently there are no MSPs registered with the Commission and, accordingly, no nonbank MSPs domiciled in Japan and registered with the FSA. Accordingly, the Commission’s Comparability Determination and Comparability Order do not address nonbank MSPs.

³² FSA Application at p. 4.

³³ Businesses categorized as Type I Financial Instruments Business (Article 28(1) of the FIEA) can only be conducted by Type I FIBOs registered under Article 29 of the FIEA. Type I Financial Instruments Business includes market transactions of derivatives and foreign market derivatives transactions pertaining to certain highly liquid securities and over-the-counter transactions of derivatives.

³⁴ To implement and reinforce the legal framework, the FSA has developed and published supervisory guidelines. The supervisory guidelines are meant for FSA staff, but are public documents, which are expected to be followed by the applicable

financial institutions. Financial institutions are consulted in connection with the establishment of, and any amendments to, the supervisory guidelines. FSA staff conducts supervision and enforcement based on the supervisory guidelines.

³⁵ 2022 Proposal, 87 FR 48092 (Aug. 8, 2022).

³⁶ See 2022 Proposal at 48092. Consistent with the process specified in section I.B. above for conducting Comparability Determinations, the Commission provided the FSA with an opportunity to review for factual accuracy and completeness the Commission’s description of relevant Japanese laws and regulations on which the proposed Comparability Determination and proposed Comparability Order were based. The Commission has relied on FSA’s review, and has incorporated feedback and corrections received from the FSA. As previously noted, a Comparability Determination and Comparability Order based on an inaccurate description of foreign laws and regulations may not be valid.

³⁷ See 2022 Proposal at 48114.

E. General Comments on the FSA Application and the Commission's Proposed Finding of Comparability Between the CFTC Capital Rules and CFTC Financial Reporting Rules and the Japanese Capital Rules and Japanese Financial Reporting Rules

The public comment period on the FSA Application, the proposed Comparability Determination, and the proposed Comparability Order ended on October 7, 2022. The Commission received six comment letters from the following interested parties: Better Markets, Inc. ("Better Markets"); the FSA; the International Bankers Association of Japan ("IBAJ"); a joint letter from the Institute of International Bankers ("IIB"), the International Swaps and Derivatives Association ("ISDA"), and the Securities Industry and Financial Markets Association ("SIFMA"); and two letters from William J. Harrington.⁴²

Two commenters expressed support for the proposed Comparability Determination and proposed Comparability Order, agreeing with the Commission's overall analysis and determination of comparability of the CFTC Capital Rules and CFTC Financial Reporting Rules and the Japanese Capital Rules and Japanese Financial Reporting Rules.⁴³ In addition, the FSA submitted a comment letter in support of the Commission's proposal, and recommending several technical amendments to the proposed Comparability Determination and Comparability Order that were corrective or typographical in nature.⁴⁴

Conversely, two commenters disagreed with the CFTC's proposed Comparability Determination and proposed Comparability Order.⁴⁵ Better

Markets asserted that the principles-based, holistic approach applied by the Commission, which assesses whether the applicable foreign jurisdiction's capital and financial requirements achieve comparable outcomes to the corresponding Commission requirements, is "insufficiently rigorous, leaving far too much room for inaccurate and unwarranted comparability determinations."⁴⁶

The Commission does not believe that the principles-based, holistic assessment that it conducted on the comparability of the Japanese Capital Rules and Japanese Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules was "insufficiently rigorous," nor does the Commission believe that it left "room for inaccurate and unwarranted comparability determinations." The principles-based, holistic approach employed in the Comparability Determination was performed in accordance with the substituted compliance assessment framework adopted by the Commission for capital and financial reporting requirements for foreign nonbank SDs and set out in Commission Regulation 23.106. Consistent with this assessment framework, the Commission focused on whether the Japanese Capital Rules and Japanese Financial Reporting Rules are designed with the objective of ensuring overall safety and soundness of the Japanese nonbank SDs in a manner that is comparable with the Commission's overall objective of ensuring the safety and soundness of nonbank SDs.

As stated in the 2022 Proposal, due to the detailed and complex nature of the capital frameworks, differences in how jurisdiction approach and implement the requirements are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS framework.⁴⁷ Furthermore, as discussed in Section I.B. above, when adopting Commission Regulation 23.106, the Commission stated that "its approach to substituted compliance is a principles-based, holistic approach that focuses on whether the foreign regulations are designed with the objectives of ensuring the overall safety and soundness of the [non-US nonbank SD] in a manner that is comparable with the Commission's overall capital and financial reporting requirements, and is not based on a line-by-line assessment or comparison of a foreign jurisdiction's regulatory

requirements with the Commission's requirements."⁴⁸

The approach and standards set forth in Commission Regulation 23.106, with the focus on "comparable outcomes," are also consistent with the Commission's precedents of undertaking a principles-based, holistic assessment of the comparability of foreign regulatory regimes for purposes of substituted compliance for cross-border swap transactions. The Commission first outlined its approach to substituted compliance with respect to swaps requirements in 2013, when it issued an Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations.⁴⁹ In the Guidance, the Commission stated that "[i]n evaluating whether a particular category of foreign regulatory requirement(s) is comparable and comprehensive to the applicable requirement(s) under the CEA and Commission regulations, the Commission will take into consideration all relevant factors, including but not limited to, the comprehensiveness of those requirement(s), the scope and objectives of the relevant regulatory requirement(s), the comprehensiveness of the foreign regulator's supervisory compliance program, as well as the home jurisdiction's authority to support and enforce its oversight of the registrant."⁵⁰ The Commission emphasized that in this context, "comparable does not necessarily mean identical."⁵¹ Rather, the Commission stated that it would evaluate whether the home jurisdiction's regulatory requirement is comparable to, and as comprehensive as, the corresponding U.S. regulatory requirement(s).⁵² In conducting comparability determinations based on the policy set forth in the Guidance, the Commission noted that the "outcome-based" approach recognizes that "foreign regulatory systems differ and their approaches vary and may differ from how the Commission chose to address an issue, but that the foreign jurisdiction's regulatory requirements nonetheless achieve the regulatory outcome sought to be achieved by a certain provision of the CEA or Commission regulation."⁵³

⁴⁸ 85 FR 57462 at 57521.

⁴⁹ *Interpretative Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations*, 78 FR 45292 (July 26, 2013) ("Guidance").

⁵⁰ Guidance at 45343.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See e.g., *Comparability Determination for the European Union: Certain Entity-Level*

⁴² Letter From Stephen Hall, Legal Director and Securities Specialist, Better Markets (Oct. 7, 2022) ("Better Markets Letter"); Letter from Yuji Yamashita, Deputy Commissioner for International Affairs, FSA (Oct. 7, 2022) ("FSA Letter"); Letter From Philippe Avril, Chair, IBAJ (Oct. 6, 2022) ("IBAJ Letter"); Letter From Stephanie Webster, General Counsel, IIB; Steven Kennedy, Global Head of Public Policy, ISDA; Kyle L. Brandon, Managing Director, Head of Derivatives Policy, SIFMA (collectively, "Associations") (Oct. 7, 2022) ("Associations Letter"); Letters from William J. Harrington ("Harrington") (Oct. 7 and Oct. 20, 2022) ("Harrington 10/7/2022 Letter" and "Harrington 10/20/2022 Letter") The comment letters for the 2022 Proposal are available at: <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7301>.

⁴³ Associations Letter at p. 1; IBAJ Letter at p. 1.

⁴⁴ FSA Letter. In particular, the FSA recommended that the Commission add Article 47 of the FIEA to the list of relevant provisions comprising the Japanese Capital Rules enumerated in proposed Condition 4. FSA Letter at p. 2. The Commission has revised final Condition 4 to that effect.

⁴⁵ Better Markets Letter at p. 2; Harrington 10/20/2022 Letter at p. 20.

⁴⁶ Better Markets Letter at p. 2.

⁴⁷ See 2022 Proposal at 48098.

The Commission further elaborated on the required elements of comparability in 2016, when it issued final rules to address the cross-border application of the Commission's margin requirements for uncleared swap transactions. Specifically, the Commission stated that its substituted compliance approach reflects an outcome-based assessment of the comparability of a foreign jurisdiction's margin requirements with the Commission's corresponding requirements.⁵⁴ The Commission further stated that it would evaluate the objectives and outcomes of the foreign margin requirements in light of foreign regulator(s)' supervisory and enforcement authority.⁵⁵ Consistent with its previously stated position, the Commission recognized that jurisdictions may adopt different approaches to achieving the same outcome and, therefore, the assessment would focus on whether the foreign jurisdiction's margin requirements are comparable to the Commission's in purpose and effect, not whether they are comparable in every aspect or contain identical elements.⁵⁶ The Commission's policy thus reflects an understanding that a line-by-line evaluation of a foreign jurisdiction's regulatory regime is not the optimum approach to assessing the comparability of complex structures whose individual components may differ based on jurisdiction-specific considerations, but which achieve the objective and outcomes set forth in the Commission's framework.

With respect to the FSA Application, the process leading to the Comparability Determination involved Commission staff obtaining English language translations of relevant Japanese laws, rules, and regulations cited in the FSA Application from the FSA.⁵⁷ Staff verified the assertions and citations contained in the FSA Application regarding the specific Japanese Capital Rules and Japanese Financial Reporting Rules to the relevant English language versions of the Japanese laws, rules, and regulations.⁵⁸

Requirements, 78 FR 78923 (December 27, 2013) at 78926.

⁵⁴ *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements*, 81 FR 34817, 34836–34837 (May 31, 2016).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Commission staff received English translations on May 11, 2021.

⁵⁸ Staff also reviewed the FSA website to confirm various provisions of Japanese laws and regulations that were relevant to the proposed Comparability Determination and proposed Comparability Order.

Commission staff also evaluated the comparability of the Japanese Capital Rules and Japanese Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules with respect to the following areas: (i) the process of establishing minimum capital requirements for Japanese nonbank SDs and how such process addresses risk, including market risk and credit risk of the Japanese nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting a Japanese nonbank SD's minimum capital requirements; (iii) the financial reports and other financial information submitted by a Japanese nonbank SD to the FSA, and whether such information provides the FSA with the means necessary to effectively monitor the financial condition of the Japanese nonbank SD; and (iv) the regulatory notices and other communications between a Japanese nonbank SD and the FSA that address potential adverse financial or operational issues that may impact the firm.⁵⁹ With respect to the ability of the FSA to supervise and enforce compliance with the Japanese Capital Rules and Japanese Financial Reporting Rules, the Commission's assessment included a review of the FSA's surveillance program for monitoring Japanese nonbank SDs compliance with Japanese Capital Rules and Japanese Financial Reporting Rules, and the disciplinary process imposed on firms that fail to comply with such requirements.⁶⁰

Contrary to the position articulated by Better Markets regarding the nature of the comparability assessment, the Commission believes that the principles-based, holistic assessment of the Japanese Capital Rules and Japanese Financial Reporting Rules against the CFTC Capital Rules and CFTC Financial Reporting Rules, as outlined above and discussed in detail in Section II below, was sufficiently rigorous for purposes of determining if the Japanese laws and regulations are comparable in purpose and effect to the CEA and Commission regulations.

Better Markets further asserted that even under a principles-based, holistic approach, the FSA capital and financial reporting requirements for Japanese nonbank SDs do not satisfy the test for an order granting substituted compliance because the FSA's regulatory framework governing capital and financial reporting is not comparable to the corresponding CFTC

requirements.⁶¹ Better Markets cited the Commission's inclusion of conditions in the proposed Comparability Order as demonstrating the Commission's need "to compensate for the acknowledged obvious gaps in the FSA framework."⁶² Better Markets further stated that the differences between the Japanese and the CFTC capital and financial reporting regimes mandate denial of the FSA Application for a comparability determination.⁶³

The Commission disagrees that the inclusion of conditions in the Comparability Order precludes a finding of comparability with respect to the Japanese Capital Rules and Japanese Financial Reporting Rules. The Commission's comparability assessment process, consistent with the holistic approach, contemplates the potential need for a Comparability Order to contain conditions. Specifically, Commission Regulation 23.106(a)(5) states that the Commission may impose any terms and conditions it deems appropriate in issuing a Comparability Order, including conditions with respect to capital adequacy and financial reporting requirements of non-U.S. nonbank SDs.⁶⁴

The process employed in this Comparability Determination is consistent with the Commission's established approach to conducting comparability assessments. Upon a finding of comparability, the Commission's policy generally is that eligible entities may comply with a substituted compliance regime subject to the conditions the Commission places on its finding, and subject to the Commission's retention of its examination authority and its enforcement authority.⁶⁵ In this regard, the Commission has stated that certain conditions included in a Comparability Order may be designed to ensure the

⁶¹ Better Markets Letter at p. 2.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 17 CFR 23.106(a)(5), which provides that in issuing a Capital Comparability Determination, the Commission may impose *any terms and conditions it deems appropriate*, including certain capital adequacy and financial reporting requirements on swap dealers. . . . (Emphasis added). Commission Regulation 23.106(a)(3) establishes the Commission's standard of review for performing a Comparability Determination and provides that the Commission may consider all relevant factors, including whether the relevant foreign jurisdiction's capital adequacy and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital adequacy and financial reporting requirements for SDs. 17 CFR 23.106(a)(3)(ii).

⁶⁵ 85 FR 57462 at 57520. See also Guidance at 45342–45344 and *Comparability Determination for the European Union: Certain Transaction Level Requirements*, 78 FR 78878 (December 27, 2013) at 78880.

⁵⁹ 2022 Proposal at 48098–48112.

⁶⁰ *Id.* at 48112–48113.

Commission's direct access to books and records required to be maintained by an SD registered with the Commission.⁶⁶ Other conditions may address areas where the foreign jurisdiction lacks analogous requirements.⁶⁷ The inclusion of conditions in a Comparability Order was contemplated as an integral part of the Commission's holistic, principle-based approach to conducting comparability assessments and is not inconsistent with a grant of substituted compliance. In particular, Commission Regulation 23.106(a)(5) states the Commission's authority to impose conditions in issuing a Comparability Determination in connection with the CFTC Capital Rules and the CFTC Financial Reporting Rules. As further discussed below, the conditions proposed in the 2022 Proposal are clearly of the nature contemplated by Commission Regulation 23.106(a)(5).

The Commission also does not believe that the inclusion of the conditions in the proposed Comparability Order demonstrates "obvious gaps in the FSA framework" as asserted by Better Markets. Consistent with the Commission's policy described above, a majority of the conditions contained in the proposed Comparability Order are designed to ensure that: (i) the Japanese nonbank SD is eligible for substituted compliance based on the Japanese laws and regulations that were reviewed by the Commission in performing the comparability assessment, and (ii) the Commission and the NFA receive timely financial information and notices to effectively monitor a Japanese nonbank SD's compliance with the Comparability Order and to assess the ongoing safety and soundness of the Japanese nonbank SD. Specifically, there are 23 conditions in the final Comparability Order. Four conditions set forth criteria that a Japanese nonbank SD must meet to be eligible for substituted compliance pursuant to the Comparability Order.⁶⁸ The four conditions ensure that only Japanese nonbank SDs that are within the scope of, and comply with, the Japanese Capital Rules and Japanese Financial Reporting Rules that were part of the Commission's comparability

assessment may apply for substituted compliance. Eight additional conditions require Japanese nonbank SDs within scope of the Comparability Order to provide notice to the Commission and NFA of certain defined events,⁶⁹ and a further three conditions require Japanese nonbank SDs to file with the Commission and NFA copies of certain unaudited and audited financial reports that the firms provide to the FSA.⁷⁰ In addition, two additional conditions reflect administrative matters necessary to implement the substituted compliance framework.⁷¹ Lastly, five

⁶⁹ The eight conditions require a Japanese nonbank SD to provide notice to the Commission in the event that the firm: (i) is informed by the FSA that it failed to comply with any component of the Japanese Capital Rules or Japanese Financial Reporting Rules (Condition 15); (ii) fails to maintain regulatory capital in the form of Basic Items of at least the equivalent of \$20 million (Condition 16); (iii) its capital adequacy ratio is below the early warning level of 140 percent (Condition 17); (iv) its capital adequacy ratio is below the minimum requirement of 120 percent (Condition 18); (v) fails to make or keep current financial books and records (Condition 19); (vi) fails to post or collect margin for uncleared swaps and non-cleared security-based swaps with one or more counterparties in amounts that exceed defined limits (Condition 20); (vii) changes its fiscal year-end date (Condition 21); and (viii) is subject to material changes to the Japanese Capital Rules, Japanese Financial Reporting Rules, or the supervisory authority of the Japanese Commission (Condition 22).

⁷⁰ The three conditions provide that a Japanese nonbank SD must file with the Commission and NFA: (i) English language copies of certain financial reporting forms that the Japanese nonbank SD is required to submit to the FSA pursuant to Article 56–2(1) of the FIEA (Condition 8); (ii) an English language copy of the annual business report that the Japanese nonbank SDs is required to submit to the FSA pursuant to Article 46–3(1) of the FIEA and Article 172 of the COO (Condition 9); and (iii) English language copies of the Japanese nonbank SD's annual audited financial statements and management report that are required to be prepared pursuant to Article 435(2) of the Japanese Companies Act (Act No. 86 of 2005) (Condition 10).

⁷¹ One of the administrative conditions provides that a Japanese nonbank SD must provide a notice to the Commission of its intent to comply with the Comparability Order and the Japanese Capital Rules and Japanese Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Financial Reporting Rules. The notice must include the Japanese nonbank SD's representation that the firm is organized and domiciled in Japan, is a registered FIBO, and is subject to and complies with the Japanese Capital Rules and the Japanese Financial Reporting Rules (Condition 6). The second administrative condition provides that a Japanese nonbank SD must file any documents with the Commission and NFA via electronic transmission (Condition 23). With respect to Condition 6, the Commission also notes that the language of the proposed condition required that a Japanese nonbank SD provide a notice of its intent to comply with "applicable" Japanese Capital Rules and Japanese Financial Reporting Rules. Given that "Japanese Capital Rules and Japanese Financial Reporting Rules" is a term defined in the Comparability Order to include laws and regulations that apply to Japanese nonbank SDs, the word "applicable" is superfluous and is, therefore, not included in final Condition 6 of the Comparability Order.

conditions impose obligations on Japanese nonbank SDs that align with certain of the Commission's requirements for nonbank SDs. The five conditions require a Japanese nonbank SD to: (i) maintain a minimum level of capital defined as Basic Items⁷² in an amount equivalent to at least \$20 million (Condition 5); (ii) prepare and keep current financial books and records (Condition 7); (iii) file a monthly schedule of the firm's financial positions on Schedule 1 of appendix B to Subpart E of part 23 of the Commission's regulations (Condition 11); (iv) file a monthly report listing the custodians holding margin posted by, and collected by, the Japanese nonbank SD, the amount of margin held by each custodian, and the aggregate amount of margin required to be posted and collected by the Japanese nonbank SD (Condition 13); and (v) submit, with each filing of financial information, a statement by an authorized representative that, to the best knowledge and belief of the person making the representation, the information is true and correct (Condition 14).⁷³

As the substance of these conditions demonstrates, the primary objective of a majority of the conditions is not to compensate for regulatory gaps in the Japanese capital and financial reporting framework, but rather to ensure that the Commission and NFA receive information to conduct ongoing monitoring of Japanese nonbank SDs for compliance with relevant capital and financial reporting requirements. As discussed above, in issuing the Comparability Order, the Commission is not ceding its supervisory and enforcement authorities. The Comparability Order permits Japanese nonbank SDs to satisfy the Commission's capital and financial reporting requirements by complying with certain laws and/or regulations of Japan that have been found comparable to the Commission's laws and/or regulations in purpose and effect. The Commission and NFA, however, have a continuing obligation to conduct

⁷² "Basic Items" are analogous to common equity tier 1 capital as defined in the CFTC Capital Rules. See discussion in section II.B.

⁷³ Another condition specifies that Japanese nonbank SDs that are registered with the U.S. Securities and Exchange Commission ("SEC") as security-based swap dealers ("SBSDs") and required to file with the SEC, or its designee, Form X-17A-5 ("FOCUS Report"), must file a copy of such FOCUS Report with the Commission and NFA within 35 calendar days after the end of each month (Condition 12). A Japanese nonbank SD that files a FOCUS Report pursuant to Condition 12 will not be required to file the reports and schedules specified in Conditions 8 and 11. Currently, no Japanese nonbank SD is registered as a SBSB.

⁶⁶ *Comparability Determination for the European Union: Certain Transaction Level Requirements*, 78 FR 78878 (December 27, 2013) at 78880.

⁶⁷ Guidance at 45343.

⁶⁸ The four criteria provide that the Japanese nonbank SD: (i) is not subject to capital rules of a U.S. prudential regulator (Condition 1); (ii) is organized and domiciled in Japan (Condition 2); (iii) is registered as a FIBO (Condition 3); and (iv) is subject to the Japanese Capital Rules and Japanese Financial Reporting Rules that are part of the Commission's comparability assessment (Condition 4).

ongoing oversight, including potential examination, of Japanese nonbank SDs to ensure compliance with the Comparability Order, including its conditions. To that effect, the notice and financial reporting conditions set forth in the Comparability Order provide the Commission and NFA with information necessary to monitor for such compliance, and to evaluate the operational condition and ongoing financial condition of Japanese nonbank SDs. The Commission may also initiate an enforcement action against a Japanese nonbank SD that fails to comply with the conditions of the Comparability Order.⁷⁴

Furthermore, to the extent that a condition imposes a new obligation on Japanese nonbank SDs, the imposition of such condition is also consistent with Commission Regulation 23.106 and the Commission's established policy with regard to comparability determinations. As discussed above, the Commission contemplated that even in circumstances where the Commission finds two regulatory regimes comparable, the Commission may impose requirements on entities relying on substituted compliance where the Commission determines that the home jurisdiction's regime lacks comparable and comprehensive regulation on a specific issue.⁷⁵ The Commission's authority to impose such conditions is set out in Commission Regulation 23.106(a)(5), which states that the Commission may impose "any terms and conditions it deems appropriate, including certain capital adequacy and financial reporting requirements [on SDs]." ⁷⁶

Better Markets further stated that if the Commission grants substituted compliance with regard to materially different regulatory requirements, it must make a well-supported comparability determination by, at a minimum, clearly and specifically

setting forth the desired regulatory outcome and providing a detailed, evidence-based explanation as to how the jurisdiction's different legal requirements nonetheless lead to a comparable regulatory outcome.⁷⁷ Better Markets also stated that if the Commission grants the Comparability Determination and Comparability Order, it must, at a minimum, ensure that the conditions are applied and enforced with full force and without exception or dilution.⁷⁸ Better Markets asserted that "[a] determination that a foreign jurisdiction's nonbank SDs rules would produce comparable regulatory outcomes is the beginning, not the end, of the CFTC's obligation to ensure that the activities of the foreign nonbank SD entities do not pose risks to the U.S. financial system. As time goes on, regulatory requirements that, in theory, are expected to produce one regulatory outcome may, in practice, produce a different one. And, of course, the regulatory requirements may themselves be changed in a variety of ways. Finally, the effectiveness of an authority's supervision and enforcement program can become weakened for any number of reasons—the CFTC cannot assume that an enforcement program that is presently effective will continue to be effective."⁷⁹ Better Markets further asserted that to fulfill its obligation to protect the U.S. financial system, the Commission must ensure, on an ongoing basis, that each grant of substituted compliance remains appropriate over time by, at a minimum, requiring each Comparability Order to impose an obligation on the applicant, as appropriate, to: (i) periodically apprise the Commission of the activities and results of its supervision and enforcement programs, to ensure that they remain sufficiently robust to deter and address violations of the law; and (ii) immediately apprise the Commission of any material changes to the regulatory regime, including changes to rules or interpretations of rules.⁸⁰

Although the Commission disagrees that the Japanese Capital Rules and the Japanese Financial Reporting Rules, as a whole, are materially different or do not achieve comparable regulatory outcomes, the Commission concurs that granting substituted compliance should be the result of a well-supported comparability assessment. Consistent with that view, the Commission believes that this final Comparability

Determination articulates the Commission's analysis in sufficient detail and provides an appropriate explanation of how the foreign jurisdiction's requirements are comparable in purpose and effect with the Commission's requirements, and lead to comparable regulatory outcomes with the Commission's requirements. Specifically, Section III of the 2022 Proposal and Section II of the final Comparability Determination reflect, among other observations, the Commission's detailed analysis with respect to each of the elements for consideration listed in Commission Regulation 23.106(a)(3).

The Commission also concurs that the availability of substituted compliance is conditioned upon a non-US nonbank SD's ongoing compliance with the terms and conditions of the final Comparability Order, and the Commission's ongoing assessment that the Japanese Capital Rules and Japanese Financial Reporting Rules remain comparable in purpose and effect with the CFTC Capital Rules and CFTC Financial Reporting Rules. As noted above, and discussed in more detail in Sections II.D. and E. below, Japanese nonbank SDs are subject to notice and financial reporting requirements under the final Comparability Order that provide Commission and NFA staff with the ability to monitor the Japanese nonbank SDs' ongoing compliance with the conditions set forth in the final Comparability Order. In addition, the final Comparability Order requires Japanese nonbank SDs or the FSA to inform the Commission of changes to the relevant Japanese Capital Rules and Japanese Financial Reporting Rules so that the Commission may assess the continued effectiveness of the Comparability Order in ensuring that the Japanese laws and regulations have the comparable regulatory objectives of the CEA and Commission regulations of ensuring the safety and soundness of nonbank SDs.⁸¹ Commission staff will also monitor the Japanese nonbank SDs directly as part of its supervisory program and will discuss with the firms any proposed or pending revisions to specific laws and rules cited in the final

⁷⁴ As the Commission stated in the 2022 Proposal, a non-U.S. nonbank SD that operates under a Comparability Order issued by the Commission remains subject to the Commission's examination and enforcement authority. Specifically, the Commission may initiate an enforcement action against a non-U.S. nonbank SD that fails to comply with its home-country capital adequacy and/or financial reporting requirements cited in a Comparability Order. See 2022 Proposal at 48094–48095. See also 17 CFR 23.106(a)(4)(ii), which provides that the Commission may examine all nonbank SDs, regardless of whether the nonbank SDs rely on substituted compliance, and that the Commission may initiate an enforcement action under the Commission's capital and financial reporting regulations against a non-U.S. nonbank SD that fails to comply with a foreign jurisdiction's capital adequacy and financial reporting requirements.

⁷⁵ Guidance at 45343.

⁷⁶ 17 CFR 23.106(a)(5).

⁷⁷ Better Markets at p. 6.

⁷⁸ *Id.* at p. 2.

⁷⁹ *Id.* at p. 6.

⁸⁰ *Id.*

⁸¹ Condition 22 of the final Comparability Order requires Japanese nonbank SDs or the FSA to notify the Commission of any material changes to the information submitted in the FSA Application, including, but not limited to, proposed and final material changes to the Japanese Capital Rules or Japanese Financial Reporting Rules and proposed and final material changes to the FSA's supervisory authority or supervisory regime over Japanese nonbank SDs. The Commission notes that it also made certain non-substantive, clarifying changes to the language of final Condition 22 as compared to the proposed condition.

Comparability Order. Lastly, in addition to assessing the effectiveness of the Comparability Order as a result of revisions or proposed revisions to the Japanese laws, regulations, or supervisory regime, the Commission further notes that future material changes to the CFTC Capital Rules or CFTC Financial Reporting Rules, or the Commission's or NFA's supervisory programs, may necessitate an amendment to the Comparability Determination and Comparability Order to reflect those changes.⁸²

Another commenter, Harrington, stated that the Commission "must prevent every regulated [SD] globally from providing a swap contract with a 'flip clause [. . .].'"⁸³ Harrington further recommended that the Commission condition the Comparability Order on specifying that a Japanese nonbank SD that is party to a swap contract with a flip clause must hold additional capital determined based on the required margin and the contract market value.⁸⁴ Alternatively, Harrington argued that the Commission should prohibit a Japanese nonbank SD from entering into a new swap contract with a flip clause or extending an existing one.⁸⁵ Harrington has elsewhere referred to a description of a "flip clause" as a provision in swap contracts with structured debt issuers that reverses or "flips" the priority of payment obligations owed to the swap counterparty on the one hand and the noteholders on the other, following a specified event of default.⁸⁶ Based on Harrington's description, flip clauses present a risk to the SD in synthetic transactions where payments under a swap contract are secured with the same collateral that would serve to cover payments under the notes issued by a structured debt issuer. In such circumstances, an "event of default" by the SD would cause the SD's priority of payment from the collateral under a swap to "flip" to a more junior priority position, including for mark-to-market gains on "in the money" swaps.⁸⁷

Harrington argued that no element of the CFTC Capital Rules or the Japanese Capital Rules addresses "the 100% self-exposure that [an SD] incurs with each

swap with flip clause."⁸⁸ Harrington recognized, however, that the CFTC margin requirements for uncleared swap transactions address his concerns associated with the inclusion of a flip clause.⁸⁹ Nonetheless, according to Harrington, risks arise in circumstances when non-U.S. margin rules exempt SDs from margin obligations in connection with swaps with a structured debt issuer.⁹⁰

The Commission recognizes that given some definitional differences and differences in the activity thresholds with respect to the scope of application of the CFTC margin requirements and non-U.S. margin requirements, some transactions that are subject to the CFTC margin requirements for uncleared swaps may not be subject to margin requirements in another jurisdiction. In connection with this Comparability Determination, however, the Commission notes that both under the CFTC Capital Rules and the Japanese Capital Rules, uncollateralized exposures from uncleared swap transactions would generate a higher counterparty credit risk charge than the exposures resulting from transactions under which the counterparties have posted collateral.⁹¹ Accordingly, the Commission does not believe that the respective sets of rules adopt a conflicting approach or lead to a disparate outcome with respect to the capital treatment of uncollateralized uncleared swap exposures that would warrant a finding of non-comparability of the CFTC Capital Rules and the Japanese Capital Rules.

With regard to Harrington's general recommendations, also included in a submission by Harrington in connection with the adoption of the CFTC Capital Rules, that the Commission impose additional capital charges for swap contracts with a flip clause,⁹² the Commission notes that any change in its

capital requirements and approach, if deemed appropriate, would be addressed separately from the Comparability Determination. As the Commission stated in adopting the CFTC Capital Rules, over time the Commission may consider adjusting the capital charges applicable to nonbank SDs that engage in bespoke swap transactions, including contracts involving flip clauses, as a result of its experience and as market developments may warrant.⁹³ If the Commission proceeds with adjustments to the CFTC Capital Rules, the Commission may reconsider the comparability between the CFTC Capital Rules and the Japanese Capital Rules in light of these changes.

Finally, IBAJ proposed several technical amendments to the 2022 Proposal that were corrective or clarifying in nature.⁹⁴ As further discussed below, several of the proposed changes have been incorporated, as appropriate, throughout the final Comparability Determination and Comparability Order.

II. Final Capital and Financial Reporting Comparability Determination and Comparability Order

The following section provides the Commission's comparative analysis of the Japanese Capital Rules and the Japanese Financial Reporting Rules with the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules, as described in the 2022 Proposal, further modified to address comments received. As emphasized in the 2022 Proposal, the capital and financial reporting regimes are complex structures comprised of a number of interrelated regulatory components.⁹⁵ Differences in how jurisdictions approach and implement these regimes are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS framework.

The Commission performed the analysis by assessing the comparability of the Japanese Capital Rules for Japanese nonbank SDs as set forth in the FSA Application and in the English language translation of certain applicable Japanese laws and regulations with the Commission's Bank-Based Approach for nonbank SDs.

⁸² 2022 Proposal at 48098 (n. 72).
⁸³ Harrington 10/20/2022 Letter at p. 3.
⁸⁴ Harrington 10/20/2022 Letter at p. 23.
⁸⁵ *Id.*
⁸⁶ William J. Harrington, Submission to the U.S. Securities and Exchange Commission Re: File No. S7-08-12 (Nov. 19, 2018) at p.8.
⁸⁷ For additional information on the legal mechanics of a flip clause, see Lehman Brothers Special Financing Inc v. Bank of America N.A., No. 18-1079 (2nd Cir. 2020).

⁸⁸ Harrington 10/20/2022 Letter at p. 21-22.

⁸⁹ Harrington 10/20/2022 Letter at p.3 (noting that the requirement for SDs to post and collect variation margin for swap contracts with a securitization or structured debt issuer "generates the immense benefit of inducing U.S. securitization and structured debt issuers to forswear all swap contracts, both with and without a flip clause").

⁹⁰ Harrington 10/20/2022 Letter at p.3 (arguing that "non-U.S. swap margin rules de facto exempt a swap provider from collecting or posting variation margin under a new contract with most securitization and structured debt issuers").

⁹¹ 12 CFR 217.34 and 12 CFR 217.132 (indicating that nonbank SDs may recognize the risk-mitigating effects of financial collateral for collateralized derivatives contracts) and Notice on Capital, Article 15.5, and 15-2.5 (similarly indicating that Japanese nonbank SDs are allowed to recognize the risk-mitigating effect of collateral by deducting the amount of collateral from the exposure at default amount).

⁹² Harrington 10/20/2022 Letter at p.24.

⁹⁴ IBAJ Letter.

⁹⁵ See 2022 Proposal at 48098.

The Commission understands that, as of the date of the final Comparability Determination and Comparability Order, the three Japanese nonbank SDs registered with the Commission are subject to a bank-based capital approach under the Japanese Capital Rules. Accordingly, when the Commission makes its final determination herein about the comparability of the Japanese Capital Rules with the CFTC Capital Rules, the determination pertains to the comparability of the Japanese Capital Rules with the Bank-Based Approach under the CFTC Capital Rules. The Commission notes that any material changes to the information submitted in the FSA Application, including, but not limited to, proposed and final material changes to the Japanese Capital Rules or Japanese Financial Reporting Rules, as well as any proposed and final material changes to the FSA's supervisory authority or supervisory regime, will require notification to the Commission and NFA pursuant to Condition 22 of the final Comparability Order.⁹⁶ Therefore, if there are subsequent material changes to the Japanese Capital Rules, Japanese Financial Reporting Rules, or the supervisory authority or supervisory regime, the Commission will review and assess the impact of such changes on the final Comparability Determination and Comparability Order as they are then in effect, and may amend or supplement the Comparability Order as appropriate.⁹⁷

A. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules and Japanese Capital Rules and Japanese Financial Reporting Rules

1. Preliminary Determination

As reflected in the 2022 Proposal and discussed above, the Commission preliminarily determined that the overall objectives of the Japanese Capital Rules and the CFTC Capital Rules are comparable in that both sets of rules are intended to ensure the safety and soundness of nonbank SDs by establishing regulatory regimes that require nonbank SDs to maintain a

sufficient amount of qualifying regulatory capital to absorb losses, including losses from swaps and other trading activities, and to absorb decreases in the value of firm assets and increases in the value of firm liabilities without the nonbank SDs becoming insolvent.⁹⁸ The Commission further noted that the Japanese Capital Rules and CFTC Capital Rules are also based on, and consistent with, the BCBS framework, which was designed to ensure that banking entities hold sufficient levels of capital to absorb losses and decreases in the value of firm assets and increases in the value of firm liabilities without the banks becoming insolvent.⁹⁹

The Commission also preliminarily found that the Japanese Capital Rules are comparable in purpose and effect to the CFTC Capital Rules given that both regulatory approaches compute the minimum capital requirements based on the level of a nonbank SD's on-balance sheet and off-balance sheet exposures, with the objective and purpose of ensuring that the nonbank SD's capital is adequate to absorb losses or decreases in the value of firm assets or increases in the value of firm liabilities resulting from such exposures.¹⁰⁰ The Commission observed that the Japanese Capital Rules and CFTC Capital Rules provide for a comparable approach to the calculation of on-balance sheet and off-balance sheet risk exposures using standardized or internal model-based approaches.¹⁰¹ In addition, as discussed in the 2022 Proposal, the Japanese Capital Rules' and CFTC Capital Rules' requirements for identifying and measuring on-balance sheet and off-balance sheet exposures under standardized or internal model-based approaches are also consistent with the requirements set forth under the BCBS framework for identifying and measuring on-balance sheet and off-balance sheet exposures.¹⁰²

Finally, the Commission preliminarily noted that the Japanese Capital Rules and CFTC Capital Rules further achieve comparable outcomes and are comparable in purpose and effect in that both sets of rules limit the types of capital instruments that qualify as regulatory capital to cover the on-balance sheet and off-balance sheet risk exposures to high quality equity capital and qualifying subordinated debt instruments that meet conditions designed to ensure that the holders of

the debt have effectively subordinated their claims to other creditors of the nonbank SD.¹⁰³ As discussed in the 2022 Proposal and in Section II.B. below, both the Japanese Capital Rules and the CFTC Capital Rules define high quality capital by the degree to which the capital represents permanent capital that is contributed, or readily available to a nonbank SD, on an unrestricted basis to absorb unexpected losses, including losses from swaps trading and other activities, without the nonbank SD becoming insolvent.¹⁰⁴

The Commission further stated that it preliminarily found the Japanese Financial Reporting Rules to be comparable in purpose and effect to the CFTC Financial Reporting Rules as both the FSA and CFTC require nonbank SDs to file periodic financial reports, including unaudited financial reports and an annual audited financial report, detailing their financial operations and demonstrating their compliance with minimum capital requirements.¹⁰⁵ As discussed in the 2022 Proposal, in addition to providing the CFTC and FSA with information necessary to comprehensively assess the financial condition of a nonbank SD on an ongoing basis, the financial reports further provide the CFTC and FSA with information regarding potential changes in a nonbank SD's risk profile by disclosing changes in account balances reported over a period of time.¹⁰⁶ Such changes in account balances may indicate, among other things, that the nonbank SD has entered into new lines of business, has increased its activity in an existing line of business relative to other activities, or has terminated a previous line of business.¹⁰⁷

In assessing the comparability between the CFTC Financial Reporting Rules and the Japanese Financial Reporting Rules, the Commission noted that the prompt and effective monitoring of the financial condition of nonbank SDs through the receipt and review of periodic financial reports supports the Commission and FSA in meeting their respective objectives of ensuring the safety and soundness of nonbank SDs. In this regard, the Commission stated that the early identification of potential financial issues provides the Commission and FSA with an opportunity to address such issues with the nonbank SD before they develop to a state where the financial condition of the firm is

⁹⁶ Condition 22 of the final Comparability Order. The Commission notes that it made certain non-substantive, clarifying changes to the language of Condition 22 as compared to the proposed condition.

⁹⁷ See 2022 Proposal at 48098. As stated in the 2022 Proposal, the Commission may also amend or supplement the Comparability Order to address any material changes to the CFTC Capital Rules and CFTC Financial Reporting Rules, including rule amendments to capital rules of the Federal Reserve Board that are incorporated into the CFTC capital Rules' Bank-Based Approach under Commission Regulation 23.101(a)(1)(i), that are adopted after the final Comparability Order is issued. See *id.* (fn. 72).

⁹⁸ See 2022 Proposal at 48099.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 48099–48100.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 48100.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

impaired such that it may no longer hold a sufficient amount of qualifying regulatory capital to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, or cover losses from its business activities, including the firm's swap dealing activities and obligations to swap counterparties.¹⁰⁸

2. Comment Analysis and Final Determination

In response to the Commission's request for comment, Better Markets identified certain differences between the CFTC Capital Rules and CFTC Financial Reporting Rules and the Japanese Capital Rules and Japanese Financial Reporting Rules and stated that the differences mandated denial of the request for a comparability determination.¹⁰⁹ Better Markets further stated that the imposition of conditions to achieve comparability between the regimes implicitly concedes that the regimes are not comparable, and is suboptimal and undesirable, as it creates a set of capital and reporting requirements that Japanese nonbank SDs must abide by and that the Commission must monitor.¹¹⁰

As described herein and in the 2022 Proposal, Commission staff has engaged in a detailed, comprehensive study and evaluation of the Japanese capital and financial reporting framework and has confirmed that its understanding of the elements and application of the framework is accurate. The Commission has also concluded, based on its evaluation, that the FSA has a comprehensive oversight program for monitoring Japanese nonbank SD's compliance with relevant Japanese Capital Rules.

Furthermore, as discussed in Section I.E. above, the conditions set forth in the Comparability Order are generally intended to ensure that: (i) only Japanese nonbank SDs that are subject

to the laws and regulations assessed under the Comparability Determination are eligible for substituted compliance; (ii) the Japanese nonbank SDs are subject to supervision by the FSA; and (iii) the Japanese nonbank SDs provide information to the Commission and NFA that is relevant to the ongoing supervision of their operations and financial condition. Considering this thorough analysis and the ongoing requirement for Japanese nonbank SDs to provide information to the Commission and NFA demonstrating compliance with the Comparability Order, the Commission is confident that it is capable of effectively conducting, together with NFA, appropriately tailored oversight of the Japanese nonbank SDs. In light of the Commission's ultimate conclusion that the Japanese capital and financial reporting requirements are comparable based on the standards articulated in Commission Regulation 23.106(a)(3), the Commission believes that a failure to issue a Comparability Determination and Comparability Order would in fact be "suboptimal and undesirable" as it would impose duplicative requirements that would result in increased costs for registrants and market participants without a commensurate benefit from an oversight perspective.

As discussed in Sections I.B. and E. above, and detailed herein, the Commission finds that the CFTC Capital Rules and Financial Reporting Rules and the Japanese Capital Rules and Financial Reporting Rules are comparable in purpose and effect, and have overall comparable objectives, notwithstanding the identified differences. In this regard, the Commission notes that instead of conducting a line-by-line assessment or comparison of the Japanese Capital and Japanese Financial Reporting Rules and the CFTC Capital and CFTC Financial Reporting Rules, it has applied in the assessment set forth in this determination and order, a principles-based, holistic approach in assessing the comparability of both regimes, consistent with the standard of review it adopted in Commission Regulation 23.106(a)(3). Based on that principles-based, holistic assessment, the individual elements of which are described in more detail in Sections II.B. through II.F. below, the Commission has determined that both sets of rules are designed to ensure the safety and soundness of nonbank SDs and achieve comparable outcomes. As such, the Commission adopts the Comparability Determination and Comparability Order as proposed with respect to the analysis

of the regulatory objectives of the CFTC Capital Rules and Financial Reporting Rules and the Japanese Capital and Financial Reporting Rules.

B. Nonbank Swap Dealer Qualifying Capital

1. Preliminary Determination

As discussed in the 2022 Proposal, the Commission preliminarily determined that the Japanese Capital Rules are comparable in purpose and effect to CFTC Capital Rules with regard to the types and characteristics of a nonbank SD's equity that qualifies as regulatory capital in meeting its minimum requirements.¹¹¹ The Commission explained that the Japanese Capital Rules and the CFTC Capital Rules for nonbank SDs both require a nonbank SD to maintain a quantity of high-quality and permanent capital that, based on the firm's activities and on-balance sheet and off-balance sheet exposures, is sufficient to absorb losses and decreases in the value of firm assets and increases in the value of firm liabilities without resulting in the firm becoming insolvent.¹¹² The Commission observed that the Japanese Capital Rules and the CFTC Capital Rules permit nonbank SDs to recognize comparable forms of equity capital and qualifying subordinated debt instruments toward meeting minimum capital requirements, with both the Japanese Capital Rules and the CFTC Capital Rules emphasizing high quality capital instruments.¹¹³

In support of its preliminary Comparability Determination, the Commission noted that the CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital in the form of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in amounts that meet certain stated minimum requirements set forth in Commission Regulation 23.101.¹¹⁴ Common equity tier 1 capital is generally composed of an entity's common stock instruments, and any related surpluses, retained earnings, and accumulated other comprehensive income, and is a more conservative or permanent form of capital that is last in line to receive distributions in the event of the entity's insolvency.¹¹⁵ Additional tier 1 capital is generally composed of

¹⁰⁸ *Id.*

¹⁰⁹ Better Markets Letter at pp. 7–11. For example, Better Markets asserts that while the CFTC requires non-bank SDs to hold qualifying capital in an amount equal to at least 8 percent of the nonbank SDs uncleared swap margin amount, Japan's capital rules are based on an "arbitrary percentage" of a company's operating expenses. Better Markets also asserted that while the CFTC's capital rules require nonbank SDs to "maintain regulatory capital in the form of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, Japan's capital rules require nonbank SDs to maintain a "capital adequacy amount" in the form of "Basic Items and Supplemental Items" and that the Japanese framework has no dollar minimum capital requirement. These distinctions between the CFTC Capital Rules and Financial Reporting Rules, and the Japanese Capital and Financial Reporting Rules, are discussed in detail in sections II.C. and II.B., respectively, below.

¹¹⁰ *Id.*

¹¹¹ See 2022 Proposal at 48101.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ 17 CFR 23.101(a)(1)(i) and 2022 Proposal at 48100. The terms "common equity tier 1 capital," "additional tier 1 capital," and "tier 2 capital" are defined in the bank holding company regulations of the Federal Reserve Board. See 12 CFR 217.20.

¹¹⁵ 12 CFR 217.20(b).

equity instruments such as preferred stock and certain hybrid securities that may be converted to common stock if triggering events occur and may have a preference in distributions over common equity tier 1 capital in the event of an insolvency.¹¹⁶ Total tier 1 capital is composed of common equity tier 1 capital and further includes additional tier 1 capital. Tier 2 capital includes certain types of instruments that include both debt and equity characteristics such as qualifying subordinated debt.¹¹⁷ Subordinated debt must meet certain conditions to qualify as tier 2 capital under the CFTC Capital Rules.¹¹⁸

The preliminary Comparability Determination also noted that the Japanese Capital Rules require each Japanese nonbank SD to maintain a “capital adequacy amount” (*i.e.*, an aggregate of Basic Items and Supplemental Items, after deducting carrying value of fixed assets, with Basic Items representing at least 50 percent of the total capital adequacy amount)¹¹⁹ that equals or exceeds 120 percent of the firm’s “risk equivalent amount,” which is the sum of the firm’s market risk, credit risk, and basic risk.¹²⁰ Basic Items are composed of the Japanese nonbank SD’s balance sheet capital, including: (i) issued and outstanding shares; (ii) the payment for an application for new shares; (iii) the capital surplus; (iv) the earned surplus; (v) the negative valuation difference on available-for-sale securities; and (vi) the firm’s own treasury stock.¹²¹ Supplemental Items include the positive valuation difference on available-for-sale securities and certain subordinated debt instruments.¹²² Subordinated debt

instruments also must meet certain conditions to qualify as Supplemental Items under the Japanese Capital Rules, including containing appropriate provisions subordinating the rights of the lender to the payment of principal and interest to other creditors of the Japanese nonbank SD.¹²³ In addition, any accelerated payment of the subordinated debt may only be made on a voluntarily basis by the Japanese nonbank SD after obtaining approval from the FSA.¹²⁴

Based on its comparative assessment, the Commission preliminarily found that the types and characteristics of the equity instruments included in Basic Items under the Japanese Capital Rules are comparable to the types and characteristics of equity instruments comprising common equity tier 1 capital and additional tier 1 capital under the CFTC Capital Rules.¹²⁵ Specifically, the Commission noted that the Japanese Capital Rules’ Basic Items and the CFTC Capital Rules’ common equity tier 1 capital and additional tier 1 capital are comparable in that these forms of equity capital have similar characteristics (*e.g.*, the equity must be in the form of high-quality, committed, and permanent capital) and represent contributed equity capital that generally has no priority to the distribution of firm assets or income with respect to other shareholders or creditors of the firm, which allows a nonbank SD to use this equity to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, and cover losses from business activities, including the firm’s swap dealing activities.¹²⁶

The Commission also found the Supplemental Items under the Japanese Capital Rules to be comparable to tier 2 capital under the CFTC Capital Rules.¹²⁷ Specifically, the Commission noted that the qualifying conditions imposed on subordinated debt instruments are comparable under the Japanese Capital Rules and the CFTC Capital Rules in that they are designed to ensure that the debt has qualities supporting its recognition by a nonbank SD as equity for capital purposes, including by effectively subordinating the lenders’ claims for repayment on the debt, or interest payments on the debt, to the claims of other creditors of the nonbank SD, and by limiting or restricting repayment or accelerated payments of the subordinated loans if such repayments or accelerated prepayments

would result in the nonbank SD’s equity falling below certain defined thresholds.¹²⁸ The Commission preliminarily concluded that the terms and conditions provided assurances that the subordinated debt was appropriate to be recognized as regulatory capital available to a nonbank SD to meet its regulatory obligations and to absorb business losses and decreases in the value of firm assets and increases in the value of firm liabilities.¹²⁹

The Commission also noted that the Japanese Capital Rules differ from the CFTC Capital Rules in that the Japanese Capital Rules require Japanese nonbank SDs to exclude the carrying value of fixed assets from the sum of the Basic Items and Supplemental Items in computing the capital adequacy amount, whereas the CFTC Capital Rules do not require a nonbank SD to exclude the carrying value of fixed assets from the firm’s common equity tier 1 capital or additional tier 1 capital.¹³⁰ As discussed in the 2022 Proposal, the deduction of the carrying value of fixed assets under the Japanese Capital Rules is a more conservative standard as it imposes an obligation on Japanese nonbank SDs to meet minimum regulatory capital requirements with capital that reflects or represents balance sheet assets that are more liquid than fixed assets.¹³¹

2. Comment Analysis and Final Determination

In response to the Commission’s request for comment on the qualifying capital analysis, Better Markets objected to the Commission’s determination that the Japanese Capital Rules are comparable to the CFTC Capital Rules with respect to the type and characteristics of equity that qualifies as regulatory capital.¹³² Better Markets asserted that the Commission did not adequately analyze the differences between the two regulatory regimes with respect to the items of qualifying capital.¹³³ More specifically, Better Markets stated that Basic Items under the Japanese Capital Rules include treasury stock, whereas, under the CFTC Capital Rules, which are based on definitions of capital from the Federal

¹¹⁶ 12 CFR 217.20(c).

¹¹⁷ 12 CFR 217.20(d).

¹¹⁸ Subordinated debt must meet requirements set forth in SEC Rule 18a–1d. Specifically, subordinated debt instruments must have a term of at least one year (with the exception of approved revolving subordinated debt agreements which may have a maturity term that is less than one year), and contain terms that effectively subordinate the rights of lenders to receive any payments, including accrued interest, to other creditors of the firm. 17 CFR 23.101(a)(1)(i)(B) and 17 CFR 240.18a–1d.

¹¹⁹ See 2022 Proposal at 48100. The phrase “after deducting carrying value of fixed assets” has been added after “Supplemental Items” in response to a technical comment by IBAJ. IBAJ Letter at p. 5. As the Commission explained in the 2022 Proposal, the deduction of the carrying value of fixed assets is a conservative approach to the computation of a Japanese nonbank SD’s capital adequacy amount as it excludes the value of non-liquid fixed assets from the firm’s total Basic Items. See 2022 Proposal at 48101.

¹²⁰ Article 46–6(2) of the FIEA, Article 176 of the COO and section IV–2–1 (Preciseness of Capital Adequacy Ratio) of the Supervisory Guidelines for FIBO.

¹²¹ Article 176(1)(i) through (vi) of the COO.

¹²² Article 176(1)(vii) of the COO.

¹²³ Article 176(2) and (3) of the COO.

¹²⁴ *Id.*

¹²⁵ See 2022 Proposal at 48101.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ The IBAJ noted that the Japanese Capital Rules require the carrying value of fixed assets to be deducted from both Basic Items and Supplemental Items (and not just Basic Items as stated in the 2022 Proposal). The Commission has incorporated this clarification into the final Comparability Determination. IBAJ Letter at p. 5.

¹³¹ See Article 177 of the COO for a breakdown of the fixed assets to be deducted.

¹³² Better Markets Letter at p. 9.

¹³³ *Id.* at p. 8.

Reserve Board, common equity tier 1 capital is net of treasury stock.¹³⁴

The Commission recognizes that the Japanese Capital Rules list treasury stock, which represents previously issued shares of stock that have been repurchased by the firm, as a Basic Item.¹³⁵ In application of the Japanese Rules of Corporate Accounting, however, treasury stock must be deducted from the shareholders' equity component of the firms' balance sheet.¹³⁶ As such, consistent with the treatment received under the CFTC Capital Rules, the treasury stock is not counted towards the Japanese nonbank SD's Basic Items or Supplemental Items in meeting its minimum regulatory capital requirement. Accordingly, the Commission does not find that the CFTC Capital Rules and the Japanese Capital Rules diverge with respect to their respective approach to exclude treasury stock from regulatory capital.

In addition, upon further analysis, the Commission not only reiterates its observations that the Japanese Capital Rules' Basic Items present characteristics that are comparable to the characteristics of common equity tier 1 and additional tier 1 capital, but the Commission further concludes that, despite certain definitional differences, the Japanese Capital Rules' Basic Items are more closely equated to common equity tier 1 capital. In particular, the Basic Items' categories of "issued and outstanding shares," "capital surplus," and "earned surplus," correspond to the CFTC Capital Rules' common equity tier 1 categories of "common stock and related surpluses," and "retained earnings" as the categories represent equity contributions and earnings that have been retained by the nonbank SDs and represent residual ownership interest in the nonbank SDs. Similarly, whereas the CFTC Capital Rules provide for the inclusion of unrealized losses and gains on available-for-sale securities in the common equity tier 1 category of "accumulated other comprehensive income," the Japanese Capital Rules require that the positive valuation of available-for-sale securities (*i.e.*, unrealized gain) be excluded and the negative valuation difference (*i.e.*, unrealized loss) of available-for-sale

securities be included in Basic Items, thus mandating a similar, if not more conservative, treatment for this category of capital items. Finally, as clarified above, the CFTC Capital Rules and the Japanese Capital Rules treat treasury stock consistently for purposes of determining qualifying capital. More generally, the Commission is of the view that the Japanese Capital Rules' Basic Items are comparable to the CFTC Capital Rules' common equity tier 1 items in that both categories represent a more conservative, permanent form of capital that is last in line to receive distributions in the event of the entity's insolvency.

In conclusion, the Commission finds that the Japanese Capital Rules and the CFTC Capital Rules, are comparable in purpose and effect, and achieve comparable regulatory outcomes, with respect to the types of capital instruments that qualify as regulatory capital. Both the Japanese Capital Rules and the CFTC Capital Rules limit regulatory capital to permanent and conservative forms of capital, including common equity, capital surpluses, retained earnings, and subordinate debt where debt holders effectively subordinate their claims to repayment to all other creditors of the nonbank SD in the event of the firm's insolvency. Limiting regulatory capital to the above categories of equity and debt instruments promotes the safety and soundness of the nonbank SD by helping to ensure that the regulatory capital is not withdrawn or converted to other equity instruments that may have rights or priority with respect to payments, such as dividends or distributions in insolvency, over other creditors, including swap counterparties. The Commission, therefore, is adopting the Comparability Order as proposed with respect to the types and characteristics of equity and subordinated debt that qualify as regulatory capital to meet minimum capital requirements under the Japanese Capital Rules.

C. Nonbank Swap Dealer Minimum Capital Requirement

1. Introduction to Nonbank Swap Dealer Minimum Capital Requirements

As reflected in the 2022 Proposal, the CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital that satisfies each of the following criteria: (i) an amount of common equity tier 1 capital of at least \$20 million; (ii) an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital equal to or greater than 8 percent

of the nonbank SD's total risk-weighted assets, provided that common equity tier 1 capital comprises at least 6.5 percent of the 8 percent; (iii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or in excess of 8 percent of the nonbank SD's uncleared swap margin amount;¹³⁷ and (iv) the amount of capital required by NFA.¹³⁸

In comparison, the Japanese Capital Rules require each Japanese nonbank SD to maintain a "capital adequacy amount" that equals or exceeds 120 percent of the firm's "risk equivalent amount."¹³⁹ As explained in the 2022 Proposal, the "capital adequacy amount" is calculated as the Japanese nonbank SD's qualifying balance sheet equity capital in the form of Basic Items and Supplemental Items, after deducting the carrying value of fixed assets from both Basic Items and Supplemental Items.¹⁴⁰ The Commission noted that the Japanese Capital Rules further require that at least 50 percent of the Japanese nonbank SD's capital used to meet the 120 percent minimum requirement must be composed of Basic Items, and any subordinated debt included in Supplemental Items must meet regulatory requirements designed to ensure that the debt is adequately subordinated to claims of other potential creditors of the firm.¹⁴¹

2. Preliminary Determination and Comment Analysis

While noting certain differences in the minimum capital requirements and

¹³⁷ The term "uncleared swap margin" is defined in Commission Regulation 23.100 to generally mean the amount of initial margin that a nonbank SD would be required to collect from each counterparty for each outstanding swap position of the nonbank SD. 17 CFR 23.100. A nonbank SD must include all swap positions in the calculation of the uncleared swap margin amount, including swaps that are exempt or excluded from the scope of the Commission's uncleared swap margin regulations. A nonbank SD must compute the uncleared swap margin amount in accordance with the Commission's margin rules for uncleared swaps. 17 CFR 23.154.

¹³⁸ 17 CFR 23.101(a)(1)(i)(D). *See also* 2022 Proposal at 48101 and 48104. Commission Regulation 23.101(a)(1)(i) sets forth one of the minimum thresholds that a nonbank SD must meet as the "the amount of capital required by a registered futures association." As previously noted, NFA is currently the only entity that is a registered futures association. NFA has adopted the Commission's capital requirements as its own requirements, and has not adopted any additional or stricter minimum capital requirements. *See* NFA rulebook, Financial Requirements section 18 Swap Dealer and Major Swap Participant Financial Requirements, available at [nfa.futures.org](https://www.nfa.futures.org).

¹³⁹ *See* 2022 Proposal at 48103.

¹⁴⁰ *Id.*

¹⁴¹ *See* 2022 Proposal at 48099 and Article 176(1)(vii) of the COO.

¹³⁴ *Id.* at p. 9.

¹³⁵ Article 176 of the COO.

¹³⁶ Article 76(2) of Rules of Corporate Accounting (Ordinance of the Ministry of Justice No. 13 of February 7, 2006). To account for the accurate treatment of treasury stock, the Commission has revised final Condition 4 of the final Comparability Order to include Article 76 of the Rules of Corporate Accounting to the list of laws comprising the Japanese Capital Rules that a Japanese nonbank SD must comply with under the Comparability Order.

calculation of regulatory capital between the Japanese Capital Rules and the CFTC Capital Rules, the Commission preliminarily found that the Japanese Capital Rules and CFTC Capital Rules achieve, subject to the proposed conditions in the proposed Comparability Determination and proposed Comparability Order, comparable outcomes by requiring a nonbank SD to maintain a minimum level of qualifying regulatory capital and subordinated debt to absorb losses from the firm's business activities, including its swap dealing activities, and decreases in the value of the firm's assets and increases in the firm's liabilities without the nonbank SD becoming insolvent.¹⁴² As further discussed below, the Commission's preliminary finding of comparability was based on a principles-based, holistic comparative analysis of the three minimum capital requirement thresholds of the CFTC Capital Rules' Bank-Based Approach referenced above and the respective elements of the Japanese Capital Rules' requirements.

a. Fixed Amount Minimum Capital Requirement

As noted above, prong (i) of the CFTC Capital Rules requires each nonbank SD electing the Bank-Based Approach to maintain a minimum of \$20 million of common equity tier 1 capital. The Commission's \$20 million fixed-dollar minimum capital requirement is intended to ensure that each nonbank SD maintains a level of regulatory capital, without regard to the level of the firm's dealing and other activities, sufficient to meet its obligations to swap market participants given the firm's status as a CFTC-registered nonbank SD, and to help ensure the safety and soundness of the nonbank SD.¹⁴³ In contrast, the Japanese Capital Rules do not impose a capital requirement on Japanese nonbank SDs based on a minimum dollar amount.

The Commission expressed the preliminary view that each CFTC-registered nonbank SD should maintain a minimum level of regulatory capital to help ensure that it satisfies its regulatory obligations and meets its financial commitments to swap counterparties and creditors without the firm becoming insolvent.¹⁴⁴ Accordingly, the Commission proposed to condition the Comparability Order to require each Japanese nonbank SD to maintain, at all times, a minimum level of regulatory capital in the form of Basic Items, as

defined in Article 176 of the COO, in an amount denominated in yen that is equivalent to, or greater than, \$20 million in U.S. dollars.¹⁴⁵

One commenter, Better Markets, argued that the absence of a base level requirement in the Japanese Capital Rules that is equivalent to the CFTC Capital Rules' requirement for each nonbank SD to maintain a minimum of \$20 million of common equity tier 1 capital "demonstrates a fatal lack of comparability."¹⁴⁶ Better Markets further asserted that the Commission's proposed condition requiring that Japanese nonbank SDs maintain a minimum level of regulatory capital of at least \$20 million inadequately compensates for the gap in the Japanese framework.¹⁴⁷ Specifically, Better Markets argued that by allowing Japanese nonbank SD to meet the proposed minimum capital level with Basic Items, which the Commission preliminarily found to be equivalent to the combination of common equity tier 1 and additional tier 1 capital, instead of limiting the qualifying items to the higher form of common equity tier 1 capital, the Commission would impose a materially weaker capital requirement.¹⁴⁸

As noted above, the Commission recognized the difference between the Japanese Capital Rules and the CFTC Capital Rules with respect to the \$20 million minimum dollar amount of regulatory capital a nonbank SD is required to maintain. The Commission's proposed condition, however, effectively addresses this difference by providing that a Japanese nonbank SD may not avail itself of substituted compliance unless it maintains a minimum of \$20 million of regulatory capital in the form of Basic Items. The imposition of the condition was consistent with the Commission authority under Commission Regulation 23.106(a)(5). Furthermore, as discussed in Section I.E. above, the Commission has stated that entities relying on substituted compliance may be required to comply with certain Commission-imposed requirements in situations where comparable regulations in their home country jurisdiction are deemed to be lacking.¹⁴⁹

As discussed in Section II.B.2. above, the Commission is also of the view that

the Japanese Capital Rules' Basic Items are comparable to the CFTC Capital Rules' common equity tier 1 items in that both categories represent a conservative, permanent form of capital that is last in line to receive distributions in the event of the entity's insolvency. Specifically, the capital that may be recognized by a nonbank SD and Japanese nonbank SD to meet its common equity tier 1 capital requirement and Basic Items requirement, respectively, is generally limited to common stock, related common stock surpluses, and retained earnings. As such, the Commission concludes that the requirement for Japanese nonbank SDs to maintain an amount of regulatory capital in the form of Basic Items equal to or in excess of the equivalent of \$20 million will impose a comparable standard to the analogue requirement under the CFTC Capital Rules and will appropriately address the lack of a minimum fixed amount capital requirement under the Japanese Capital Rules.

In conclusion, the Commission finds that the Japanese Capital Rules and the CFTC Capital Rules, with the imposition of the condition for Japanese nonbank SDs to maintain a minimum level of Basic Items in an amount equivalent to at least \$20 million, are comparable in purpose and effect and achieve comparable regulatory outcomes with respect to capital requirements based on a minimum dollar amount. The requirement for a nonbank SD with limited swap dealing or other business activities to maintain a minimum level of regulatory capital equivalent to \$20 million helps to ensure the firm's safety and soundness by allowing it to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to swap counterparties, other creditors, and market participants, without the firm becoming insolvent.

b. Minimum Capital Requirement Based on Risk-Weighted Assets

Prong (ii) of the CFTC Capital Rules' minimum capital requirements described above requires each nonbank SD electing the Bank-Based Approach to maintain an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, with common equity tier 1 capital comprising at least 6.5 percent of the 8 percent.¹⁵⁰ Risk-weighted assets are a nonbank SD's on-balance sheet and off-balance sheet exposures, including market risk and credit risk exposures, and include

¹⁴² See 2022 Proposal at 48104.

¹⁴³ 85 FR 57462 at 57492.

¹⁴⁴ See 2022 Proposal at 48106.

¹⁴⁵ *Id.* The Commission also proposed to allow a Japanese nonbank SD to convert the yen-denominated amount of its Basic Items to the U.S. dollar equivalent based on a commercially reasonable and observed exchange rate.

¹⁴⁶ Better Markets Letter at p. 9.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Guidance at 45343.

¹⁵⁰ 17 CFR 23.101(a)(1)(i)(B).

exposures associated with proprietary swap, security-based swap, equity, and futures positions, weighted according to risk. The requirements and capital ratios set forth in prong (ii) are based on the Federal Reserve Board's capital requirements for bank holding companies¹⁵¹ and are consistent with the BCBS framework.¹⁵² The requirement for each nonbank SD to maintain regulatory capital in an amount that equals or exceeds 8 percent of the firm's total risk-weighted assets is intended to help ensure that the nonbank SD's level of capital is sufficient to absorb decreases in the value of the firm's assets, absorb increases in the value of the firm's liabilities, and cover unexpected losses resulting from the firm's business activities, including losses resulting from collateralized and uncollateralized defaults from swap counterparties, without the nonbank SD becoming insolvent.¹⁵³

The Japanese Capital Rules contain capital requirements for Japanese nonbank SDs that the Commission preliminarily found comparable in purpose and effect to the requirements in prong (ii) of the CFTC Capital Requirements.¹⁵⁴ Specifically, the Japanese Capital Rules require a Japanese nonbank SD to maintain regulatory capital in an amount equal to or in excess of 120 percent of the firm's risk "risk equivalent amount" (*i.e.*, the firm's risk-weighted assets).¹⁵⁵ A Japanese nonbank SD's "risk equivalent amount" is calculated as the sum of the firm's: (i) market risk equivalent amount (*i.e.*, the amount equivalent to possible risks which may accrue due to fluctuations in the prices of securities and other proprietary assets and

transactions held);¹⁵⁶ (ii) counterparty risk equivalent amount (*i.e.*, the amount equivalent to possible risks which may accrue due to the default in performance of contracts by the counterparties to transactions or any other reason);¹⁵⁷ and (iii) basic risk equivalent amount (*i.e.*, the amount equivalent to possible risk which may accrue in the ordinary course of executing business, such as errors in business handling).¹⁵⁸

The Commission also preliminarily found that the Japanese Capital Rules and the CFTC Capital Rules are comparable with respect to the approaches used in the calculation of risk-weighted amounts for market risk and credit risk in determining the nonbank SD's risk-weighted assets.¹⁵⁹ In this connection, the Commission noted that both regimes require a nonbank SD to use standardized approaches to compute market risk and credit risk amounts, unless the firm is approved to use internal models.¹⁶⁰

As the Commission observed, the standardized approaches to calculating risk-weighted asset amounts for market risk and credit risk under both the Japanese Capital Rules and the CFTC Capital Rules follow the same structure that is now the common global standard: (i) allocating assets to categories according to risk and assigning each a risk weight; (ii) allocating counterparties according to risk assessments and assigning each a risk factor; (iii) calculating gross exposures based on valuation of assets; (iv) calculating a net exposure allowing offsets following well defined procedures and subject to clear limitations; (v) adjusting the net exposure by the market risk weights; and finally, (vi) for credit risk exposures, multiplying the sum of net exposures to each counterparty by their corresponding risk factor.¹⁶¹

More specifically, with respect to the calculation of standardized risk-weighted asset amounts for market risk, the Commission explained that the CFTC Capital Rules incorporate by reference the standardized market risk charges set forth in Commission

Regulation 1.17 for FCMs and SEC Rule 18a-1 for nonbank security-based swap dealers ("SBSDs").¹⁶² The standardized market risk charges under Commission Regulation 1.17 and SEC Rule 18a-1 are calculated as a percentage of the market value or notional value of the nonbank SD's assets, including marketable securities and derivatives positions, with the percentages applied to the market value or notional value increasing as the expected or anticipated risk of the positions increases.¹⁶³ For example, the CFTC Capital Rules require nonbank SDs to calculate standardized market risk-weighted asset amounts for uncleared swaps based on notional values of the swap positions multiplied by percentages set forth in the applicable rules.¹⁶⁴ In addition, market risk-weighted asset amounts for readily marketable equity securities are calculated by multiplying the fair market value of the securities by 15 percent.¹⁶⁵

Under the CFTC Capital Rules, the resulting total market risk-weighted asset amount is multiplied by a factor of 12.5 to cancel the effect of the 8 percent multiplication factor applied to all of the nonbank SD's risk-weighted assets under prong (ii) of the rules' minimum capital requirements described above. As a result, a nonbank SD is effectively required to hold qualifying regulatory capital equal to or greater than 100 percent of the amount of its market risk exposure amount.¹⁶⁶

Comparable to the CFTC Capital Rules, the Japanese Capital Rules

¹⁶² See paragraph (3) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

¹⁶³ 17 CFR 1.17(c)(5) and 17 CFR 240.18a-1(c)(1).

¹⁶⁴ 17 CFR 1.17(c)(5)(iii).

¹⁶⁵ 17 CFR 1.17(c)(5)(v), referencing SEC Rule 15c3-1(c)(2)(vi) (17 CFR 240.15c3-1(c)(2)(vi)).

¹⁶⁶ See 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*). As noted, a nonbank SD is required to maintain qualifying capital (*i.e.*, an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) in an amount that equals or exceeds 8 percent of its risk-weighted assets. The regulations, however, require the nonbank SD to effectively maintain qualifying capital equal to or in excess of 100 percent of its market risk-weighted assets by requiring the nonbank SD to multiply its market-risk weighted assets by a factor of 12.5. For example, the market risk exposure amount for marketable equity securities with a current fair market value of \$250,000 is \$37,500 (market value of \$250,000 × .15 standardized market risk factor). The nonbank SD is required to maintain regulatory capital equal to or in excess of full market risk exposure amount of \$37,500 (risk exposure amount of \$37,500 × 8 percent regulatory capital requirement equals \$3,000; the regulatory capital requirement is then multiplied by a factor of 12.5, which effectively requires the nonbank SD to hold regulatory capital in an amount equal to at least 100 percent of the market risk exposure amount (\$3,000 × 12.5 factor equals \$37,500)).

¹⁵¹ 12 CFR 217.10(a)(1). The minimum capital requirement for a bank holding company under the Federal Reserve Board's rules requires bank holding companies to satisfy their 8 percent minimum capital ratio requirement with a minimum of 4.5 percent of common equity tier 1 capital. The CFTC Capital Rules, however, require a nonbank SD to meet its minimum 8 percent capital ratio with at least 6.5 percent of common equity tier 1 capital. 17 CFR 23.101(a)(1)(i)(B).

¹⁵² *Risk-based capital requirements RBC20, Calculation of minimum risk-based capital requirements* (Version effective as of 01 January 2023), published by the BCBS and available here: https://www.bis.org/basel_framework/chapter/RBC/20.htm?inforce=20230101&published=20201126.

¹⁵³ See generally 85 FR 57462 at 57530.

¹⁵⁴ See 2022 Proposal at 48105.

¹⁵⁵ See discussion in 2022 Proposal at 48105. The Japanese Capital Rules require a Japanese nonbank SD to maintain a capital adequacy amount that equals or exceeds 120 percent of its "risk equivalent amount." Article 46-6(2) of the FIEA, Article 176 of the COO, and section IV-2-1 (Preciseness of Capital Adequacy Ratio) of the Supervisory Guidelines for FIBO.

¹⁵⁶ Article 178(1)(i) of the COO and Articles 10 through 14 of the Notice on Capital. The "market risk equivalent amount" corresponds to "market risk" in the CFTC Capital Rules' Bank-Based Approach and the BCBS framework.

¹⁵⁷ Article 178(1)(ii) of the COO and Articles 15 through 15-7 of the Notice on Capital. The "counterparty risk equivalent amount" corresponds to "credit risk" in the BCBS and Bank-Based Approach frameworks.

¹⁵⁸ Article 178(1)(iii) of the COO and Article 16 of the Notice on Capital.

¹⁵⁹ See 2022 Proposal at 48105.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

require a Japanese nonbank SD to calculate its standardized market risk equivalent amount by multiplying specified market risk weights set forth in the Japanese Capital Rules by the notional or market value of the relevant assets and positions.¹⁶⁷ A Japanese nonbank SD is further required to include the full value of its market risk equivalent amount in its aggregate risk equivalent amount, which effectively requires the Japanese nonbank SD to hold qualifying equity capital and subordinated debt in an amount that equals or exceeds 120 percent of the market risk equivalent amount.¹⁶⁸

With respect to standardized risk-weighted asset amounts for credit risk from non-derivatives positions, the Commission explained that under the CFTC Capital Rules, a nonbank SD must compute its on-balance sheet and off-balance sheet exposures in accordance with the standardized risk-weighting requirements adopted by the Federal Reserve Board and set forth in Subpart D of 12 CFR 217 as if the SD itself were a bank holding company subject to Subpart D.¹⁶⁹ Standardized risk-weighted asset amounts for credit risk are computed by multiplying the amount of the exposure by defined counterparty credit risk factors that range from 0 percent to 150 percent.¹⁷⁰ A nonbank SD with off-balance sheet exposures is required to calculate a risk-weighted asset amount for credit risk by multiplying each exposure by a credit conversion factor that ranges from 0 percent to 100 percent, depending on the type of exposure.¹⁷¹

In comparison, the Commission noted that Japanese Capital Rules require a Japanese nonbank SD to calculate its standardized counterparty risk equivalent amount by multiplying its

exposure under a given transaction by the specific risk weight applicable to the counterparty under the provisions of the Japanese Capital Rules.¹⁷² In this regard, the Japanese Capital Rules impose risk weights ranging from 0 percent to 25 percent on exposures to governmental financial institutions, non-governmental financial institutions, general corporations, and individuals.¹⁷³ For certain exposures, credit ratings are used to determine the percentage of the counterparty credit risk exposure and, if no credit ratings are available, the Japanese nonbank SD generally applies a 25 percent risk weight.¹⁷⁴ A Japanese nonbank SD is required to include the full amount of the counterparty risk equivalent amount in its aggregate risk equivalent amount.¹⁷⁵ As noted above, a Japanese nonbank SD is also required to maintain a “capital adequacy amount” that equals or exceeds 120 percent of the firm’s “risk equivalent amount.” Therefore, a Japanese nonbank SD is effectively required to maintain an amount of qualifying capital that is equal to or in excess of 120 percent of its credit risk equivalent amount.

With respect to credit risk for derivatives positions, the Commission explained that under the CFTC Capital Rules, a nonbank SD may compute standardized credit risk exposures, using either the current exposure method (“CEM”) or the standardized approach for measuring counterparty credit risk (“SA-CCR”).¹⁷⁶ Both CEM and SA-CCR are non-model, rules-based approaches to calculating counterparty credit risk exposures for derivatives positions. Credit risk exposure under CEM is the sum of: (i) the current exposure (*i.e.*, the positive mark-to-market) of the derivatives contract; and (ii) the potential future exposure, which is calculated as the product of the notional principal amount of the derivatives contract multiplied by a standard credit risk conversion factor set forth in the rules of the Federal Reserve Board.¹⁷⁷ Credit risk exposure under SA-CCR is defined as the exposure at default amount of a

derivatives contract, which is computed by multiplying a factor of 1.4 by the sum of: (i) the replacement costs of the contract (*i.e.*, the positive mark-to-market); and (ii) the potential future exposure of the contract.¹⁷⁸

In comparison, the Japanese Capital Rules require a Japanese nonbank SD that is not approved to use credit risk models to calculate its exposure using the CEM.¹⁷⁹ Under the CEM, a Japanese nonbank SD calculates its exposures for over-the-counter derivatives using a standardized rules-based approach, and is required to hold an amount of qualifying capital that equals or exceeds 120 percent of the aggregate derivatives exposures.

As discussed in the 2022 Proposal, both the CFTC Capital Rules and the Japanese Capital Rules also provide that, if approved by NFA or the FSA, respectively, nonbank SDs may also use internal models to calculate market and/or credit risk exposures.¹⁸⁰ The Commission noted that the internal market and credit risk models under the Japanese Capital Rules and the CFTC Capital Rules are based on the BCBS framework and preliminarily found that such models must meet comparable quantitative and qualitative requirements covering the same risks, including comparable model risk management requirements.¹⁸¹ In this regard, the Commission observed that both rule sets address the same types of risk, with similar allowed methodologies, calibrated to similar risk levels and under similar controls.¹⁸² The Commission also noted that the Japanese Capital Rules and the CFTC Capital Rules contain comparable

¹⁷⁸ 12 CFR 217.132(c).

¹⁷⁹ See 2022 Proposal at 48104.

¹⁸⁰ *Id.* at 48102–48104.

¹⁸¹ *Id.* For a discussion of the qualitative and quantitative requirements that models must meet under the CFTC Capital Rules and the Japanese Capital Rules, see 2022 Proposal at 48102–48103 and 48104, respectively. In this context, the Commission notes that, as emphasized by IBAJ, the expected exposure method is the only internal model allowed for purposes of calculating credit risk under the Japanese Capital Rules. IBAJ Letter at pp. 5–6. The Commission had erroneously indicated, in referring to credit risk models under the Japanese Capital Rules, that internal credit risk models can also further include estimation of the likelihood of default of counterparties and that credit risk models may include internal ratings based on the estimation of default probabilities, consistent with the Basel framework and subject to the same model risk management guidelines. 2022 Proposal at 48098 and 48104. The Commission hereby rectifies its summary of the relevant Japanese Capital Rules and specifies that these statements do not apply to credit risk models under the Japanese Capital Rules. The Commission, however, maintains its conclusion that model requirements under the CFTC Capital Rules and the Japanese Capital Rules are comparable.

¹⁸² See 2022 Proposal at 48105.

¹⁶⁷ See 2022 Proposal at 48103.

¹⁶⁸ *Id.* Using the example above, if the market risk exposure amount for the equity securities under the Japanese Capital Rules was calculated to be \$37,500, the Japanese nonbank SD would be required to hold an amount of regulatory capital equal to or in excess of \$45,000 (market risk exposure amount of \$37,500 × 120 percent).

¹⁶⁹ 23.101(a)(1)(i)(B) and paragraph (1) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100. See also 2022 Proposal at 48102.

¹⁷⁰ 12 CFR 217.32. Lower credit risk factors are assigned to entities with lower credit risk and higher credit risk factors are assigned to entities with higher credit risk. For example, a credit risk factor of 0 percent is applied to exposures to the U.S. government, the Federal Reserve Bank, and U.S. government agencies (12 CFR 217.32(a)(1)), and a credit risk factor of 100 percent is assigned to an exposure to foreign sovereigns that are not members of the Organization of Economic Cooperation and Development (12 CFR 217.32(a)(2)). See also discussion in 2022 Proposal at 48102.

¹⁷¹ 12 CFR 217.33. See also discussion in 2022 Proposal at 48102.

¹⁷² See 2022 Proposal at 48103–48104.

¹⁷³ Article 15(3) of the Notice on Capital. See also discussion in 2022 Proposal at 48104.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ 17 CFR 217.34 and 17 CFR 23.100 (defining the term *BHC risk-weighted assets* and providing that a nonbank SD that does not have model approval may use either CEM or SA-CCR to compute its exposures for over-the-counter derivative contracts without regard to the status of its affiliate with respect to the use of a calculation approach under the Federal Reserve Board’s capital rules). See also discussion in 2022 Proposal at 48102.

¹⁷⁷ 12 CFR 217.34.

requirements for the management of model risk, which depend on a series of controls, including the independence of validation, ongoing monitoring and audit.

In addition, the Japanese Capital Rules require a Japanese nonbank SD to calculate a basic risk equivalent amount (*i.e.*, an operational risk exposure amount) as a component of the firm's risk equivalent amount. The basic risk equivalent amount is computed as an amount equal to 25 percent of the Japanese nonbank SD's defined annual operating expenses, and is intended to provide a capital cushion to cover risks that may occur in the course of executing ordinary business operations, such as errors in business transactions.¹⁸³

One commenter, Better Markets, noted that the CFTC Bank-Based Approach requires nonbank SDs to maintain an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital equal to or greater than 8 percent of the non-bank SD's total risk-weighted assets, provided that common equity tier 1 capital must comprise at least 6.5 percent of the 8 percent of risk-weighted assets.¹⁸⁴ Better Markets stated that, in contrast, the Japanese Capital Rules require Japanese nonbank SDs to hold capital equal to or greater than 120 percent of their risk-weighted assets, including 50 percent that must be held in Basic Items.¹⁸⁵ Better Markets further asserted that in stating that the 120 percent of risk-weighted assets required by the Japanese capital rules equates to an "effective minimum capital requirement of 9.6 percent of risk-weighted assets," the Commission did not provide an analysis of how the CFTC calculated that effective minimum and did not disclose how much of the 9.6 percent is held in Basic Items as opposed to Supplementary Items.¹⁸⁶ In Better Markets' view, without this information and analysis, no comparability determination can be made because U.S. nonbank SDs are required to maintain 6.5 percent of the total 8 percent of risk-weighted assets in the highest form of capital, namely common equity tier 1 capital.¹⁸⁷

Another commenter, IBAJ, offered a contrasting view, stating that Japanese nonbank SDs must maintain capital equal to 120 percent of market risk, credit risk, and basic risk equivalent

amounts and that such amount of capital translated into an effective capital ratio requirement of 9.6 percent of risk weighted assets, which is higher than the 8 percent capital ratio required by the Basel standards or CFTC Capital Rules.¹⁸⁸ As discussed immediately below, the Commission agrees with the IBAJ that the capital ratio required by the Japanese Capital Rules exceeds the capital ratio required by the CFTC Capital Rules under the Bank-Based Approach.

In response to the comment asserting that the Commission did not provide an analysis supporting the statement that the Japanese Capital Rules impose on Japanese nonbank SDs "an effective minimum requirement of 9.6 percent of the risk-weighted assets," the Commission notes that the 9.6 percent figure is intended to express the Japanese minimum capital as a capital ratio in a manner consistent with the CFTC Capital Rules for purposes of a comparison. Specifically, the Japanese Capital Rules require a Japanese nonbank SD to maintain regulatory capital in an amount that equals or exceeds 120 percent of the aggregate of the firm's risk-weighted assets. In contrast, the CFTC Capital Rules require a nonbank SD to maintain a minimum capital ratio to total risk-weighted assets of 8 percent. Converting the Japanese Capital Rules' requirement to an equivalent capital ratio under the CFTC Capital Rules would result in the capital ratio of 8 percent being increased by 20 percent, effectively requiring nonbank SDs to maintain a ratio of total regulatory capital to risk-weighted assets of 9.6 percent (*i.e.*, 8 percent plus 20 percent of 8 percent).¹⁸⁹

In addition, the Japanese Capital Rules' standardized approach to calculating minimum capital requirements also results in a higher regulatory capital requirement for counterparty credit risk. Although the standardized credit risk weights under the Japanese Capital Rules range from 0 to 25 percent, whereas those applicable under the CFTC Capital Rules range from 0 to 150 percent, the Japanese Capital Rules' requirement that Japanese nonbank SDs hold 120 percent of the firm's risk-weighted assets would yield a higher capital requirement. For example, for an exposure that is subject to the highest risk weight for counterparty credit risk, the Japanese Capital Rules would require a Japanese nonbank SD to hold capital equal to 30 percent of the exposure amount (*i.e.*, 25 percent risk weight multiplied by 120

percent capital requirement), whereas the CFTC Capital Rules would require a nonbank SD to hold capital equal to 12 percent of the exposure amount (*i.e.*, 150 percent risk weight multiplied by 8 percent capital requirement).

Furthermore, the Commission notes that under the Japanese Capital Rules, the total risk-weighted assets include amounts for operational and similar risks arising from a Japanese nonbank SD's activities (*i.e.*, basic risk equivalent amount). These risk-weighted asset amounts are included in the risk equivalent amount in all circumstances, whether the nonbank SD uses a standardized approach or a model approach to calculating risk-weighted assets.¹⁹⁰ As such, the basic risk equivalent amount increases the amount of the risk-weighted assets and thus the amount of regulatory capital that a Japanese nonbank SD is required to maintain. Taking these factors into account in the computation of risk-weighted assets and regulatory capital under the Japanese Capital Rules, the Commission believes that a nonbank SD is generally required to maintain a higher level of regulatory capital under the Japanese Capital Rules than it would be under the CFTC Capital Rules.

Moreover, to the extent the Japanese Capital Rules might require a lesser amount of common equity tier 1 capital than the CFTC Capital Rules, the Commission believes that the difference will be generally offset and mitigated by the higher amount of regulatory capital required by the Japanese Capital Rules. Accordingly, the Commission finds that the Japanese Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the minimum amount of capital and type of capital required by these rules.

In conclusion, the Commission finds that the Japanese Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the computation of minimum capital requirements based on a nonbank SD's risk-weighted assets. The Commission finds that notwithstanding the differences discussed above, the Japanese Capital Rules and the CFTC Capital rules have a comparable approach to the computation of market

¹⁸³ Article 178(1)(iii) of the COO and Article 16 of the Notice on Capital. *See also* discussion in 2022 Proposal at 48104.

¹⁸⁴ Better Markets Letter at p. 9.

¹⁸⁵ *Id.* at p. 10.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ IBAJ Letter at p. 2.

¹⁸⁹ *See* 2022 Proposal at 48104 and fn. 125.

¹⁹⁰ In contrast, the CFTC Capital Rules do not require nonbank SDs to include an operational risk charge in the firm's risk-weighted assets if the firm uses a standardized approach to calculating risk-weighted asset amounts. An operational risk component is included in the firm's risk-weighted assets only if the firm uses a model to calculate risk-weighted asset amounts for credit risk. *See* definition of *BHC equivalent risk-weighted assets* in Commission Regulation 23.100 (cross referencing subparts E and D of 12 CFR part 217). 17 CFR 23.100.

risk exposure amounts and credit risk exposure amounts for on-balance sheet and off-balance sheet exposures, which are intended to achieve comparable regulatory outcomes by ensuring that a nonbank SD maintains a sufficient level of regulatory capital to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to counterparties and creditors, without the firm becoming insolvent.

c. Minimum Capital Requirement Based on the Uncleared Swap Margin Amount

As noted above, prong (iii) of the CFTC Capital Rules' Bank-Based Approach requires a nonbank SD to maintain regulatory capital in an amount equal to or greater than 8 percent of the firm's total uncleared swaps margin amount associated with its uncleared swap transactions to address potential operational, legal, and liquidity risks.¹⁹¹

The Japanese Capital Rules differ from the CFTC Capital Rules in that they do not impose a capital requirement on Japanese nonbank SDs based on a percentage of the margin for uncleared swap transactions.¹⁹² In the 2022 Proposal, the Commission described, however, how certain Japanese capital and liquidity requirements may compensate for the lack of direct analogue to the 8 percent uncleared swap margin amount requirement.¹⁹³ Specifically, the Commission noted that under the Japanese Capital Rules the risk equivalent amount (*i.e.*, the firm's risk-weighted assets) is calculated as the sum of the market risk equivalent amount, the counterparty risk equivalent amount, and the basic risk equivalent amount.¹⁹⁴ As discussed, the basic risk equivalent amount is computed as an amount equal to 25 percent of the Japanese nonbank SD's defined annual operating expenses, and is intended to provide a capital cushion to cover risks that may accrue in the course of executing ordinary business

operations, such as errors in business transactions.¹⁹⁵ In addition, the Japanese Capital Rules require a Japanese nonbank SD to deduct the carrying value of fixed assets from its Basic Items and Supplemental Items in computing its regulatory capital, which promotes a degree of liquidity into the Japanese nonbank SD's regulatory capital by requiring assets that are more liquid than fixed assets to support the Basic Items and Supplemental Items that are used to meet the Japanese nonbank SD's minimum capital requirement. As stated in the 2022 Proposal, the Commission preliminarily determined that the inclusion of an operational risk charge as a separate component of the risk equivalent amount, including by Japanese nonbank SDs that do not use internal models, and the deduction of the carrying value of fixed assets from regulatory capital, would achieve a comparable outcome to the Commission's requirement for nonbank SDs to hold regulatory capital in excess of 8 percent of its uncleared swap margin amount.¹⁹⁶

Focusing on the absence of a capital requirement based on a percentage of the margin for uncleared swap transactions under the Japanese Capital Rules, Better Markets asserted that the Japanese Capital Rules are not only different from the CFTC Capital Rules in form and substance, but lead to a regulatory outcome that is not comparable.¹⁹⁷ In support, Better Markets noted that, whereas the CFTC relies on an approach that requires nonbank SDs to hold qualifying capital in an amount equal to at least 8 percent of the nonbank SD's uncleared swap margin amount, the Japanese Capital Rules are based on "an arbitrary percentage of a company's operating expenses, which would be closer in concept to liquidity needs."¹⁹⁸

Other commenters agreed with the Commission's preliminary determination that the Japanese Capital Rules and CFTC Capital Rules are comparable notwithstanding the absence in the Japanese Capital Rules of a capital requirement based on uncleared swap margin.¹⁹⁹ In this regard, FSA asserted that the Japanese Capital Rules are largely comparable in outcome even in the absence of the uncleared swap margin requirement because the Japanese capital adequacy

ratio takes into account operational risk.²⁰⁰

The Associations and IBAJ expressed the view that the Japanese Capital Rules are comparable in purpose and effect to the Commission's requirements for a nonbank SD to hold regulatory capital equal to or greater than 8 percent of its uncleared swap margin amount.²⁰¹ The commenters explained that under the Japanese Capital Rules, liquidity risk is covered through the deduction of the balance sheet carrying value of fixed assets, and operational risk and legal risk are covered by the basic risk equivalent amount, which is a simplified but conservative approach to calculating a proxy for operational risks under the Basel standards.²⁰² Under the approach, basic risk is incrementally added to market risk and credit risk, which further increases the required capital amount under the Japanese Capital Rules.²⁰³ The commenters further explained that the Japanese Capital Rules' basic risk equivalent amount is computed as an amount equal to 25 percent of the Japanese nonbank SD's defined annual operating expenses, and is intended to provide a capital cushion to cover risk that may accrue in the course of executing ordinary business operations, such as errors in business transactions.²⁰⁴ According to the commenters, such amount combined with market risk, credit risk, and the deduction of the carrying value of fixed assets will broadly capture obligations to market participants, potential operational risk, legal risk, and liquidity risk, as well as market risk and credit risk.²⁰⁵ The commenters further noted that the calculation will capture both the trading portfolio as well as non-trading assets, whereas the CFTC's requirement to hold 8 percent of nonbank SD's uncleared swap margin amount will not capture non-trading assets.²⁰⁶ As such, the commenters concluded that the Japanese Capital Rules' basic risk equivalent requirement is sufficiently comparable to the CFTC Capital Rules' uncleared swap margin requirement.²⁰⁷

The Commission believes that the Japanese Capital Rules' approach to calculating the basic risk equivalent amount, which accounts for operational risk and legal risk, and the deduction of the balance sheet carrying value of fixed

¹⁹¹ More specifically, in establishing the requirement that a nonbank SD must maintain a level of regulatory capital in excess of 8 percent of the uncleared swap margin amount associated with the firm's swap transactions, the Commission stated that the intent of the uncleared swap margin amount was to establish a method of developing a minimum amount of capital for a nonbank SD to meet its obligations as an SD to market participants, and to cover potential operational risk, legal risk and liquidity risk, and not just the risks of its trading portfolio. See 85 FR 57462 at 57485.

¹⁹² See 2022 Proposal at 48104.

¹⁹³ *Id.* at 48105.

¹⁹⁴ Article 178(1)(iii) of the COO and Article 16 of the Notice on Capital. The basic risk equivalent amount is calculated as 25 percent of certain defined operating expenses incurred by the Japanese nonbank SD over a 12-month period, and includes general expenses, selling expenses, and financial expenses.

¹⁹⁵ See 2022 Proposal at 48105.

¹⁹⁶ *Id.*

¹⁹⁷ Better Markets Letter at p. 7.

¹⁹⁸ *Id.*

¹⁹⁹ Associations Letter at p. 2; FSA Letter at p. 1; IBAJ Letter at p. 2.

²⁰⁰ FSA Letter at p. 1.

²⁰¹ Associations Letter at p. 2; IBAJ Letter at p. 2.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Associations Letter at p. 3; IBAJ Letter at p. 3.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

assets to reflect liquidity risk, support the comparability of the Japanese Capital Rules and the CFTC Capital Rules even in the absence of a separate capital requirement in the Japanese Capital Rules requiring Japanese nonbank SDs to have qualified capital equal to or greater than 8 percent of the amount of uncleared swap margin.

In conclusion, the Commission finds that the Japanese Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the requirement that a nonbank SD's minimum level of regulatory capital reflects potential operational risk exposures in addition to market risk and credit risk exposures. The Commission emphasizes that the intent of the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin is to establish a minimum capital requirement that would help ensure that the nonbank SD meets its obligations as an SD to market participants, and to cover potential operational risk, legal risk, and liquidity risk in addition to the risks associated with its trading portfolio.²⁰⁸ The Commission further notes that the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin amount was conceived as a proxy, not an exact measure, for inherent risk in the SD's positions and operations, including operational risk, legal risk, and liquidity risk.²⁰⁹ As the Commission noted in adopting the CFTC Capital Rules, although the amount of capital required of a nonbank SD under the uncleared swap margin calculation is directly related to the volume, size, complexity, and risk of the covered SD's positions, the minimum capital requirement is intended to cover a multitude of potential risks faced by the SD.²¹⁰ The Commission understands that other jurisdictions may adopt alternative measures to cover the same risks. In this regard, the Japanese Capital Rules address comparable risks albeit not through a requirement based on a Japanese nonbank SD's uncleared swap margin amount. Specifically, Japanese nonbank SDs are required to maintain a minimum level of regulatory capital based on an aggregate of the firm's total risk-weighted asset exposure amounts for market risk, credit risk, and operational risk. The Commission further notes that a Japanese nonbank SD is required to maintain regulatory capital in an amount that exceeds 120

percent of the total risk-weighted assets, which is 20 percent higher than the CFTC Capital Rules. Accordingly, the Commission has determined that, notwithstanding the differences in approaches, the Japanese Capital Rules and CFTC Capital Rules are comparable in purpose and effect, and achieve comparable regulatory outcomes, by requiring nonbank SDs to maintain a sufficient minimum level of regulatory capital to addresses potential market risk, credit risk, and operational risk, and to help ensure the safety and soundness of the firm by requiring it to hold capital to absorb decreases in firm assets, absorb increases in firm liabilities, and meet its obligations to counterparties and creditors, without the firm becoming insolvent.

3. Final Determination

Based on its analysis of comments and its holistic assessment of the respective requirements discussed in Section II.C.2.a., b., and c. above, the Commission adopts the Comparability Determination and Comparability Order as proposed with respect to the minimum capital requirements and calculation of regulatory capital, subject to the condition that Japanese nonbank SDs must maintain a minimum level of regulatory capital in the form of Basic Items that equals or exceeds the equivalent of \$20 million U.S. dollars.

D. Nonbank Swap Dealer Financial Reporting Requirements

1. Proposed Determination

The Commission detailed the requirements of the CFTC Financial Reporting Rules in the 2022 Proposal.²¹¹ Specifically, the 2022 Proposal notes that the CFTC Financial Reporting Rules require nonbank SDs to file with the Commission and NFA periodic unaudited and annual audited financial reports.²¹² The unaudited financial reports must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement demonstrating compliance with, and calculation of, the applicable regulatory minimum capital requirement; (iv) a statement of changes in ownership equity; (v) a statement of changes in liabilities subordinated to claims of general creditors; and (vi) such further material information necessary to make the required statements not misleading.²¹³ The annual audited financial reports must include the same financial statements that are required to be included in the unaudited financial

reports, and must further include: (i) a statement of cash flows; (ii) appropriate footnote disclosures; and (iii) a reconciliation of any material differences between the financial statements contained in the annual audited financial reports and the financial statements contained in the unaudited financial reports prepared as of the nonbank SD's year-end date.²¹⁴ In addition, a nonbank SD must attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct.²¹⁵ The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.²¹⁶

The CFTC Financial Reporting Rules also require a nonbank SD to file the following financial information with the Commission and NFA on a monthly basis: (i) a schedule listing the nonbank SD's financial positions reported at fair market value;²¹⁷ (ii) schedules showing the nonbank SD's counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries;²¹⁸ and (iii) for nonbank SDs approved to use internal capital models, certain model metrics, such as aggregate value-at-risk ("VaR") and counterparty credit risk information.²¹⁹

The CFTC Financial Reporting Rules further require a nonbank SD to provide the Commission and NFA with information regarding the custodianship of margin for uncleared swap transactions ("Margin Report").²²⁰ The Margin Report must contain: (i) the name and address of each custodian holding initial margin or variation margin on behalf of the nonbank SD or

²¹⁴ *Id.* and 17 CFR 23.105(e)(4).

²¹⁵ *Id.* and 17 CFR 23.105(f).

²¹⁶ *Id.*

²¹⁷ *Id.* and 17 CFR 23.105(l) and Schedule 1 of Appendix B to Subpart E of part 23 ("Schedule 1"). Schedule 1 includes a nonbank SD's holding of U.S. Treasury securities, U.S. government agency debt securities, foreign debt and equity securities, money market instruments, corporate obligations, spot commodities, and cleared and uncleared swaps, security-based swaps, and mixed swaps in addition to other position information.

²¹⁸ *Id.* and schedules 2, 3 and 4, respectively, of Commission Regulation 23.105(l). 17 CFR 23.105(l).

²¹⁹ *Id.* and 17 CFR 23.105(k) and (l), and appendix B to Subpart E of part 23.

²²⁰ *Id.* and 17 CFR 23.105(m).

²⁰⁸ See 2022 Proposal at 48102 (referencing 85 FR 57462).

²⁰⁹ 85 FR 57462 at 57497.

²¹⁰ 85 FR 57462 at 57485 and 57497.

²¹¹ 2022 Proposal at 48106–48107.

²¹² *Id.* and 17 CFR 23.105(d) and (e).

²¹³ *Id.* and 17 CFR 23.105(d)(2).

its swap counterparties; (ii) the amount of initial and variation margin required by the uncleared margin rules held by each custodian on behalf of the nonbank SD and on behalf its swap counterparties; and (iii) the aggregate amount of initial margin that the nonbank SD is required to collect from, or post with, swap counterparties for uncleared swap transactions subject to the uncleared margin rules.²²¹

A nonbank SD electing the Bank-Based Capital Approach is required to file the unaudited financial report, Schedule 1, schedules of counterparty credit exposures, and the Margin Report with the Commission and NFA no later than 17 business days after the applicable month end reporting date.²²² A nonbank SD must file its annual report with the Commission and NFA no later than 60 calendar days after the end of its fiscal year.²²³

The 2022 Proposal also detailed relevant financial reporting requirements of the Japanese Financial Reporting Rules.²²⁴ The Japanese Financial Reporting Rules require a Japanese nonbank SD to submit monthly monitoring survey reports (“Monthly Monitoring Report”) to the FSA.²²⁵ The Monthly Monitoring Report must include information on the Japanese nonbank SD’s capital adequacy ratio, and the status of the firm’s business operations and accounting (including a balance sheet and profit/loss statement), market risk, counterparty risk, operational risk, and liquidity risk.²²⁶ The Monthly Monitoring Report are typically submitted by a Japanese nonbank SD within two to three weeks of the end of each month.²²⁷

A Japanese nonbank SD is also required to submit a business report to the Commissioner of the FSA within three months of the end of the firm’s fiscal year (“Annual Business Report”).²²⁸ The Annual Business Report must include a balance sheet, profit/loss statement, statement of changes in shareholders’ equity, balance of subordinated debt, and a statement of capital adequacy ratio.²²⁹ Furthermore, a Japanese nonbank SD is required to prepare financial statements and business reports every business year pursuant to the Japanese Companies Act (“Annual Audited Financial Report”).²³⁰ The Annual Audited Financial Report includes the firm’s balance sheet, profit/loss statement, and statement of changes in shareholders’ equity, and such statements are required to be audited by an accounting auditor.²³¹ The Annual Audited Financial Report must be submitted to, and approved by, the shareholders at a meeting within three months of the Japanese nonbank SD’s fiscal year-end.²³²

Based on its review of the FSA Application and the relevant Japanese laws and regulations, the Commission preliminarily determined that, subject to the conditions specified in the 2022 Proposal and discussed below, the Japanese Financial Reporting Rules are comparable to CFTC Financial Reporting Rules in purpose and effect.²³³ The Commission noted that both sets of rules provide the FSA and the Commission with financial information necessary to monitor a nonbank SD’s compliance with capital requirements and to assess a nonbank

SD’s overall safety and soundness. Specifically, both CFTC Financial Reporting Rules and the Japanese Financial Reporting Rules require a nonbank SD to file statements of financial condition, statements of profit and loss, and statements of regulatory capital that, collectively, provide information for the FSA, Commission, and NFA to assess a nonbank SD’s overall ability to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, and cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.²³⁴

The proposed conditions in the proposed Comparability Order were intended to ensure that the Commission and NFA receive appropriate and timely financial information from Japanese nonbank SDs in order to monitor the firms’ compliance with FSA capital requirements and to assess the firms’ overall safety and soundness. The proposed conditions would require a Japanese nonbank SD to provide the Commission and NFA with copies of its Monthly Monitoring Report, Annual Business Report, and Annual Audited Financial Report.²³⁵ The proposed conditions would also require the Monthly Monitoring Report, Annual Business Report, and Annual Audited Financial Report to be translated into the English language.²³⁶ The Monthly Monitoring Report and the Annual Business Report also must have balances converted from yen to U.S. dollars. The Commission further recognized that the requirement to translate balances denominated in yen to U.S. dollars on the audited financial statements may have an unintended impact on the opinion expressed by the public accountant on the financial statements. The Commission, therefore, proposed to accept the Annual Audited Financial Report denominated in yen, but required the report to be translated into the English language.²³⁷

The proposed conditions also would require a Japanese nonbank SD to file with the Commission and NFA its: (i) Monthly Monitoring Reports within 15 business days of the earlier of the date

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ 2022 Proposal at 48106–48110.

²²⁵ *Id.* and section II–1–4 (General Supervisory Process) of the Supervisory Guidelines for FIBO, which directs the FSA as part of its offsite monitoring to require FIBOs (including the Japanese nonbank SDs) to submit a monitoring survey report regarding the following matters: capital adequacy ratio, status of business operations and accounting (including a balance sheet and profit and loss statement), status of segregated management of customer assets, market risk, counterparty risk, operational risk, and liquidity risk. The FSA has, pursuant to Article 56–2(1) of the FIEA, ordered the Japanese nonbank SDs to submit monthly monitoring reports to the FSA.

²²⁶ *Id.*

²²⁷ The Commission noted that there are various types of reports which are required of the Japanese nonbank SDs under “Reporting orders” issued by the FSA in accordance with Article 56–2(1) of the FIEA. Some of these reports are required to be submitted on a monthly basis, whereas other reports are required to be submitted on a quarterly basis, semi-annual basis, or annual basis. The FSA typically does not set a specific filing deadline and instead requests all reports to be submitted “without delay.” In case of monthly reports, the

normal practice is for firms to submit such reports within two to three weeks from the prior month-end.

²²⁸ 2022 Proposal at 48107 and Article 46–3(1) of the FIEA and Article 172 of the COO.

²²⁹ 2022 Proposal at 48107 and Appended Forms No. 12 of the COO.

²³⁰ 2022 Proposal at 48107 and Japanese Companies Act (Act No. 86 of 2005).

²³¹ 2022 Proposal at 48107 and Article 328(1) and (2), Article 435(2), and 436(2)(i) of the Companies Act, and Article 59 of the Rules of Corporate Accounting (Ordinance of the Ministry of Justice No. 13 of 2006). The audit requirement applies to a “Large Company,” which is defined by Article 2(vi) of the Companies Act as a stock company that satisfies any of the following requirements: (i) that the amount of stated capital in the balance sheet as of the end of the firm’s most recent business year is JPY 500 million or more; or (ii) that the total sum of the liabilities section of the balance sheet as of the end of the firm’s most recent business year is JPY 20 billion or more. The FSA has represented that each of the current CFTC-registered Japanese nonbank SDs is a Large Company under the Companies Act, and is subject to the audit requirement for its financial statements. FSA Application p. 18.

²³² *Id.*

²³³ See 2022 Proposal at 48106–48110.

²³⁴ *Id.*

²³⁵ See 2022 Proposal at 48107 and Article 46–3(1) of the FIEA, Article 172 of the COO, and Appended Forms No. 12 of the COO.

²³⁶ In the 2022 Proposal, the Commission proposed that the translation of audited financial statements into the English language would not be required to be subject to the audit of the public accountants. A Japanese nonbank SD would be required to report the exchange rate that it used to convert balances from yen to U.S. dollars to the Commission and NFA as part of the financial reporting.

²³⁷ See 2022 Proposal at 48108.

the report is filed with the FSA or 35 calendar days after the month-end reporting date;²³⁸ (ii) Annual Business Report within 15 business days of the earlier of the date the report is filed with the FSA or the date that the report is required to be filed with the FSA;²³⁹ and (iii) Annual Audited Financial Report within 15 business days of the approval of the report at the Japanese nonbank SD's shareholder meeting.²⁴⁰ The Commission stated that, in its preliminary view, the proposed filing dates provided sufficient time for the respective reports to be translated into the English language with balances converted from yen to U.S. dollars, as applicable.²⁴¹

The Commission also proposed a condition to require Japanese nonbank SDs to file with the Commission and NFA, on a monthly basis, Schedule 1 showing the aggregate securities, commodities, and swap positions of the firm at fair market value as of the reporting date.²⁴² The Commission explained that Schedule 1 provides the Commission and NFA with detailed information regarding the fair market value of the nonbank SD's financial positions as of the end of each month, including the firm's swaps positions, which allows the Commission and NFA to monitor the types of investments and other activities that the firm engages in and would assist the Commission and NFA in monitoring the safety and soundness of the firm.²⁴³ The Commission proposed to require that Schedule 1 be filed by a Japanese nonbank SD along with the firm's Monthly Monitoring Report. The Commission also proposed to require that Schedule 1 be prepared in the English language with balances reported in U.S. dollars.

The Commission also proposed a condition to require a Japanese nonbank SD to submit a statement by an

authorized representative or representatives of the Japanese nonbank SD that, to the best knowledge and belief of the person(s), the information contained within each Monthly Monitoring Report, Schedule 1, Annual Business Report, and Annual Audited Financial Report, is true and correct, including as it relates to the translation of the report into the English language and the conversion of balances to U.S. dollars.²⁴⁴ The statement by an authorized representative or representatives of the Japanese nonbank SD was intended to be the equivalent of the oath or affirmation required of nonbank SDs under Commission Regulation 23.105(f),²⁴⁵ to ensure that reports filed with the Commission and NFA were prepared and submitted by firm personnel with knowledge of the financial reporting of the firm who can attest to the accuracy of the reporting and translation.²⁴⁶

The Commission further proposed a condition that would require a Japanese nonbank SD to file a Margin Report with the Commission and NFA on a monthly basis.²⁴⁷ The Commission noted that a Margin Report would assist the Commission and NFA in their assessment of the safety and soundness of the Japanese nonbank SDs by providing information regarding the firm's swaps book and the extent to which it has uncollateralized swap exposures to counterparties or has not met its margin obligations to swap counterparties. The Commission explained that this information, along with the list of custodians holding both the firm's and counterparties' swaps collateral, would assist with identifying potential financial impacts to the nonbank SD resulting from defaults on its swap transactions.

In the Commission's preliminary view, its proposed approach of requiring Japanese nonbank SDs to provide the Commission and NFA with copies of the Monthly Monitoring Reports, Annual Business Reports, and Annual Audited Financial Reports that the firms currently file with the FSA or otherwise prepare struck an appropriate balance of

ensuring that the Commission and NFA receive the financial reporting necessary for the effective monitoring of the financial condition of the nonbank SDs, while also recognizing the appropriateness of providing substituted compliance based on the existing FSA financial reporting requirements and regulatory structure.²⁴⁸

The Commission's preliminary determination did not require a Japanese nonbank SD to file the model metrics and counterparty credit exposure information required by Commission Regulations 23.105(k) and (l),²⁴⁹ respectively, in recognition that NFA's current SD risk monitoring program requires all SDs, including Japanese nonbank SDs, to file with NFA on a monthly basis certain risk metrics that are comparable with the risk metrics contained in Commission Regulation 23.105(k) and (l) and address the market risk and credit risk of the SD's positions.²⁵⁰ Specifically, the Commission noted that NFA's monthly risk metric information includes: (i) VaR for interest rates, credit, foreign exchange, equities, commodities, and total VaR; (ii) total stressed VaR; (iii) interest rate, credit spread, foreign exchange market, and commodity sensitivities; (iv) total swaps current exposure both before and after offsetting against collateral held by the firm; and (v) a list of the 15 largest swaps counterparty current exposures.²⁵¹

Furthermore, the Commission recognized that although the Japanese Financial Reporting Rules do not contain an analogue to the CFTC's requirements for nonbank SDs to file monthly model metric information and counterparty exposure information, the FSA has access to comparable

²⁴⁸ *Id.*

²⁴⁹ Commission Regulation 23.105(k) requires a nonbank SD that has obtained approval from the Commission or NFA to use internal capital models to submit to the Commission and NFA each month information regarding its risk exposures, including VaR, and requires certain credit risk exposure information from model and non-model approved firms. 17 CFR 23.105(k). Commission Regulation 23.105(l) requires each nonbank SD to provide information to the Commission and NFA regarding its counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries in Schedules 2, 3, and 4, respectively. 17 CFR 23.105(l).

²⁵⁰ 2022 Proposal at 48109.

²⁵¹ See 2022 Proposal at 48109 and NFA Financial Requirements, section 17—*Swap Dealer and Major Swap Participant Reporting Requirements*, and Notice to Members—*Monthly Risk Data Reporting for Swap Dealers* (May 30, 2017) (“NFA Notice 1–17–10”), available here: <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4817>.

²³⁸ 2022 Proposal at 48108 and proposed Condition 8. As noted, the FSA does not set a specific filing date for Monthly Monitoring Reports, electing to instead require firms to file such reports “without delay.” The Commission proposed to establish a due date that is no later than 35 calendar days from the reporting date to set a definitive filing date that also provides Japanese nonbank SDs with sufficient time to translate the reports into English and convert balances to U.S. dollars.

²³⁹ 2022 Proposal at 48108 and proposed Condition 9.

²⁴⁰ 2022 Proposal at 48108 and proposed Condition 10.

²⁴¹ See 2022 Proposal at 48108.

²⁴² See *id.* In response to a comment by the IBAJ, the Commission confirms that its intent was to require that Schedule 1 of Appendix B to Subpart E of part 23 be filed at the same time as the Monthly Monitoring Report, consistent with Condition (11) of the Order. IBAJ Letter at p. 6.

²⁴³ See 2022 Proposal at 48108.

²⁴⁴ *Id.* at 48108–48109 and proposed Condition 12.

²⁴⁵ 17 CFR 23.105(f). Commission Regulation 23.105(f) requires a nonbank SD to attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct. The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.

²⁴⁶ See 2022 Proposal at 48109.

²⁴⁷ *Id.*

information.²⁵² More specifically, the Commission noted that the FSA would perform the initial approval and ongoing assessment of the performance of a Japanese nonbank SD's models as part of its oversight function and may be better positioned to monitor a Japanese nonbank SD's model metrics and performance and to assess the Japanese nonbank SD's credit exposures as part of the FSA's overall monitoring of the financial condition of the firm.²⁵³ As such, the FSA would have access to information allowing it to assess the ongoing performance of risk models and to monitor the Japanese nonbank SD's credit exposures, which may be comprised of credit exposures to primarily Japanese counterparties.

2. Comment Analysis and Final Determination

The Commission received comments regarding the comparability of financial reporting and specific comments addressing several of the financial reporting issues on which the Commission solicited feedback. Regarding the scope of the financial information that a Japanese nonbank SD should be required to file, Better Markets stated that the 2022 Proposal does not adequately support the Commission's preliminary conclusion that the content of the Monthly Monitoring Reports, Annual Business Reports, and Annual Audited Financial Reports required pursuant to the Japanese Capital Rules are comparable with the requirements of the CFTC Financial Reporting Rules.²⁵⁴ In contrast, FSA stated that the Commission should limit the request of financial information to the extent consistent and sufficient with the purpose of the Commission's capital requirements to efficiently and effectively achieve its supervisory and monitoring objectives.²⁵⁵ IBAJ stated that the Commission should limit the financial information required to be filed to the types of financial information required of nonbank SDs under Commission Regulation 23.105.²⁵⁶ IBAJ further stated that, consistent with the types of schedules and data nonbank SDs are required to file under Commission Regulation 23.105, the Commission should require

Japanese nonbank SDs to file the following information from the Monthly Monitoring Report: (i) Form 1–1 Capital Ratio Summary; (ii) Form 1–2 Capital Ratio: Deductible Assets; (iii) Form 1–3 Market Risk; (iv) Form 1–4 Counterparty Risk; (v) Form 2–1 Monthly Financial Statement (1); and (vi) Form 2–2 Monthly Financial Statement (2). IBAJ also stated that other financial information contained within the Monthly Monitoring Report should not be required as the information is either not submitted by nonbank SDs under Commission Regulation 23.105, such as client assets segregation status and transaction volume, or the information is similar to the information contained in the quarterly risk exposure report and monthly risk data report that Japanese nonbank SDs already provide to the Commission and NFA.²⁵⁷ IBAJ also asserted that limiting the scope of information to the six items noted above from the Monthly Monitoring Report would be consistent with the financial information that Commission staff has required from Japanese nonbank SDs under CFTC Staff Letter 22–10.²⁵⁸

The Commission has reviewed the comments and believes that the Japanese Financial Reporting Requirements, subject to the conditions below, are comparable to the CFTC Financial Reporting Requirements in purpose and effect in that both the Japanese rules and the CFTC regulations provide information necessary for the monitoring of the financial condition of a nonbank SD. In response to the comments, the Commission is modifying the conditions in the final Comparability Order to list specific

²⁵⁷ *Id.*

²⁵⁸ *Id.* and CFTC Staff Letter No. 22–10, *Extension of Time-Limited No-Action Position for Foreign Based Nonbank Swap Dealers domiciled in Japan, Mexico, the United Kingdom, and the European Union*, issued by the Market Participants Division on August 17, 2022. CFTC Staff Letter No. 22–10, which extended the expiration of CFTC Staff Letter 21–20, provides that the Market Participants Division ("MPD") would not recommend an enforcement action to the Commission if a non-U.S. nonbank SD covered by the letter ("covered nonbank SDs"), subject to certain conditions, complied with their respective home-country capital and financial reporting requirements in lieu of the Commission's capital and financial reporting requirements set forth in Commission Regulations 23.100 through 23.106, pending the Commission's determination of whether the capital and financial reporting requirements of certain foreign jurisdictions are comparable to the Commission's corresponding requirements. The relevant conditions include that a covered nonbank SD domiciled in Japan must: (i) be registered as a Type I FIBO with the FSA; (ii) submit to MPD financial information required by the FSA within 15 days of submitting such information to the FSA; and (iii) submit to the Commission a statement of financial condition, statement of income/loss, and statement of regulatory capital to the extent that such financial information is not required by the FSA.

schedules of the Monthly Monitoring Report that each Japanese nonbank SD is required to file with the Commission and NFA. Specifically, the Commission agrees that the Comparability Order should specify the required information that a Japanese nonbank SD must submit to the Commission and NFA from its Monthly Monitoring Report to be consistent with the types of capital and general financial statement information that a nonbank SD is required to file under Commission Regulation 23.105. This modification would ensure that the Commission receives the relevant financial information necessary to monitor the general financial condition and capital compliance of a Japanese nonbank SD, while eliminating the requirement for Japanese nonbank SDs to provide other information contained in the Monthly Monitoring Report that is specific to certain requirements in Japan and beyond the overall financial condition and capital compliance of the firm.

Therefore, consistent with the statement above, the Commission is modifying Condition 8 of the Comparability Order to provide that a Japanese nonbank SD must file Form 1–1 Capital Ratio Summary ("Form 1–1"), Form 1–2 Capital Ratio: Deductible Assets ("Form 1–2"), Form 1–3 Market Risk ("Form 1–3"), Form 1–4 Counterparty Risk ("Form 1–4"), Form 2–1 Monthly Financial Statement (1) ("Form 2–1"), and Form 2–2 Financial Statement (2) ("Form 2–2") of the Monthly Monitoring Report with the Commission and with NFA on a monthly basis. Final Condition 8 will continue to require a Japanese nonbank SD to file such forms translated into the English language with balances converted to U.S. dollars,²⁵⁹ and, as further discussed below, will require that such forms be filed with the Commission and NFA within 35 calendar days after the end of each month.

The Commission finds that the financial information provided by Japanese nonbank SDs in the specified forms of the Monthly Monitoring Report, the Annual Business Report, and the Annual Audited Financial Report is comparable to the unaudited and audited financial information provided by nonbank SDs under the relevant provisions of Commission Regulation 23.105(d) and (e), respectively. With respect to Better Markets' comment regarding the

²⁵⁹ The condition will also specify that Japanese nonbank SDs must use a commercially reasonable and observable yen/U.S. dollar spot rate as of the date of the reports.

²⁵² Under the Japanese Financial Reporting Rules, the FSA has broad powers to request any information necessary for the exercise of its functions. FSA Application at p. 16 (referencing Article 56–2 of the FIEA) and discussion in 2022 Proposal at 48113.

²⁵³ See 2022 Proposal at 48109.

²⁵⁴ Better Markets Letter at p. 10.

²⁵⁵ FSA Letter at p. 2.

²⁵⁶ IBAJ Letter at p. 4.

sufficiency of the support for a finding of comparability of the financial reporting requirements, the Commission believes that the description of the reporting forms' content demonstrates the similarity between the required information. In this regard, Form 2-1 and Form 2-2 of the Monthly Monitoring Report present a Japanese nonbank SD's statement of financial condition and statement of profit/loss, respectively. Form 2-1 and Form 2-2 provide information that is necessary for the monitoring of the financial condition of a Japanese nonbank SD and are comparable to the statement of financial condition and statement of profit/loss required by the Commission of nonbank SDs under Commission Regulation 23.105(d)(2).

Form 1-1, Form 1-2, Form 1-3, and Form 1-4 detail the calculation of a Japanese nonbank SD's capital ratio. Form 1-3 and Form 1-4 provide details concerning a Japanese nonbank SD's calculation of market risk and counterparty credit risk, respectively, that is incorporated into the firm's calculation of its risk-weighted assets. Form 1-3 details market risk by asset class (e.g., equity, interest rate, foreign exchange, commodity, and crypto assets) and contract type (e.g., spot transactions or forward transactions). Form 1-4 details counterparty credit risk by transaction type (e.g., foreign exchange, interest rates, and equity). Form 1-2 details the deductions that a Japanese nonbank SD must take in computing its Basic and Supplemental capital to reflect illiquid assets (e.g., fixed assets). Form 1-1 summarizes the Japanese nonbank SD's capital calculation of its Basic and Supplemental Items and further contains the firm's overall capital ratio to demonstrate compliance with the Japanese Capital Rules. Forms 1-1 through 1-4 of the Monthly Monitoring Report require a Japanese nonbank SD to file financial information regarding its capital ratio that is comparable to the capital ratio reporting requirements under Commission Regulation 23.105(d)(2), which requires a nonbank SD to submit a statement of its capital requirement calculation and the firm's compliance with such capital requirement.

The Commission is also adopting Conditions 9 and 10 of the proposed Comparability Order substantially as proposed.²⁶⁰ Final Conditions 9 and 10 require a Japanese nonbank SD to file a

copy of its Annual Business Report and Annual Audited Financial Report, respectively, with the Commission and NFA. The Annual Business Report and Annual Audited Financial Report are comparable to the annual audited financial report that each nonbank SD is required to file with the Commission and NFA pursuant to Commission Regulation 23.105(e). Specifically, information included in the Annual Business Report and Annual Audited Financial Reports includes the Japanese nonbank SD's statements of financial condition, statement of income or loss, a statement demonstrating the firm's capital levels and its compliance with the Japanese Capital Rules, a statement of changes in ownership equity and a statement of subordinated debt. This information is comparable to the audited financial information required by the Commission from nonbank SDs under Commission Regulation 23.105(e) and detailed above.

The Annual Business Report and Annual Audited Financial Report must be translated into English, and balances in the Annual Business Report must be converted into U.S. dollars.²⁶¹ The Annual Business Report is required to be filed with the Commission and NFA within 15 business days of the earlier of the date that the report is filed, or is required to be filed, with the FSA, and the Annual Audited Financial Report is required to be filed with the Commission and NFA within 15 business days of the approval of the report at the shareholders' meeting.

For purposes of clarity, the Commission notes that Japanese nonbank SDs may present the financial information required to be provided to the Commission and NFA under the final Comparability Order in accordance with generally accepted accounting principles that the Japanese nonbank SD uses to prepare general purpose financial statements in Japan. This clarification is consistent with proposed Condition 7, which the Commission adopts subject to a minor modification in the final Comparability Order, requiring that the Japanese nonbank SD prepares and keeps current ledgers and other similar records "in accordance

with accounting principles permitted by the [FSA]." ²⁶²

In taking the position that Japanese nonbank SDs may provide financial reporting prepared in accordance with the accounting standards applicable in their home jurisdiction, the Commission considered the nature of the financial reporting information required from nonbank SDs for purposes of monitoring their overall financial condition and compliance with capital requirements. Specifically, the Commission notes that the requirements for how nonbank SDs calculate their risk-weighted assets and capital ratio, in both Japan and the U.S., follow a rules-based approach consistent with the Basel standards, and, consequently, the Commission does not anticipate that a variation in the applicable accounting standards would materially impact this calculation.²⁶³ In this regard, the

²⁶² 2022 Proposal at 48114. Proposed Condition 7 stated that Japanese nonbank SDs must prepare and keep current ledgers and other similar records "in accordance with accounting principles required by the [FSA]". To promote consistency across the Comparability Determinations the Commission is adopting with respect to several other jurisdictions and to reflect the fact that certain jurisdictions may not issue a formal approval of the accounting standards used by nonbank SDs, the Commission is replacing the adjective "required" with the adjective "permitted" in the reference to the accounting standards to be used by Japanese nonbank SDs.

²⁶³ Furthermore, the Commission's approach to permitting Japanese nonbank SDs to maintain financial books and records, and to file financial reports and other financial information, prepared in accordance with local accounting standards is consistent with the SEC's final comparability determinations for non-U.S. SBSBs. See *Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin*, 86 FR 59797 (Oct. 28, 2021) at 59812 and *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a-7*, 86 FR 59208 (Oct. 26, 2021) ("SEC Manner and Format Order") at 59219. Specifically, the SEC stated that the use of local reporting requirements will avoid non-U.S. SBSBs "having to perform and present two Basel capital calculations (one pursuant to local requirements and one pursuant to U.S. requirements)." SEC Manner and Format Order at 59219. The SEC noted, in this regard, that the Basel standards are international standards that have been adopted in the U.S. and in jurisdictions where substituted compliance is available for capital under the SEC comparability determinations and that, therefore, requirements for how firms calculate capital pursuant to the Basel standards generally should be similar. *Id.* In addition, if a Japanese nonbank SD becomes registered with the SEC as an SBSB and is required to file a FOCUS Report, the

²⁶⁰ Subject to the specification in final Condition 9 that the conversion of balances to U.S. dollars must be done using a commercially reasonable and observable yen/U.S. dollar spot rate as of the date of the report.

²⁶¹ As noted above, the 2022 Proposal included a proposal to permit balances in the Annual Audited Financial Report to be presented in yen to avoid raising potential issues with respect to the audit opinion expressed on the financial statements by the accountant engaged to conduct the audit of the Japanese nonbank SD's financial statements. See 2022 Proposal at 48108 and proposed Condition 10 at 48115. As previously stated herein, the Commission is adopting Condition 10 in the final Comparability Order as proposed.

Commission notes that Japanese nonbank SDs currently submit financial reports, including a statement of financial condition and a statement of regulatory capital, pursuant to CFTC Staff Letter 22–10.²⁶⁴ The reports provide the Commission with appropriate information to assess the financial and operational condition of Japanese nonbank SDs, as well as the firms' compliance with the capital ratios imposed on Japanese nonbank SDs under the Japanese Capital Rules.

In addition, the Commission is adding a condition in the final Comparability Order to specify that Japanese nonbank SDs that are registered with the SEC as an SBSB and required to file a FOCUS Report with the SEC or its designee, must file a copy of the FOCUS Report with the Commission and NFA within 35 calendar days after the end of each month. Currently, no Japanese nonbank SD is registered as an SBSB. The Commission, however, is including the condition in anticipation of potential future dual registrants. Under final Condition 12, a Japanese nonbank SD that files a copy of the FOCUS Report will not be required to file the financial reports and schedules specified in final Conditions 8 and 11 of the Comparability Order. Final Condition 12 is also consistent with Commission Regulation 23.105(d)(3), which mandates the filing of a FOCUS Report by dual registrants.²⁶⁵

One commenter, Better Markets, disagreed with the 2022 Proposal to the extent that the Commission proposed not to require Japanese nonbank SDs that have been approved by the FSA to use capital models to file the monthly model metric information required by Commission Regulation 23.105(k) with the Commission or NFA.²⁶⁶ Commission Regulation 23.105(k) requires nonbank SDs that have been approved by the Commission or NFA to use models to compute market risk or credit risk for computing capital requirements to file certain information with the Commission and NFA on a monthly basis.²⁶⁷ The information required to be

filed includes: (i) for nonbank SDs approved to use market risk models, a listing of any products that the nonbank SD excludes from the approved market risk model and the amount of the standardized market risk charge taken on such products; (ii) a graph reflecting, for each business line of the nonbank SD, the daily intra-month VaR; (iii) the aggregate VaR for the nonbank SD; and (iv) certain credit risk information for swaps, mixed swaps and security-based swaps, including: (a) overall current exposure, (b) current exposure listed by counterparty for the 15 largest exposures, (c) the 10 largest commitments listed by counterparty, (d) maximum potential exposure listed by counterparty for the 15 largest exposures, (e) aggregate maximum potential exposure, (f) a summary report reflecting the SD's current and maximum potential exposures by credit rating category, and (g) a summary report reflecting current exposure for each of the top ten countries to which the nonbank SD is exposed.²⁶⁸ Better Markets stated that by not requiring the information contained in Commission Regulation 23.105(k), the Commission was proposing to "take a back seat to the FSA and blindly accept [Japanese nonbank SDs'] assessments resulting from their use of internal models to calculate risk," and that such an approach undercuts the comparability of the financial reporting and risk assessment of both regimes.²⁶⁹

The Commission does not agree that its approach is effectively deferring model oversight to the FSA or that it is otherwise "blindly accept[ing]" the internal model-based assessments of the Japanese nonbank SDs. As noted above, pursuant to NFA rules, all registered SDs, including Japanese nonbank SDs, are required to submit to NFA, on a monthly basis, a list of specified risk metrics related to the SD's market risk and credit risk exposures.²⁷⁰ As part of its regulatory oversight program, NFA uses the risk metrics information to identify firms that may pose heightened risk and allocates appropriate oversight resources. NFA also may request additional information from a nonbank SD to the extent it determines that information in the risk metrics or other financial filings warrants a need for additional follow-up. Furthermore, Commission staff has access to the

collected risks metrics information and participates in NFA's risk monitoring function by regularly exchanging information and discussing potential risks with NFA staff.

As the list of specified risk metrics discussed above indicates, although the information collected by NFA is not identical to the information required under Commission Regulation 23.105(k), there is a significant overlap in the data items. Working with industry participants, NFA identified the risk data items listed in NFA Notice I–17–10 as relevant risk metrics to be collected for oversight purposes, noting that most SDs use these or similar metrics as part of their own risk management program. The Commission believes that the information required pursuant to NFA Notice I–17–10 would provide the Commission and NFA with key data allowing them to monitor nonbank SDs' risk exposures. In addition, the Commission and NFA have the ability to request additional information from its registrants, including Japanese nonbank SDs, at any time.²⁷¹ Finally, the Commission notes that the FSA, which will be conducting the initial approval and ongoing assessment of the performance of the Japanese nonbank SDs' internal models, under a regulatory framework that the Commission finds comparable to the CFTC Capital Rules, will have access to additional information that the FSA deems relevant in the conduct of such approval and assessment. The Commission, therefore, concludes that it is not necessary to require Japanese nonbank SDs relying on the final Comparability Order to submit the model metric information mandated by Commission Regulation 23.105(k).

Better Markets also noted that the proposed Comparability Determination was conditioned on a Japanese nonbank SD submitting a statement by an authorized representative that to the best knowledge and belief of the person the information contained in reports submitted to the Commission is true and correct, in lieu of the oath or affirmation required by Commission Regulation 23.105(f).²⁷² Better Markets stated that there are significant legal differences between a statement and the oath or affirmation required by the CFTC Financial Reporting Rules, further highlighting the differences between the

Commission's approach to permitting Japanese nonbank SDs to maintain financial books and records, and file financial information, prepared in accordance with local accounting standards would facilitate financial reporting by such dually-registered entities. In such case, dually-registered entities would not have to perform multiple calculations under different accounting standards or submit two different FOCUS Reports.

²⁶⁴ CFTC Staff Letter No. 22–10, *Extension of Time-Limited No-Action Position for Foreign Based Nonbank Swap Dealers domiciled in Japan, Mexico, the United Kingdom, and the European Union*, August 17, 2022.

²⁶⁵ 17 CFR 23.105(d)(3).

²⁶⁶ Better Markets Letter at p. 11.

²⁶⁷ 17 CFR 23.105(k).

²⁶⁸ 17 CFR 23.105(k)(1).

²⁶⁹ Better Markets Letter at p. 11.

²⁷⁰ NFA Rulebook, Financial Requirements, section 17 Swap Dealer and Major Swap Participant Reporting Requirements, available here: <https://www.nfa.futures.org/rulebooksql/rules.aspx?RuleID=SECTION%2017&Section=7>, and NFA Notice I–17–10.

²⁷¹ 17 CFR 23.105(h), which provides that the Commission or NFA may, by written notice, require any SD to file financial operational information at such time as may be specified by the Commission or NFA.

²⁷² Better Markets Letter at p.10.

regulatory reporting requirements of the U.S. and those of Japan.²⁷³

For completeness, the Commission notes that the proposed condition requires that an authorized representative of the Japanese nonbank SD provide a statement that, to the best of the knowledge and belief of the representative, the information contained in the financial reports filed with the Commission and NFA is true and correct, including the applicable translation of the reports to the English language and the conversion of balances to U.S. dollars. The proposed condition was based on current Commission Regulation 23.105(f), which provides that a nonbank SD must attach to each unaudited and annual audited financial report filed with the Commission and NFA an oath or affirmation that to the best knowledge and belief of the individual making the oath or affirmation the information in the financial reports is true and correct. Similar to the intent of Commission Regulation 23.105(f), the purpose of the proposed condition is to obtain a formal attestation from a representative with the appropriate knowledge and authority that the information provided in the requisite financial reports is accurate and properly translated. The Commission's choice of language in using the term "statement" was not intended to make a legal distinction between this term and the terms "oath" or "affirmation," but rather to select a generic term that is universally understood across jurisdictions to reflect the above-referenced purpose. In practice, the Commission does not believe that there is a material legal difference between the language of the proposed condition and the required oath or affirmation required under Commission Regulation 23.105(f). Instead, the Commission is of the view that the proposed condition would have the same legal effect as Commission Regulation 23.105(f) of providing the Commission with a stronger basis to take legal action if a Japanese nonbank SD files erroneous information.

Commenters also addressed the Commission's request for comment on the proposed filing dates for the reports and information specified above and the compliance dates for any new reporting obligations that the Comparability Order would impose on Japanese nonbank SDs. IBAJ stated that the proposed filing of reports and information with the Commission and NFA within 15 days of the date when the filing is made with the FSA is sufficient.²⁷⁴ Other

commenters requested that the Commission set the compliance date at least six months following the issue date of the Comparability Order to adequately prepare for compliance with the reporting conditions imposed by the Order.

The Commission believes that granting an additional period of time to allow Japanese nonbank SDs to develop and implement the necessary systems and processes for compliance with the Comparability Order is appropriate with respect to new reporting obligations imposed on Japanese nonbank SDs under the final Order. For other reporting obligations, for which a process already exists, such as the reports that Japanese nonbank SDs currently submit to the Commission and NFA pursuant to CFTC Staff Letter 22–10 and/or prepare pursuant to the Japanese Financial Reporting Rules, additional time for compliance does not appear necessary. Accordingly, the Commission is setting a compliance date of 180 calendar days from the date of publication of the final Comparability Order in the **Federal Register**, to comply with final Conditions 11 and 13, which require Japanese nonbank SDs to file Schedule 1 and the Margin Report with the Commission and NFA.

In an effort to align, where appropriate, the filing deadlines for financial reporting obligations imposed by the Comparability Order on Japanese nonbank SDs with the filing deadlines that the Commission proposed for nonbank SDs domiciled in several other jurisdictions, the Commission is also setting the filing deadline in final Condition 8 to 35 calendar days after the end of each month.²⁷⁵ The filing deadline will apply to the selected forms of the Monthly Monitoring Report, as well as to Schedule 1 and the Margin Report, which pursuant to final Conditions 11 and 13 must be filed with the selected forms of the Monthly Monitoring Report.

In summary, the Commission is adopting the Comparability Order and conditions as proposed with respect to the comparability of the CFTC Financial Reporting Requirements and Japanese

Financial Reporting Requirements, subject to the adjustments to the required content of the Monthly Monitoring Report, the filing deadlines discussed above, the minor change in the language of final Condition 7 to specify that Japanese nonbank SDs must keep current ledgers or similar records in accordance with accounting principles "permitted" by the FSA, and the specifications in final Conditions 8, 9, 11, and 13 that the conversion of balances to U.S. dollars must be done using a commercially reasonable and observable yen/U.S. dollar spot rate as of the date of the respective report. The Commission also grants an additional compliance period for the new reporting obligations imposed on Japanese nonbank SDs as set forth in the final Comparability Order below.

E. Notice Requirements

1. Proposed Determination

The Commission noted in the 2022 Proposal that the CFTC Financial Reporting Rules require nonbank SDs to provide the Commission and NFA with written notice of certain defined events.²⁷⁶ Commission Regulation 23.105(c) requires a nonbank SD to file written notice with the Commission and NFA of the following events: (i) the nonbank SD's regulatory capital is less than the minimum amount required; (ii) the nonbank SD's regulatory capital is less than 120 percent of the minimum amount required; (iii) the nonbank SD fails to make or to keep current required financial books and records; (iv) the nonbank SD experiences a reduction in the level of its excess regulatory capital of 30 percent or more from the amount last reported in a financial report filed with the Commission; (v) the nonbank SD plans to distribute capital to equity holders in an amount in excess of 30 percent of the firm's excess regulatory capital; (vi) the nonbank SD fails to post to, or collect from, a counterparty (or group of counterparties under common ownership or control) required initial and variation margin, and the aggregate amount of such margin equals or exceeds 25 percent of the nonbank SD's minimum capital requirement; (vii) the nonbank SD fails to post to, or collect from, swap counterparties required initial and variation margin, and the aggregate amount of such margin equals or exceeds 50 percent of the nonbank SD's minimum capital requirement; and (viii) the nonbank SD is registered with the SEC as an SBSB and files a notice

²⁷³ *Id.*

²⁷⁴ IBAJ Letter at p. 6.

²⁷⁵ See *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union*, 88 FR 41774 (June 27, 2023) and *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Capital and Financial Reporting Requirements of the United Kingdom and Regulated by the United Kingdom Prudential Regulation Authority*, 89 FR 8026 (Feb. 5, 2024).

²⁷⁶ 2022 Proposal at 48110. See, also, 17 CFR 23.105(c).

with the SEC under applicable SEC Rules.²⁷⁷

The notices are part of the Commission's overall program of helping to ensure the safety and soundness of nonbank SDs and the swaps markets in general.²⁷⁸ Notices provide the Commission and NFA with an opportunity to assess whether there is an actual or potential financial and/or operational issue at a nonbank SD. In situations where there is an underlying issue, Commission and NFA staff engage with the nonbank SD in an effort to minimize potential adverse impacts on the firm, swap counterparties, and the larger swaps market.²⁷⁹

The 2022 Proposal also noted that the Japanese Financial Reporting Rules include notice requirements for Japanese nonbank SDs, although in a more limited manner than the Commission's notice requirements. The Japanese Financial Reporting Rules require a Japanese nonbank SD to provide immediate notice to the FSA if the firm's capital adequacy ratio falls below 140 percent (*i.e.*, "Japanese Early Warning Notice").²⁸⁰ The Japanese Early Warning Notice must be accompanied by a Plan Regarding Specific Voluntary Measures to Be Taken in Order to Maintain the Capital Adequacy Ratio, which includes the concrete measures that the Japanese nonbank SD will take to maintain a capital adequacy ratio above 140 percent.²⁸¹ The FSA also has the authority to examine the future outlook of the Japanese nonbank SD's capital adequacy ratio through hearings and to urge the firm to make voluntary improvement efforts.²⁸²

A Japanese nonbank SD is also required to file immediate notice with the FSA if the firm's capital adequacy ratio falls below the 120 percent minimum requirement.²⁸³ The notification must include the Japanese nonbank SD's Plan Regarding Specific Voluntary Measures to Be Taken in Order to Improve the Capital Adequacy Ratio.²⁸⁴ The FSA will review the plan and, when necessary, identify the specific method by which a Japanese nonbank SD must bring its capital adequacy ratio back above the

prescribed minimum level and the estimated date of the recovery. In situations where the Japanese nonbank SD fails to maintain the minimum level of regulatory capital, the FSA will also examine other aspects of the firm's operations, including the status of segregated management of customer assets and fund-raising. If the FSA finds it to be necessary and appropriate in the public interest or for the protection of investors, the Commissioner of the FSA may order a change of business methods, order assets to be deposited, or issue orders with respect to matters that are otherwise necessary from a supervisory perspective.²⁸⁵

If a Japanese nonbank SD's capital adequacy ratio falls below 100 percent, the Commissioner of the FSA may order the suspension of all or part of the firm's business activities for a period not to exceed three months if the FSA deems such action to be necessary and appropriate for the public interest or for the protection of investors.²⁸⁶ If the Japanese nonbank SDs capital adequacy ratio does not exceed 100 percent, and the FSA determines that the firm's capital adequacy ratio status is not likely to recover, the Commissioner of the FSA may rescind the registration of the firm.²⁸⁷

Furthermore, in addition to the above measures, the FSA may order a Japanese nonbank SD to change its business methods or to otherwise take measures that are necessary for improving its business operations or the state of its assets if the FSA finds such action necessary and appropriate in the public interest or for the protection of investors.²⁸⁸ Finally, the Prime Minister of Japan may rescind the registration of a Japanese nonbank SD, or order the suspension of all or a part of its business

activities for a period of no longer than six months, if the Japanese nonbank SD violates a disposition by a government agency,²⁸⁹ or is likely to become insolvent due to the state of its business and assets.²⁹⁰

Based on its review of the FSA Application and the relevant Japanese laws and regulations, the Commission preliminarily determined that the Japanese Financial Reporting Rules and the CFTC Financial Reporting Rules were comparable in purpose and effect with respect to the requirements in Commission Regulation 23.105(c)(1) and (2) for nonbank SDs to provide notice if the firm fails to maintain the minimum level of regulatory capital or falls below 120 percent of the minimum level of regulatory capital. Therefore, the Commission proposed to condition the Comparability Order on a Japanese nonbank SD providing the Commission and NFA with written notice within 24 hours of the firm filing notice with the FSA, pursuant to Article 179(3) of the COO, that its capital adequacy ratio had fallen below 140 percent or 120 percent.²⁹¹ The Commission noted that upon receipt of a notice, Commission staff and NFA staff would engage with the FSA and the Japanese nonbank SD to obtain an understanding of the facts that led to the filing of the notice and would discuss with the FSA its plan for any ongoing monitoring of the Japanese nonbank SD. Accordingly, the Commission stated that its proposal would not require the Japanese nonbank SD to file copies of its recovery plan that it filed with the FSA with the Commission or NFA. The Commission stated that to the extent it needed further information from the Japanese nonbank SD, the Commission expected to request such information as part of its interaction with the Japanese nonbank SD and from its discussions with the FSA.²⁹² The Commission believed that its proposed conditions would ensure that the Commission and NFA received the appropriate information covered by Commission Regulation 23.105(c)(1) and (2), while also removing the obligation for the Japanese nonbank SD to file separate and duplicative notices with the Commission/NFA and the FSA.

The Commission, however, also acknowledged that the notice provisions of the Japanese Financial Reporting Rules differ in certain respects from the CFTC Financial Reporting Rules.²⁹³

²⁸⁵ 2022 Proposal at 48110–48111. Article 53(1) of the FIEA. Section IV–2–2 (Supervisory Response to Cases of Financial Instruments Business Operators' Capital Adequacy Ratio Falling Below Prescribed Level) (3) of the Supervisory Guidelines for FIBO indicates four examples of the order: (i) to draft and implement measures (including the drafting of specifics and the implementation schedule) to bring the capital adequacy ratio back above the legally prescribed level and maintain the ratio above that level on a permanent basis; (ii) to implement measures to ensure the protection of investors in preparation for an unexpected event, through appropriate management of securities and cash and careful management of fund-raising; (iii) to avoid activities that could lead to wasteful use of corporate assets; and (iv) to compile the projections of the balance sheet and fund-raising status on a daily basis and the projection of the capital adequacy ratio in ways to reflect the specific measures to be implemented, in order to bring the capital adequacy ratio back above the legally prescribed level.

²⁸⁶ 2022 Proposal at 48111. Article 53(2) of the FIEA.

²⁸⁷ *Id.* Article 53(3) of the FIEA.

²⁸⁸ *Id.* Article 51 of the FIEA.

²⁸⁹ *Id.* Article 52(1)(vii) of the FIEA.

²⁹⁰ *Id.* Article 52(1)(viii) of the FIEA.

²⁹¹ *Id.*

²⁹² See 2022 Proposal at 48112.

²⁹³ *Id.*

²⁷⁷ 17 CFR 23.105(c).

²⁷⁸ *Id.*

²⁷⁹ See 2022 Proposal at 48110.

²⁸⁰ *Id.*, citing Article 179 of the COO.

²⁸¹ *Id.*

²⁸² *Id.* citing section IV–2–2 (Supervisory Response to Cases of Financial Instruments Business Operators' Capital Adequacy Ratio Falling Below Prescribed Level) (1) of the Supervisory Guidelines for FIBO.

²⁸³ 2022 Proposal at 48110, citing Article 179 of COO.

²⁸⁴ *Id.*

Specifically, unlike the CFTC Financial Reporting Rules, the Japanese Financial Reporting Rules do not contain explicit requirements for a Japanese nonbank SD to notify the FSA if the firm fails to make or keep current books and records required by the FSA, experiences a specified decrease in its capital adequacy ratio when compared to levels previously reported, or fails to collect or post required initial margin and/or variation margin for uncleared swap and non-cleared security-based swap transactions with counterparties that exceed certain threshold levels.²⁹⁴ The Japanese Financial Reporting Rules also do not require a Japanese nonbank SD to provide the FSA with advance notice of capital withdrawals initiated by equity holders that exceed defined amounts or percentages of the firm's excess regulatory capital.²⁹⁵

To address these differences and to ensure that the Commission and NFA receive appropriate notices of events that may have potential adverse impacts on registered SDs, the Commission proposed to condition the Comparability Order to require Japanese nonbank SDs to file certain additional notices directly with the Commission and NFA. In this regard, the Commission stated that the maintenance of current books and records is a fundamental and essential component of operating as a registered nonbank SD, and that the failure to comply with such a requirement may indicate an inability of the firm to promptly and accurately record transactions ensuring compliance with regulatory requirements, including regulatory capital requirements.²⁹⁶ As such, the Commission proposed to condition the proposed Comparability Order on a Japanese nonbank SD providing the Commission and NFA with a written notice within 24 hours if the firm fails to make or to keep current books and records required by the FSA.²⁹⁷ The Commission stated that, in this context, books and records would include current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting the Japanese nonbank SD's asset, liability, income, expense, and capital accounts in accordance with the

accounting principles permitted by the FSA.²⁹⁸

The Commission further proposed to condition the Comparability Order on a Japanese nonbank SD filing a notice with the Commission and NFA if: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin on uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 25 percent of the Japanese nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the Japanese nonbank SD for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the Japanese nonbank SD's minimum capital requirement; (iii) a Japanese nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and non-cleared security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the Japanese nonbank SD's minimum capital requirement; and (iv) a Japanese nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceed 50 percent of the Japanese nonbank SD's minimum capital requirement. The Commission proposed to require this notice so that, in the event that such a notice is filed, the Commission and NFA may commence communication with the Japanese nonbank SD and the FSA to obtain an understanding of the facts that led to the failure to exchange material amounts of initial margin or variation margin in accordance with the applicable margin rules, and to assess whether there is a concern regarding the financial condition of the firm that may impair its ability to meet its financial obligations to customers, counterparties, creditors, and general market participants, or otherwise adversely impact the firm's safety and soundness.²⁹⁹

The Commission also proposed to require that a Japanese nonbank SD file any notices required under the proposed Comparability Order with the Commission and NFA in English and,

where applicable, with any balances reported in U.S. dollars. The Commission stated that each notice required by the proposed Comparability Order had to be filed in accordance with instructions issued by the Commission or NFA.³⁰⁰

The Commission did not propose to require a Japanese nonbank SD to file notices with the Commission concerning withdrawals of capital or changes in capital levels as such information would be reflected in the financial statement reporting filed with the Commission and NFA as conditions of the order, and because the Japanese nonbank SD's capital levels are also monitored by the FSA. As such, the Commission preliminarily considered that the separate reporting of the information to the Commission would be superfluous.³⁰¹

2. Comment Analysis and Final Determination

The Commission received several comments with respect to the notice provisions. IBAJ noted, with respect to the proposed requirement in proposed Condition 18 that a Japanese nonbank SD file notice with the Commission and NFA within 24 hours of the firm failing to make or keep current the financial books and records required by the FSA, that it is practically challenging for a firm to submit a notification prior to the discovery of the relevant failure.³⁰² IBAJ recommended that the condition require a notice "following the discovery" by the Japanese nonbank SD of its failure to maintain current financial books and records.³⁰³

Maintaining current books and records of all financial transactions is a fundamental recordkeeping requirement for a registered nonbank SD, and is essential in order to provide management with the information necessary to ensure that financial transactions are timely and accurately reported and that the firm is in compliance with capital and other regulatory requirements. The Commission believes that it is necessary for a nonbank SD to maintain internal controls and procedures to affirmatively monitor that books and records are being maintained on a current basis. Therefore, the Commission is adopting Condition 18 (renumbered as final Condition 19) as proposed.³⁰⁴ For

²⁹⁴ See 17 CFR 23.105(c)(3), (4), and (7).

²⁹⁵ See 17 CFR 23.105(c)(5) (requiring a nonbank SD to provide written notice to the Commission and NFA two business days prior to the withdrawal of capital by action of the equity holders if the amount of the withdrawal exceeds 30 percent of the nonbank SD's excess regulatory capital). See 2022 Proposal at 48111.

²⁹⁶ 2022 Proposal at 48111.

²⁹⁷ *Id.* at 48111–48112. See also, proposed Condition 18 at 48115.

²⁹⁸ *Id.* at 48111. For comparison, see Commission Regulation 23.105(b) (similarly defining the term "current books and records" as used in the context of Commission's requirements). 17 CFR 23.105(b).

²⁹⁹ *Id.* See also, proposed Condition 19 at 48115.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² IBAJ Letter at p. 7.

³⁰³ *Id.*

³⁰⁴ The Commission also notes that final Condition 19 is consistent with Commission Regulation 23.105(c)(3), which requires nonbank SDs subject to the Commission's notice

further clarification of this condition, the Commission also confirms that the requirement for Japanese nonbank SDs to file a notice with the Commission if the firm fails to maintain current books and records will apply with respect to books and records addressing the Japanese nonbank SD's financial condition and financial reporting requirements.

IBAJ also recommended a technical edit to the proposed condition requiring Japanese nonbank SDs to file a notice in case of a failure to exchange material amounts of initial margin or variation margin. Specifically, IBAJ suggested that the phrase "to the Japanese nonbank SD" be added after the phrase "a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin" in prong (i) of proposed Condition 19.³⁰⁵ The Commission considers this edit appropriate as it reflects the intent of the Condition as set forth in the 2022 Proposal, and has revised proposed Condition 19 (renumbered as Condition 20 of the final Order) by adding the phrase "to the Japanese nonbank SD." Separately, for purposes of clarity, the Commission notes that, in proposing a notice condition based on thresholds of "required" margin, the Commission's intent was to set the notice trigger by reference to margin amounts that are legally required to be exchanged under the applicable margin requirements. To determine the applicable margin requirements, the Commission will consider the framework set forth in Commission Regulation 23.160.³⁰⁶ To the extent Japanese nonbank SDs intending to rely on the Comparability Order have inquiries regarding the scope of uncleared swap margin transactions to be monitored for purposes of complying with final Condition 20, MPD will discuss such inquiries with the Japanese nonbank SD during the confirmation process referenced in final Condition 6 of the Comparability Order.

Finally, IBAJ requested that the Commission clarify the meaning of the term "minimum capital requirement" in proposed Condition 19.³⁰⁷ The

Commission notes that the concept of "minimum capital requirement" refers to the minimum amount of capital that a Japanese nonbank SD is required to hold pursuant to the Japanese Capital Rules. The Commission understands that this amount corresponds to the Japanese nonbank SD's required "capital adequacy amount" (*i.e.*, 120 percent of the Japanese nonbank SD's risk equivalent amount). To more accurately reflect the intent of the condition, however, the Commission will set forth the notice requirement in proposed Condition 19 (renumbered as final Condition 20) by reference to the Japanese nonbank SD's risk equivalent amount. By using the Japanese nonbank SD's risk equivalent amount as a threshold reference, the Commission will more closely align the condition with Commission Regulation 23.105(c)(7).

As discussed in Section II.E.1. above, the notice provisions are central part of the Commission's and NFA's oversight of nonbank SDs. To ensure that the Commission and NFA receive appropriate and timely notice of potential capital issues with Japanese nonbank SDs, the Commission is adopting proposed Conditions 16 and 17, which require a Japanese nonbank SD to file notice with the Commission and NFA within 24 hours of filing notice with the FSA that the firm's capital adequacy requirement has fallen below 140 percent and 120 percent, respectively.³⁰⁸

Furthermore, the Commission did not receive any comments with respect to the following proposed notice conditions: (i) the Japanese nonbank SD files notice with the Commission and NFA within 24 hours of being informed by the FSA that the firm is not in compliance with any component of the Japanese Capital Rules or Japanese Financial Reporting Rules (proposed Condition 14); (ii) the Japanese nonbank SD files notice with the Commission and NFA within 24 hours if the firm fails to maintain regulatory capital in the form of Basic Items, as defined in Article 176 of the COO, equal to or in excess of the U.S. dollar equivalent of \$20 million (proposed Condition 15); or (iii) the Japanese nonbank SD files notice of the FSA approving a change in the firm's fiscal year-end date, which must be filed with the Commission and NFA at least 15 business days prior to the effective date of the change

amount and 120 percent under the Japanese Capital Rules).

³⁰⁸ Proposed Conditions 16 and 17 have been renumbered as Conditions 17 and 18, respectively, in the final Comparability Order.

(proposed Condition 20). The Commission, having considered the 2022 Proposal, is adopting the above conditions as proposed.³⁰⁹

Commenters also requested that the Commission set the compliance date at least six months following the issue date of the Comparability Order to allow Japanese nonbank SDs to adequately prepare for compliance with the notice reporting obligations imposed by the Comparability Order.³¹⁰ Similar to its position with regard to the financial reporting obligations, the Commission believes that granting an additional period of time to allow Japanese nonbank SDs to establish and implement the necessary processes to comply with the notice requirements imposed by the Comparability Order is appropriate with respect to certain notice obligations. Specifically, the Commission understands that establishing a process for monitoring failures to collect or post initial margin or variation margin for uncleared swap transactions that exceed specified thresholds for purposes of complying with final Condition 20 may take time. Conversely, the Commission does not believe that additional time is necessary for implementing a process of providing a notice to the Commission and NFA in connection with the occurrence of events that Japanese nonbank SDs currently monitor and/or report to the FSA. The Commission is also of the view that, given the nature of the notice obligation, Japanese nonbank SDs should be in a position to comply with all other notice obligations, including those requiring Japanese nonbanks SDs to provide notice to the Commission and NFA if they fail to make or keep current financial books and records, or if they fail to maintain regulatory capital in the form of Basic Items equal to, or in excess of, the U.S. dollar equivalent of \$20 million, immediately upon effectiveness of the Comparability Order. Accordingly, the Commission is setting a compliance date of 180 calendar days after the publication of the Comparability Order in the **Federal Register** with respect to the notice reporting obligations under final Condition 20 of the Comparability Order. Commenters did not address any other aspects of the proposed Comparability Determination or Comparability Order concerning the

requirements to file notice within 24 hours if the firm does not maintain current books and records. 17 CFR 23.105(c)(3).

³⁰⁵ IBAJ Letter at p. 7.

³⁰⁶ Commission Regulation 23.160 governs the cross-border application of the CFTC margin requirements for uncleared swaps depending on the category of entities involved in the transactions and the availability of substituted compliance. 17 CFR 23.160.

³⁰⁷ *Id.* at p. 8 (asking whether "minimum capital requirement" in this context meant the amount calculated by multiplying the risk equivalent

³⁰⁹ The Commission is renumbering proposed Conditions 14, 15, 19, and 20 as Conditions 15, 16, 20, and 21, respectively, in the final Comparability Order.

³¹⁰ IBAJ Letter at p. 4 and Associations Letter at p. 4.

comparability of the Japanese and CFTC nonbank SD notice requirements.

In conclusion, the Commission finds that the regulatory notice provisions of Japanese Financial Reporting Rules and the CFTC Financial Reporting Rules, after consideration of the conditions imposed in the final Comparability Order, are comparable in purpose and effect, and achieve comparable regulatory outcomes, by providing timely notice to the FSA, and to the Commission and NFA, of specified events at a nonbank SD that may potentially indicate an ongoing issue with the safety and soundness of the firm and/or its ability to meet its obligations to swap counterparties, creditors, or other market participants without the firm becoming insolvent. As such, the Commission adopts the final Comparability Order and conditions as proposed with respect to the Commission's analysis of comparability of the Japanese and Commission's nonbank SD notice reporting requirements, subject to the technical edits in Condition 20 discussed above. The Commission is also adopting a compliance date for certain notice reporting requirements as discussed above in the final Comparability Order.

F. Supervision and Enforcement

1. Proposed Determination

In the 2022 Proposal, the Commission discussed the oversight of nonbank SDs, noting that the Commission and NFA conduct ongoing supervision of nonbank SDs to assess their compliance with the CEA, Commission regulations, and NFA rules by reviewing financial reports, notices, risk exposure reports, and other filings that nonbank SDs are required to file with the Commission and NFA.³¹¹ As discussed, the Commission and NFA also conduct periodic examinations as part of their supervision of nonbank SDs, including routine onsite examinations of nonbank SDs' books, records, and operations to ensure compliance with CFTC and NFA requirements.³¹²

The Commission also referred to the financial reports and notices required under the CFTC Financial Reporting Rules, noting that the reports and notices provide the Commission and NFA with information necessary to

ensure the nonbank SD's compliance with minimum capital requirements; assess the firm's overall safety and soundness and ability to meet its financial obligations to customers, counterparties, creditors, and general market participants; and identify potential issues at a nonbank SD that may impact the firm's ability to maintain compliance with the CEA and Commission regulations.³¹³ As discussed in the 2022 Proposal, the Commission and NFA also have the authority to require a nonbank SD to provide any additional financial and/or operational information as they may specify to monitor the safety and soundness of the firm.³¹⁴

The Commission further noted that it has authority to take disciplinary actions against a nonbank SD for failing to comply with the CEA and Commission regulations. In this regard, Section 4b–1(a) of the CEA provides the Commission with exclusive authority to enforce the capital requirements imposed on nonbank SDs adopted under Section 4s(e) of the CEA.³¹⁵ NFA also may take disciplinary actions against nonbank SDs for failure to comply with NFA rules.³¹⁶

With respect to the FSA's authority to supervise Japanese nonbank SDs and carry out enforcement actions, the Commission stated that the FSA has supervision, audit, and investigation authority with respect to Japanese nonbank SDs, including the authority to require such firms to provide all necessary information for the FSA to carry out its supervisory responsibilities.³¹⁷ Specifically, as discussed in the 2022 Proposal, the FSA has the authority to require Japanese nonbank SDs to submit documents to the FSA and to conduct onsite inspections at the business offices of the Japanese nonbank SDs.³¹⁸

The Commission noted that the FSA also monitors the capital adequacy

ratios of Japanese nonbank SDs through supervisory measures on an ongoing basis, referring to the system of notice requirements, discussed in Section E.1. above, that obligate Japanese nonbank SDs to provide notice to the FSA if certain triggering conditions are met. The Commission also discussed the FSA's authority to address actual cases of a Japanese nonbank SD's failure to maintain its required capital adequacy ratio. Specifically, as discussed, a Japanese nonbank SD is required to submit a notification and an action plan to the FSA if the Japanese nonbank SD's capital adequacy ratio falls below 120 percent.³¹⁹ The FSA will review the plan and, when necessary, identify the specific method by which the Japanese nonbank SD is required to bring its capital adequacy ratio back above the prescribed minimum level. The FSA also may order a Japanese nonbank SD to change its business methods, order assets to be deposited, or issue orders with respect to matters that are otherwise necessary from a supervisory perspective, if the FSA finds it in the public interest or for the protection of customers to take such actions.³²⁰ Furthermore, a Japanese nonbank SD may have all or parts of its business suspended for a period of up to six months or have its registration revoked if the firm violates certain laws or regulations in connection with the financial instruments business or services,³²¹ or if the firm is likely to become insolvent.³²² Finally, a Japanese nonbank SD is subject to fines and other possible actions if it fails to submit documents that are required by law to be filed with the FSA.³²³ Based on its analysis of the FSA's supervisory regime, the Commission preliminarily found that the FSA has the necessary powers and ability to supervise and enforce Japanese nonbank SDs' compliance with Japanese capital adequacy and financial reporting requirements.

The Commission also cited its long history of regulatory cooperation with the FSA, noting that the Commission and the FSA have entered into a Memorandum of Cooperation ("MOC") with regard to the cooperation and the exchange of information in the supervision and oversight of regulated entities that operate on a cross-border basis in both the U.S. and Japan ("Cross-Border Covered Entities"), including

³¹¹ See 2022 Proposal at 48112–48113.

³¹⁴ 17 CFR 23.105(h). See also 2022 Proposal at 48112–48113.

³¹⁵ *Id.* at 48113.

³¹⁶ NFA is required by the CEA to maintain rules providing that its member and persons associated with its members, including nonbank SDs, shall be appropriately disciplined by expulsion, suspension, fine, censure, or being suspended or barred from being associated with all members, or any other fitting penalty, for any violation of its rules. 7 U.S.C. 21(b)(8); see also Commission Regulation 170.6 (17 CFR 170.6), which requires, among other things, a registered futures association to take vigorous action against members that engage in activities in violation of the association's rules and to impose discipline that is fair and has a reasonable basis in fact.

³¹⁷ FSA Application, p. 16.

³¹⁸ Article 56–2 of the FIEA. See 2022 Proposal at 48113.

³¹⁹ Article 53(2) of the FIEA.

³²⁰ *Id.*

³²¹ Article 52(1)(vii) of the FIEA.

³²² Article 52(1)(viii) of the FIEA.

³²³ Article 198–6 of the FIEA. See 2022 Proposal at 48113.

³¹¹ See 2022 Proposal at 48112.

³¹² See *id.* Section 17(p)(2) of the CEA requires NFA as a registered futures association to establish minimum capital and financial requirements for nonbank SDs and to implement a program to audit and enforce compliance with such requirements. 7 U.S.C. 21(p)(2). Section 17(p)(2) further provides that NFA's capital and financial requirements may not be less stringent than the capital and financial requirements imposed by the Commission.

nonbank SDs registered with the Commission and FIBOs registered with the FSA.³²⁴ As discussed in the 2022 Proposal, pursuant to the MOC, the Commission and FSA have expressed an intent to consult regularly, as appropriate, regarding: (i) general supervisory issues, including regulatory, oversight, or other related developments; (ii) issues relevant to the operations, activities, and regulation of Cross-Border Covered Entities; and (iii) any other areas of mutual supervisory interest, and to meet periodically to discuss their respective functions and regulatory oversight programs.³²⁵ The MOC further provides for the Commission and FSA to inform each other of certain events, including any material events that could adversely impact the financial or operational stability of a Cross-Border Covered Entity, and provides a procedure for the Commission or FSA to conduct on-site examinations in, respectively, Japan or the U.S.³²⁶ The Commission stated that, pursuant to the terms of the MOC, it intends to communicate and consult with the FSA regarding the supervision of the financial and operational condition of Japanese nonbank SDs.³²⁷

Finally, in addition to preliminarily finding that the FSA has the necessary powers and authorities to conduct supervisory programs, the Commission also noted that it retains examination authority and enforcement authority over Japanese nonbank SDs.³²⁸ The ability of the Commission to exercise its

enforcement authority over Japanese nonbank SD is not conditioned upon a finding by the FSA of a violation of the Japanese Capital Rules or Japanese Financial Reporting Rules. In addition, as each Japanese nonbank SD is a member of NFA, the firm is subject to NFA membership rules, examination authority, and disciplinary process.³²⁹

2. Comment Analysis and Final Determination

In response to the Commission's request for comment, Better Markets stated that to ensure that the Commission fulfills its obligation to protect the U.S. financial system, it must ensure, on an ongoing basis, that each grant of substituted compliance remains appropriate over time by, at least, requiring that each order granting substituted compliance, and each memorandum of understanding with a foreign regulatory authority, impose an obligation that the applicant, as appropriate: (1) periodically apprise the Commission of the activities and results of its supervision and enforcement programs, to ensure that they remain sufficiently robust to deter and address violations of the law; and (2) immediately apprise the Commission of any material changes to the regulatory regime, whether explicit (*i.e.*, rules changes) or implicit (*i.e.*, changes in how a rule is interpreted, applied, or enforced).³³⁰

As discussed above, the Commission has entered into an MOC with the FSA, which sets forth a comprehensive framework for cooperation, timely communications, and exchange of information between the agencies. In addition, the 2022 Proposal includes a proposed condition requiring the FSA to notify the Commission of any material changes to the information submitted in the FSA Application, including, but not limited to, proposed and final material changes to the Japanese Capital Rules or Japanese Financial Reporting Rules and proposed and final material changes to the FSA's supervisory authority or supervisory regime over Japanese nonbank SDs. The Commission has included this condition in its final Comparability Order and further expanded it to require that a Japanese nonbank SD relying on the Comparability Order provide such notice.³³¹ As such, the Commission

believes that the comment concerning the nature and extent of cooperation and communication between the CFTC and the FSA with respect to the supervision and oversight of Japanese nonbank SDs is adequately addressed.

Furthermore, in issuing a Comparability Order, the Commission is not ceding its supervisory and enforcement authority. Japanese nonbank SDs that are subject to a Comparability Order are registered with the Commission as SDs and are members of NFA, and, as such, are subject to the CEA, Commission regulations, and NFA membership rules and requirements. Japanese nonbank SDs covered by the Comparability Order also remain subject to the Commission's examination authority with respect to all elements of the CEA and Commission regulations, including capital and financial reporting.³³² Therefore, the Commission and NFA have an ongoing obligation to conduct oversight, including potential examination, of Japanese nonbank SDs. In this regard, Japanese nonbank SDs covered by a Comparability Order are not only required to provide the Commission and NFA with information pursuant to the conditions in the order, they are also required to directly provide the Commission and NFA with additional information upon the Commission's and/or NFA's request in order to facilitate the ongoing supervision of such firms.³³³ Further, Section 17 of NFA's SD Financial Requirements rule provides that each SD member of NFA must file the financial, operational, risk management and other information required by NFA in the form and manner prescribed by NFA.³³⁴ The ability to obtain information directly from Japanese nonbank SDs ensures that the Commission and NFA have access to the information necessary to monitor the financial condition of such firms and to assess the firms' compliance with applicable capital and financial reporting requirements.

In addition, as detailed in Section I.E. above, the conditions set forth in the Comparability Order reflect that the

nonbank SDs who rely on the Comparability Order and are responsible for complying with the terms of the Order must also have an obligation to inform the Commission and NFA of material changes to the information submitted in the FSA Application. Japanese nonbank SDs may act individually or in coordination with the FSA to ensure that the Commission and NFA receive a timely notice.

³³² 17 CFR 23.106(a)(4)(ii).

³³³ 17 CFR 23.105(h).

³³⁴ NFA Financial Requirements, Section 17. Swap Dealer and Major Swap Participant Reporting Requirements, available at NFA's website: <https://www.nfa.futures.org/rulebooksqll/index.aspx>.

³²⁴ Memorandum of Cooperation Related to the Supervision of Cross-Border Covered Entities (Mar. 10, 2014), available here: <https://www.cftc.gov/idc/groups/public/%40internationalaffairs/documents/file/cftc-ifsamoc031014.pdf>. In addition, both the Commission and the FSA are signatories to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (revised May 2012), which covers primarily information sharing in the context of enforcement matters. See 2022 Proposal at 48111–48112.

³²⁵ MOC, paragraphs 19 and 26.

³²⁶ MOC, paragraph 22 and 29. Event-triggered notification in paragraph 22 of the MOC includes any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Cross-Border Covered Entity, and the failure of a Cross-Border Covered Entity to satisfy any of its requirements for continued authorization or registration where that failure could have a material adverse effect in the jurisdiction of the Commission or FSA.

³²⁷ See 2022 Proposal at 48113.

³²⁸ 2022 Proposal at 48094–48095. In discussing the comparability framework, the Commission noted that a non-U.S. nonbank SD that has received confirmation of its ability to operate under a Comparability Order remains subject to the Commission's examination authority and may be subject to a Commission enforcement action if the firm fails to comply with a foreign jurisdiction's capital adequacy or financial reporting requirements.

³²⁹ 7 U.S.C. 21(p).

³³⁰ Better Markets Letter at pp. 6–7.

³³¹ Condition 22 of the final Comparability Order. Final Condition 22 requires that the “Japanese nonbank SD or the [FSA]” provide a notice of material changes to the information submitted in the FSA Application. Although the FSA is the applicant, the Commission believes that Japanese

Commission and NFA have a continuing obligation to conduct ongoing oversight, including potential examination, of Japanese nonbank SDs to ensure compliance with the Comparability Order. Specifically, as part of this oversight, the conditions require Japanese nonbank SDs to file directly with the Commission and NFA financial reports and notices that are comparable to the financial reports and notices filed by nonbank SDs domiciled in the U.S. In addition to requiring Japanese nonbank SDs to maintain current books and records reflecting all transactions,³³⁵ the conditions further require each Japanese nonbank SD covered by the Comparability Order to file directly with the Commission and NFA: (i) notice that the firm was informed by the FSA that it is not in compliance with any component of the Japanese Capital Rules or Japanese Financial Reporting Rules;³³⁶ (ii) monthly and annual financial reports;³³⁷ (iii) notice that the firm's capital adequacy ratio has fallen below 140 percent or 120 percent;³³⁸ (iv) notice that the firm has failed to maintain regulatory capital in the form of Basic Items in amount equal to or in excess of the equivalent of \$20 million;³³⁹ and (v) notice that the firm has failed to make or keep current financial books and records required by the FSA.³⁴⁰ The Comparability Order further requires a Japanese nonbank SD or the FSA to provide notice to the Commission of any material changes to the information submitted in the application, including, but not limited to, proposed and final material changes to the Japanese Capital Rules or Japanese Financial Reporting Rules and proposed and final material changes to the FSA's supervisory authority or supervisory regime over Japanese nonbank SDs.³⁴¹ The financial information and notices required to be filed directly with the Commission and NFA under the Comparability Order, and through the Commission's and NFA's direct authority to obtain additional information from Japanese nonbank SDs, will allow the Commission and NFA to conduct ongoing oversight of such firms to assess their overall safety and soundness.

In conclusion, the Commission finds that the FSA maintains a supervisory

program over Japanese nonbank SDs that is comparable to the Commission's supervisory program over nonbank SDs. The FSA's supervisory program is comparable in purpose and effect to the Commission's supervisory program in that both programs are designed to monitor the safety and soundness of nonbank SDs through a combination of periodic financial reporting, notice reporting, and examination. Also, as noted above, the Commission and NFA will continue to conduct oversight of Japanese nonbank SDs through conditions in the Comparability Order imposing obligations on the firms to provide financial reporting and notices directly to the Commission and NFA.

In addition, the Commission finds that the FSA and Commission have comparable and sufficient enforcement authority over nonbank SDs. As discussed in Section II.F.1. above, the FSA and the Commission may sanction nonbank SDs for noncompliance with capital and financial reporting requirements by imposing fines or, if necessary, revoking the firms' registration. Furthermore, as discussed above, NFA may also take disciplinary action against a nonbank SD for failure to comply with its rules, including nonbank SD capital and financial reporting requirements. Accordingly, the Commission is adopting the Comparability Order as proposed with respect to the Commission's analysis concerning the comparability of the supervisory programs and enforcement authorities of the Commission, NFA, and FSA with respect to nonbank SD capital and financial reporting.

III. Final Capital Comparability Determination and Comparability Order

A. Commission's Final Comparability Determination

Based on the FSA's Application and the Commission's review of applicable Japanese laws and regulations, as well as the review of comments submitted in response to the Commission's request for comment on the FSA Application and the proposed Comparability Determination and Comparability Order, the Commission finds that the Japanese Capital Rules and the Japanese Financial Reporting Rules, subject to the conditions set forth in the Comparability Order below, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules. In reaching this conclusion, the Commission recognizes that there are certain differences between the Japanese Capital Rules and

CFTC Capital Rules and certain differences between the Japanese Financial Reporting Rules and the CFTC Financial Reporting Rules. The Comparability Order below is subject to conditions that are necessary to promote consistency in regulatory outcomes, or to reflect the scope of substituted compliance that would be available notwithstanding certain differences. In the Commission's view, the differences between the two rule sets are not inconsistent with providing a substituted compliance framework for Japanese nonbank SDs subject to the conditions specified in the Order below.

Furthermore, the Comparability Determination and Comparability Order are limited to the comparison of the Japanese Capital Rules to the Bank-Based Approach under the CFTC Capital Rules. As noted previously, the FSA has not requested, and the Commission has not performed, a comparison of the Japanese Capital Rules to the Commission's NLA Approach or TNW Approach.

B. Order Providing Conditional Capital Comparability Determination for Japanese Nonbank Swap Dealers

It is hereby determined and ordered, pursuant to Commodity Futures Trading Commission ("CFTC" or "Commission") Regulation 23.106 (17 CFR 23.106) under the Commodity Exchange Act ("CEA") (7 U.S.C. 1 *et seq.*) that a swap dealer ("SD") organized and domiciled in Japan and subject to the Commission's capital and financial reporting requirements under Sections 4s(e) and (f) of the CEA (7 U.S.C. 6s(e) and (f)) may satisfy the capital requirements under Section 4s(e) of the CEA and Commission Regulation 23.101(a)(1)(i) (17 CFR 23.101(a)(1)(i)) ("CFTC Capital Rules"), and the financial reporting rules under Section 4s(f) of the CEA and Commission Regulation 23.105 (17 CFR 23.105) ("CFTC Financial Reporting Rules"), by complying with certain specified Japanese laws and regulations cited below and otherwise complying with the following conditions, as amended or superseded from time to time:

(1) The SD is not subject to regulation by a prudential regulator defined in Section 1a(39) of the CEA (7 U.S.C. 1a(39));

(2) The SD is organized under the laws of Japan and is domiciled in Japan (a "Japanese nonbank SD");

(3) The Japanese nonbank SD is registered as a Type I Financial Instruments Business Operator ("FIBO") with the Japan Financial Services Agency;

³³⁵ Condition 7 of the final Comparability Order.

³³⁶ Condition 15 of the final Comparability Order.

³³⁷ Conditions 8, 9 and 10 of the final Comparability Order.

³³⁸ Conditions 17 and 18 of the final Comparability Order.

³³⁹ Condition 16 of the final Comparability Order.

³⁴⁰ Condition 19 of the final Comparability Order.

³⁴¹ Condition 22 of the final Comparability Order.

(4) The Japanese nonbank SD is subject to and complies with: Articles 28(1), 29, 46–3, 46–6(2), 47, 52(1), 53(1) through (3), 56–2, and 198–6 of the Financial Instruments and Exchange Act (Act No. 25 of 1948); Section II–1–4 (General Supervisory Processes), Section IV–2–1 (Preciseness of Capital Adequacy Ratio), and Section IV–2–2 (Supervisory Response to Cases of Financial Instruments Business Operators' Capital Adequacy Ratio Falling Below Prescribed Level) of the Comprehensive Guidelines for Supervision of Financial Instruments Business Operators; Articles 172, 176, 177(8), 178(1), 179(3), and Appended Forms No. 12 of the Cabinet Office Order on Financial Instruments Business (Cabinet Office Order No. 52 of 2007); Articles 1 through 17 of the Financial Services Agency Notice No. 59 of 2007; Articles 2(vi), 328(1) and (2), 435(2), and 436(2)(i) of the Japanese Companies Act (Act No. 86 of 2005); and Articles 59 and 76 of the Rules of Corporate Accounting (Ordinance of the Ministry of Justice No. 13 of 2006) (collectively, the “Japanese Capital Rules and Japanese Financial Reporting Rules”);

(5) The Japanese nonbank SD maintains at all times an amount of regulatory capital in the form of Basic Items, as defined in Article 176 of the Cabinet Office Order No. 52 of 2007, equal to or in excess of the equivalent of \$20 million in United States dollars (“U.S. dollars”). The Japanese nonbank SD shall use a commercially reasonable and observed yen/U.S. dollar exchange rate to convert the value of the yen-denominated Basic Items to U.S. dollars;

(6) The Japanese nonbank SD has filed with the Commission a notice stating its intention to comply with the Japanese Capital Rules and Japanese Financial Reporting Rules in lieu of the CFTC Capital Rules and the CFTC Financial Reporting Rules. The notice of intent must include the Japanese nonbank SD's representation that the firm is organized and domiciled in Japan; is a registered FIBO; and is subject to, and complies with, the Japanese Capital Rules and Japanese Financial Reporting Rules. The Japanese nonbank SD may not rely on this Comparability Order until it receives confirmation from Commission staff, acting pursuant to authority delegated by the Commission under Commission Regulation 140.91(a)(11) (17 CFR 140.91(a)(11)), that the Japanese nonbank SD may comply with the Japanese Capital Rules and Japanese Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Financial Reporting Rules. Each notice filed pursuant to this condition must be

prepared in the English language and submitted to the Commission via email to the following address:

MPDFinancialRequirements@cftc.gov;

(7) The Japanese nonbank SD prepares and keeps current ledgers and other similar records in accordance with accounting principles permitted by the Financial Services Agency;

(8) The Japanese nonbank SD files with the Commission and with the National Futures Association (“NFA”) a copy of Forms 1–1 Capital Ratio Summary, 1–2 Capital Ratio: Deductible Assets, 1–3 Market Risk, 1–4 Counterparty Risk, 2–1 Monthly Financial Statement (1), and 2–2 Monthly Financial Statement (2) of its Monthly Monitoring Report that is required to be filed with the Financial Services Agency pursuant to Article 56–2(1) of the Financial Instruments and Exchange Act. The selected forms of the Monthly Monitoring Report must be translated into the English language and balances must be converted to U.S. dollars, using a commercially reasonable and observable yen/U.S. dollar spot rate as of the date of the reports. The selected forms of the Monthly Monitoring Report must be filed with the Commission and NFA within 35 calendar days after the end of each month;

(9) The Japanese nonbank SD files with the Commission and with NFA a copy of its Annual Business Report that is required to be filed with the Financial Services Agency in accordance with Article 46–3(1) of the Financial Instruments and Exchange Act and Article 172 of the Cabinet Office Order on Financial Instruments Business. The Annual Business Report must be translated into the English language and balances must be converted to U.S. dollars, using a commercially reasonable and observable yen/U.S. dollar spot rate as of the date of the report. The Annual Business Report must be filed with the Commission and NFA within 15 business days of the earlier of the date the Annual Business Report is filed with the Financial Services Agency or the date that the Annual Business Report is required to be filed with the Financial Services Agency;

(10) The Japanese nonbank SD files with the Commission and with NFA a copy of its Annual Audited Financial Report that is required to be prepared pursuant to Article 435(2) of the Japanese Companies Act (Act No. 86 of 2005). The Annual Audited Financial Report must be translated into the English language and balances may be reported in yen. The Annual Audited Financial Report must be filed with the

Commission and NFA within 15 business days of approval of the report at the shareholders' meeting of the Japanese nonbank SD;

(11) The Japanese nonbank SD files Schedule 1 of appendix B to Subpart E of Part 23 of the Commission's regulations (17 CFR 23 Subpart E—appendix B) with the Commission and NFA on a monthly basis. Schedule 1 must be prepared in the English language with balances reported in U.S. dollars, using a commercially reasonable and observable yen/U.S. dollar spot rate as of the date of the report, and must be filed with the Commission and NFA with the selected forms of the Japanese nonbank SD's Monthly Monitoring Report required under Condition (8) of this Comparability Order;

(12) A Japanese nonbank SD that is a registered securities-based swap dealer with the U.S. Securities and Exchange Commission (“SEC”) and is required to file a monthly Form X–17A–5 (“FOCUS Report”) with the SEC, or its designee, must file a copy of the FOCUS Report with the Commission and NFA within 35 calendar days after the end of each month. A Japanese nonbank SD that files a FOCUS Report with the Commission and NFA pursuant to this Condition is not required to file the financial reports and schedules specified in Conditions 8 and 11 of this Comparability Order;

(13) The Japanese nonbank SD files a margin report containing the information specified in Commission Regulation 23.105(m) (17 CFR 23.105(m)) with the Commission and with NFA on a monthly basis (“Margin Report”). The Margin Report must be prepared in the English language with balances reported in U.S. dollars, using a commercially reasonable and observable yen/U.S. dollar spot rate as of the date of the report, and must be filed with the Commission and NFA with the selected forms of the Japanese nonbank SD's Monthly Monitoring Report;

(14) The Japanese nonbank SD submits with the specified forms of the Monthly Monitoring Report set forth in Condition 8, Schedule 1 of appendix B to Subpart E of Part 23 specified in Condition 11, the Margin Report specified in Condition 13, the Annual Business Report specified in Condition 9, and the Annual Audited Financial Report specified in Condition 10, a statement by an authorized representative or representatives of the Japanese nonbank SD that to the best knowledge and belief of the representative or representatives the information contained in the applicable

forms, schedules, and reports, including as applicable the translation of the forms, schedules, and reports into the English language and conversion of balances to U.S. dollars, is true and correct. The statement must be prepared in the English language;

(15) The Japanese nonbank SD files a notice with the Commission and NFA within 24 hours of being informed by the Financial Services Agency that the firm is not in compliance with any component of the Japanese Capital Rules or Japanese Financial Reporting Rules. The notice must be prepared in the English language;

(16) The Japanese nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to maintain regulatory capital in the form of Basic Items, as defined in Article 176 of the Cabinet Office Order No. 52 of 2007, equal to or in excess of the U.S. dollar equivalent of \$20 million using a commercially reasonable and observed yen/U.S. dollar exchange rate. The notice must be prepared in the English language;

(17) The Japanese nonbank SD provides the Commission and NFA with notice within 24 hours of filing a notice with the Financial Services Agency pursuant to Article 179 of the Cabinet Office Order on Financial Instruments Business that the firm's capital adequacy ratio has fallen below the early warning level of 140 percent. The notice filed with the Commission and NFA must be prepared in the English language;

(18) A Japanese nonbank SD provides the Commission and NFA with notice within 24 hours of filing a notice with the Financial Services Agency pursuant to Article 179 of the Cabinet Office Order on Financial Instruments Business that the firm's capital adequacy ratio has fallen below 120 percent. The notice filed with the Commission and NFA must be prepared in the English language;

(19) The Japanese nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to make or keep current the financial books and records required by the Financial Services Agency. The notice must be prepared in the English language;

(20) The Japanese nonbank SD files a notice with the Commission and NFA within 24 hours of the occurrence of any of the following: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin to the Japanese nonbank SD on uncleared swap and non-cleared security-based swap positions that, in the aggregate,

exceeds 25 percent of the Japanese nonbank SD's risk equivalent amount; (ii) counterparties fail to post required initial margin or pay required variation margin to the Japanese nonbank SD for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the Japanese nonbank SD's risk equivalent amount; (iii) the Japanese nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and non-cleared security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the Japanese nonbank SD's risk equivalent amount; or (iv) the Japanese nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the Japanese nonbank SD's risk equivalent amount. The notice must be prepared in the English language;

(21) The Japanese nonbank SD files a notice with the Commission and NFA of a change in its fiscal year-end approved or permitted to go into effect by the Financial Services Agency. The notice required by this paragraph will satisfy the requirement for a nonbank SD to obtain the approval of NFA for a change in fiscal year-end under Commission Regulation 23.105(g) (17 CFR 23.105(g)). The notice of change in fiscal year-end must be prepared in the English language and filed with the Commission and NFA at least 15 business days prior to the effective date of the Japanese nonbank SD's change in fiscal year-end;

(22) The Japanese nonbank SD or the Financial Services Agency notifies the Commission of any material changes to the information submitted in the application, including, but not limited to, proposed and final material changes to the Japanese Capital Rules or Japanese Financial Reporting Rules and proposed and final material changes to the Financial Services Agency's supervisory authority or supervisory regime over Japanese nonbank SDs. The notice must be prepared in the English language; and

(23) Unless otherwise noted in the conditions above, the reports, notices, and other statements required to be filed by the Japanese nonbank SD with the Commission and NFA pursuant to the conditions of this Comparability Order must be submitted electronically to the Commission and NFA in accordance with instructions provided by the Commission or NFA.

It is also hereby determined and ordered that this Comparability Order becomes effective upon its publication in the **Federal Register**, with the exception of Conditions 11, 13, and 20, which will become effective 180 calendar days after publication of the Comparability Order in the **Federal Register**.

Issued in Washington, DC, on July 3, 2024, 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 Order Granting Conditional Substituted Compliance in Connection with Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan—Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, and Goldsmith Romero, and Mersinger voted in the affirmative. Commissioner Pham voted to concur. No Commissioner voted in the negative.

Appendix 2—Supporting Statement of Chairman Rostin Behnam

I support the Commission's approval of four comparability determinations and related orders finding that the capital and financial reporting requirements in Japan, Mexico, the European Union (France and Germany), and the United Kingdom (for swap dealers (SDs) designated for prudential supervision by the UK Prudential Regulation Authority (PRA)) are comparable to the Commission's capital and financial reporting requirements applicable to nonbank SDs. These are the first comparability determinations that the Commission has finalized for applications filed following the July 2020 adoption of its regulatory framework for substituted compliance for non-U.S. domiciled nonbank SDs.¹ There are currently 15 non-U.S. nonbank SDs that are eligible to comply with these conditional orders: three in Japan; three in Mexico; two in Germany and one in France for the EU; and six in the UK that are PRA-designated.

As part of the process leading to the Commission's final comparability determinations and orders, Commission staff engaged in a thorough analysis of each foreign jurisdictions' capital and financial reporting frameworks and considered the public comments received on the proposed determinations and orders. Based on those reviews, the Commission has determined that

¹ *Capital Requirements of Swap Dealers and Major Swap Participants*, 85 FR 57462 (Sept. 15, 2020). The Commission issued the final rule on July 24, 2020.

the respective foreign jurisdictions' rules are comparable in purpose and effect, and achieve comparable outcomes, to the CFTC's capital and financial reporting rules. Specifically, the Commission considered the scope and objectives of the foreign regulators' capital adequacy and financial reporting requirements; the ability of those regulators to supervise and enforce compliance with their respective capital and financial reporting requirements; and other facts or circumstances the Commission deemed relevant for each of the applications.

In certain instances, the Commission found that a foreign jurisdiction's rules impose stricter standards. In limited circumstances, where the Commission concluded that a foreign jurisdiction lacks comparable and comprehensive requirements on a specific issue, the Commission included a targeted condition designed to impose an equally stringent standard. The Commission has issued the final orders consistent with its authority to issue a comparability determination with the conditions it deems appropriate. These conditions aim to ensure that the orders only apply to nonbank SDs that are eligible for substituted compliance in these respective jurisdictions and that those non-U.S. nonbank SDs comply with the foreign country's capital and financial reporting requirements as well as certain additional capital, financial reporting, recordkeeping, and regulatory notice requirements. This approach acknowledges that jurisdictions may adopt unique approaches to achieving comparable outcomes. As a result, the Commission has focused on whether the applicable foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the corresponding Commission requirements for nonbank SDs, not whether they are comparable in every aspect or contain identical elements.

With these comparability determinations, the Commission fully retains its enforcement and examination authority as well as its ability to obtain financial and event specific reporting to maintain direct oversight of nonbank SDs located in these four jurisdictions. The avoidance of duplicative requirements without a commensurate benefit to the Commission's oversight function reflects the Commission's approach to recognizing the global nature of the swap markets with dually-registered SDs that operate in multiple jurisdictions, which mandate prudent capital and financial reporting requirements. This is, however, an added benefit and not the Commission's sole justification for issuing these comparability determinations.

The comparability orders will become effective upon their publication in the **Federal Register**. For several order conditions, the Commission is granting an additional compliance period of 180 calendar days. To rely on a comparability order, an eligible non-U.S. nonbank SD must notify the Commission of its intention to satisfy the Commission's capital and financial requirements by substituted compliance and receive a Commission confirmation before relying on a determination.

I appreciate the hard work and dedication of the staff in the Market Participants

Division over the past several years to propose and finalize these four determinations. I also thank the staff in the Office of the General Counsel and the Office of International Affairs for their support on these matters.

Appendix 3—Statement of Commissioner Kristin N. Johnson

I support the Commodity Futures Trading Commission's (Commission or CFTC) issuance of four final capital and financial reporting comparability determinations and related orders (together, Final Comparability Determinations) for non-U.S. nonbank swap dealers (foreign nonbank SDs) and non-U.S. nonbank major swap participants (foreign nonbank MSPs) organized and domiciled in the United Kingdom (UK), the European Union (specifically, France and Germany), Mexico, and Japan.¹

The Final Comparability Determinations allow eligible foreign nonbank SDs to satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (CEA) and Commission regulations if they: (1) are subject to, and comply with, comparable capital and financial reporting requirements under the laws and regulations applicable in their home countries and (2) comply with the conditions enumerated in the applicable Final Comparability Determination. Under this conditional substituted compliance framework, foreign nonbank SDs in the relevant jurisdictions that comply with these conditions are deemed to be in compliance with the Commission's capital and financial reporting requirements.

Well-calibrated capital requirements create a cushion to absorb unexpected losses in times of market stress, and well-calibrated financial reporting requirements provide the Commission with information to monitor the business operations and financial condition of registered SDs. These tools are critical to managing systemic risk and fostering the stability of U.S. derivatives markets and the U.S. financial system. The Commission's substituted compliance framework addresses the need to promote sound global derivatives regulation while mitigating potentially duplicative cross-border regulatory requirements for non-U.S. market participants operating in our markets. Where the Commission permits substituted compliance, it must retain sufficient oversight, examination, and enforcement authority to ensure compliance with the foreign jurisdiction's laws and the conditions to substituted compliance.

Crucially, while these Final Comparability Determinations permit foreign nonbank SDs to comply with home country regulations in lieu of compliance with Commission regulations, the Commission is also imposing important guardrails to ensure continuous supervision of the operations and financial condition of the foreign SD.

¹ Though the Final Comparability Determinations will apply to foreign nonbank MSPs in the relevant jurisdictions, there are no such MSPs currently registered with the Commission at this time. I will refer only to SDs herein.

Background

For an example of the detrimental consequences of failing to adequately capitalize nonbank swap market participants, one need look no further than the 2008 global financial crisis. According to the U.S. Government Accountability Office, the crisis, which threatened the stability of the U.S. financial system and the health of the U.S. economy, may have led to \$10 trillion in losses, including large declines in employment and household wealth, reduced tax revenues from lower economic activity, and lost economic output.² In response to the crisis, in 2010, the U.S. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which amended the CEA to create a new regulatory framework for swaps.

As amended, Section 4s(e) of the CEA directs the Commission and prudential regulators to impose minimum capital requirements on SDs registered with the Commission. Section 4s(e) adopts separate approaches for the imposition of minimum capital requirements on bank and nonbank SDs. For bank SDs, prudential regulators are authorized to set the minimum capital requirements. For nonbank SDs, the Commission is authorized to set those requirements. The amended CEA also sets out financial reporting requirements for SDs. Under Section 4s(f) of the CEA, registered SDs are required to make financial condition reports and other reports regarding transactions and positions as mandated by Commission regulations.

In 2020, the Commission adopted regulations implementing both the capital and financial reporting requirements for SDs, which were amended in 2024 (the Capital and Financial Reporting Rules).³ The Capital and Financial Reporting Rules set minimum capital levels that nonbank SDs must maintain and financial reporting requirements that nonbank SDs must comply with, including filing periodic unaudited financial statements and an annual audited financial report.⁴

Like the U.S., many other nations adopted their own regulatory regimes to govern swaps markets in the aftermath of the financial crisis. Since then, regulators from around the world have endeavored to improve the resilience of swaps markets and establish a global set of standards on critical risk

² United States Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act (Jan. 2013), <https://fraser.stlouisfed.org/title/gao-reports-testimonies-6136/financial-regulatory-reform-622249>.

³ Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

⁴ The reporting requirements imposed on bank SD and bank MSPs were "more limited" "as the financial condition of these entities will be predominantly supervised by the applicable prudential regulator and subject to its capital and financial reporting requirements." *Id.* at 57513. In May 2024, the Commission adopted amendments to the Capital and Financial Reporting Rules that codified two previously-issued staff letters providing interpretive guidance and no-action relief and made other technical amendments. 89 FR 45569 (May 23, 2024).

management issues, such as capital and financial reporting requirements. These efforts led to the development of the Principles for Financial Market Infrastructures, to which many jurisdictions, including our own, look for guidance.⁵

The Dodd-Frank Act amendments specifically address the cross-border application of the CFTC's swaps regime. Section 2(i) of the CEA establishes that the CEA's swaps provisions apply to foreign swaps activities that have a "direct and significant" connection to, or effect on, U.S. markets. In line with Section 2(i) of the CEA, the Capital and Financial Reporting Rules set out a substituted compliance framework in Commission Regulation 23.106 for foreign nonbank SDs seeking to comply with the Commission's capital and financial reporting requirements.

The substituted compliance framework consists of comparability determinations that afford "due consideration [to] international comity principles" while being "consistent with . . . the Commission's interest in focusing its authority on potential significant risks to the U.S. financial system."⁶ The determinations involve an assessment of the home-country requirements that is a principles-based, holistic approach, focusing on whether the applicable home-country requirements have comparable objectives and achieve comparable outcomes to the Commission's Capital and Financial Reporting Rules.

Today's Final Comparability Determinations

The Final Comparability Determinations will apply to 15 foreign nonbank SDs currently registered with the Commission and subject to oversight by the UK Prudential Regulation Authority, the European Central Bank, the Mexican Comisión Nacional Bancaria y de Valores, and the Financial Services Agency of Japan. I commend staff for their hard work on the Final Comparability Determinations, including their work to thoroughly and thoughtfully analyze and address comments.

Importantly, while the Final Comparability Determinations permit foreign nonbank SDs in the relevant jurisdictions to comply with home country regulations in lieu of compliance with Commission regulations, there are numerous protections in place to ensure the Commission's ability to supervise on an ongoing basis the adequacy of the foreign nonbank SDs' compliance. The Final Comparability Determinations all include key conditions with which the foreign nonbank SDs must comply. For example, each of the Final Comparability Determinations requires that the foreign nonbank SDs provide monthly and annual financial reports to the Commission—and the Commission can request additional information as required to facilitate ongoing supervision. Each Final Comparability Determination also requires

the foreign nonbank SDs to notify the Commission if adverse events occur, such as a significant decrease in excess regulatory capital, a significant failure of a counterparty to post required margin, or non-compliance with certain capital or financial reporting requirements. Finally, in recognition of the fact that a country's capital standards and financial reporting requirements may change over time, the Final Comparability Determinations require the foreign nonbank SDs to provide notice of material changes to the home country capital or financial reporting frameworks.

Moreover, the foreign nonbank SDs subject to these determinations are registered with the Commission and are members of the National Futures Association (NFA). Therefore, these entities are subject to the CEA, Commission regulations, and NFA membership rules, and each entity remains subject to Commission supervisory, examination and enforcement authority. As noted in the Final Comparability Determinations, if a foreign SD fails to comply with its home country's capital and financial reporting requirements, the Commission may initiate an action for a violation of the Commission's Capital and Financial Reporting Rules.

As I have previously noted,⁷ it is important to recognize foreign market participants' compliance with the laws and regulations of their regulators when the requirements lead to an outcome that is comparable to the outcome of complying with the CFTC's corresponding requirements. Respect for partner regulators in foreign jurisdictions advances the Commission as a global standard setter for sound derivatives regulation and enhances market stability.

I thank the staff in the Market Participants Division for their hard work on these matters, particularly Amanda Olear, Tom Smith, and Lily Bozhanova.

Appendix 4—Concurring Statement of Commissioner Caroline D. Pham

I respectfully concur with the order granting conditional substituted compliance in connection with certain capital and financial reporting requirements applicable to nonbank swap dealers subject to regulation by the Financial Services Agency of Japan (JFSA) (Japan Final Order) because I believe the order imposes a condition relating to

financial reporting that exceeds the scope of CFTC Regulation 23.105.

I would like to thank Amanda Olear, Thomas Smith, Rafael Martinez, Warren Gorlick, Liliya Bozhanova, Joo Hong, and Justin McPhee from the CFTC's Market Participants Division for their truly hard work on the Japan Final Order and for addressing some of my concerns. I commend the staff for their tireless efforts for over a decade to finalize the CFTC's capital comparability determinations. I would also like to thank the JFSA for their assistance and support.

I have repeatedly stated the need for a pragmatic, outcomes-based approach to the CFTC's capital comparability determinations, based on recognition of the Basel Committee for Banking Supervision (BCBS) Framework for International Bank Based Capital Standards,¹ that mitigates market fragmentation while promoting financial stability. However, the Japan Final Order overreaches on its conditions relating to financial reporting requirements.

The International Bankers Association of Japan (IBAJ) requested that the CFTC limit the financial information required to be filed by Japanese nonbank swap dealers with the CFTC and National Futures Association (NFA) to the types of financial information required of U.S. nonbank swap dealers under CFTC Regulation 23.105.² By requiring the filing of the full home regulator report, the CFTC and NFA will receive information from Japanese nonbank swap dealers that exceeds the scope of Regulation 23.105. For example, IBAJ stated that the out-of-scope information the CFTC and NFA would receive includes information on client assets segregation status, mutual fund and deemed securities transaction volumes, the status of the deemed securities, and other various asset management business status reports that do not relate to swap dealing activity.³ Accordingly, the CFTC is not entitled to that information. By way of another example, the CFTC does not receive information regarding the consumer banking activity of bank swap dealers.

Instead of taking the common-sense approach of requiring the *same* information in Regulation 23.105 that is applicable to U.S. entities, the CFTC is requiring *more* information from Japanese nonbank swap dealers. The CFTC's justification for exceeding the scope of Regulation 23.105 in the Japan Final Order is so that the CFTC can see the totality of the home regulator report to better determine whether there is extraneous information that is not necessary and can be eliminated.

¹ Concurring Statement of Commissioner Caroline D. Pham Regarding Proposed Swap Dealer Capital and Financial Reporting Comparability Determination (July 27, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement072722>; Bank for International Settlements Basel Committee on Banking Supervision, The Basel Framework, <https://www.bis.org/baselframework/BaselFramework.pdf>.

² International Bankers Association of Japan, Letter Re: Japan Swap Dealer Capital Comparability Determination, 87 FR 48092 (August 8, 2022), (Oct. 6, 2022), 3–4.

³ *Id.*

⁵ Principles for Financial Market Infrastructures, Bank for International Settlements and International Organization of Securities Commissions (Apr. 2012), <https://www.bis.org/cpmi/publ/d101a.pdf>.

⁶ Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 FR 56924, 56924 (Sept. 14, 2020).

⁷ Kristin N. Johnson, Commissioner, CFTC, Combatting Systemic Risk and Fostering Integrity of the Global Financial System Through Rigorous Standards and International Comity (Jan. 24, 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement012424>; Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Notice and Order on EU Capital Comparability Determination (June 7, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement060723c>; Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Proposed Order and Request for Comment on Mexican Capital Comparability Determination (Nov. 10, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement111022c>; Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Proposed Order on Japanese Capital Comparability Determination (July 27, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072722c>.

Mere curiosity is not a sufficient justification to contravene principles of international comity and respect for other sovereign nations that is the foundation of the global financial system. Not only did the IBAJ identify the specific extraneous information that is outside the scope of the CFTC's regulations, but also, I do not understand why the CFTC would set ourselves up to have to amend the Japan Final Order to address this overreach in the future.

Regrettably, this is not the only time that the CFTC appears to take a less deferential approach to Japanese law and, therefore, a more punitive approach to Japanese entities in contrast to other jurisdictions. I question the inequity that is inherent in the CFTC's view of Japan, which has certain banking and financial services laws that are stricter than the United States. Japan is a member of the G7, and its regulators are members of the Financial Stability Board (FSB), BCBS, International Organization of Securities Commissions (IOSCO), and many other international fora dedicated to safeguarding the global financial system. The CFTC has entered into multiple Memorandum of Understanding (MOU) with the JFSA. It goes without saying that Japan protects Japanese citizens and their assets. The Commission must show the same respect for Japanese laws that it provides to other jurisdictions, particularly because Japan is a key international partner and ally to the United States.

On May 25, 2024, the G7 Finance Ministers and Central Bank Governors' Communiqué stated: "We also reiterate our strong commitment to a free, fair, and rules-based multilateral system. Building on the legacy of the Japanese G7 Presidency, we will advance our cooperation to enhance global economic resilience and economic security and protect our economies from systemic shocks and vulnerabilities."⁴ I urge the Commission to honor this commitment by the United States. [FR Doc. 2024-15092 Filed 7-17-24; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealer Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: On December 13, 2022, the Commodity Futures Trading

Commission ("Commission" or "CFTC") published in the **Federal Register** a notice and request for comment on an application submitted by Morgan Stanley Mexico, Casa de Bolsa, S.A. de C.V., Goldman Sachs Mexico, Casa de Bolsa, S.A. de C.V., and Casa de Bolsa Finamex, S.A. de C.V. requesting that the Commission determine that CFTC-registered nonbank swap dealers organized and domiciled in Mexico may comply with certain capital and financial reporting requirements under the Commodity Exchange Act and Commission regulations by being subject to, and complying with, corresponding capital and financial reporting requirements of Mexico. The Commission also solicited public comment on a proposed order providing for the conditional availability of substituted compliance in connection with the application. The Commission is adopting the proposed order with certain modifications and clarifications to address comments received. The final order provides that a nonbank swap dealer organized and domiciled in Mexico may satisfy the capital requirements and financial reporting rules under the applicable provisions of the Commodity Exchange Act and Commission regulations by complying with certain specified Mexican laws and regulations and conditions set forth in the order.

DATES: This determination was made by the Commission on June 24, 2024.

FOR FURTHER INFORMATION CONTACT:

Amanda L. Olear, Director, 202-418-5283, aolear@cftc.gov; Thomas Smith, Deputy Director, 202-418-5495, tsmith@cftc.gov; Rafael Martinez, Associate Director, 202-418-5462, rmartinez@cftc.gov; Warren Gorlick, Associate Director, 202-418-5195, wgorlick@cftc.gov; Liliya Bozhanova, Special Counsel, 202-418-6232, lbozhanova@cftc.gov; Justin McPhee, Risk Analyst, 202-418-6223, jmchpee@cftc.gov, Market Participants Division; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission is issuing an order finding that registered nonbank swap dealers organized and domiciled in Mexico ("Mexican nonbank SDs") may satisfy certain capital and financial reporting requirements under the Commodity Exchange Act ("CEA")¹ and

Commission regulations² by being subject to, and complying with, comparable capital and financial reporting requirements under relevant Mexican laws and regulations, subject to certain conditions set forth in the order below. The order is based on the proposed comparability determination and related proposed order published by the Commission on December 13, 2022 in the **Federal Register**, as modified in certain aspects to address comments and to clarify its terms.³

I. Introduction

A. Regulatory Background—CFTC Capital, Margin, and Financial Reporting Requirements for Swap Dealers and Major Swap Participants

Section 4s(e) of the CEA⁴ directs the Commission and "prudential regulators"⁵ to impose capital requirements on swap dealers ("SDs") and major swap participants ("MSPs") registered with the Commission.⁶ Section 4s(e) also directs the Commission and prudential regulators to adopt regulations imposing initial and variation margin requirements on swaps entered into by SDs and MSPs that are not cleared by a registered

² 17 CFR chapter I. Commission regulations may be accessed through the Commission's website, www.cftc.gov.

³ Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores, 87 FR 76374 (Dec. 13, 2022) ("2022 Proposal").

⁴ 7 U.S.C. 6s(e).

⁵ The term "prudential regulators" is defined in the CEA to mean the Board of Governors of the Federal Reserve System ("Federal Reserve Board"); the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency. 7 U.S.C. 1a(39).

⁶ Subject to certain exceptions, the term "swap dealer" is generally defined as any person that: (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. 7 U.S.C. 1a(49).

The term "major swap participant" is generally defined as any person who is not an SD, and: (i) subject to certain exclusions, maintains a substantial position in swaps for any of the major swap categories as determined by the Commission; (ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or (iii) is a financial entity that: (a) is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and (b) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission. 7 U.S.C. 1a(33).

⁴ G7 Finance Ministers and Central Bank Governors' Communiqué, Stresa, 23-25 May 2024, <https://www.consilium.europa.eu/media/muhnmsh1/stresa-communication-25-may-2024.pdf>.

¹ 7 U.S.C. 1 et seq. The CEA may be accessed through the Commission's website, www.cftc.gov.

derivatives clearing organization (“uncleared swaps”).

Section 4s(e) applies a bifurcated approach with respect to the above Congressional directives, requiring each SD and MSP that is subject to the regulation of a prudential regulator (“bank SD” and “bank MSP,” respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the applicable prudential regulator, and requiring each SD and MSP that is not subject to the regulation of a prudential regulator (“nonbank SD” and “nonbank MSP,” respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the Commission.⁷ Therefore, the Commission’s authority to impose capital requirements and margin requirements for uncleared swap transactions extends to nonbank SDs and nonbank MSPs, including nonbank subsidiaries of bank holding companies regulated by the Federal Reserve Board.⁸

The prudential regulators implemented section 4s(e) in 2015 by amending existing capital requirements applicable to bank SDs and bank MSPs to incorporate swap transactions into their respective bank capital frameworks, and by adopting rules imposing initial and variation margin requirements on bank SDs and bank MSPs that engage in uncleared swap transactions.⁹ The Commission adopted final rules imposing initial and variation margin obligations on nonbank SDs and nonbank MSPs for uncleared swap transactions on January 6, 2016.¹⁰ The Commission also approved final capital requirements for nonbank SDs and nonbank MSPs on July 24, 2020, which were published in the **Federal Register** on September 15, 2020 with a compliance date of October 6, 2021 (“CFTC Capital Rules”).¹¹

Section 4s(f) of the CEA addresses SD and MSP financial reporting requirements.¹² Section 4s(f) authorizes the Commission to adopt rules imposing financial condition reporting obligations

on all SDs and MSPs (*i.e.*, nonbank SDs, nonbank MSPs, bank SDs, and bank MSPs). Specifically, section 4s(f)(1)(A) provides, in relevant part, that each registered SD and MSP must make financial condition reports as required by regulations adopted by the Commission.¹³ The Commission’s financial reporting obligations were adopted with the Commission’s nonbank SD and nonbank MSP capital requirements, and also had a compliance date of October 6, 2021 (“CFTC Financial Reporting Rules”).¹⁴

B. Commission Capital Comparability Determinations for Non-U.S. Nonbank Swap Dealers and Non-U.S. Nonbank Major Swap Participants

Commission Regulation 23.106 establishes a substituted compliance framework whereby the Commission may determine that compliance by a non-U.S. domiciled nonbank SD or non-U.S. domiciled nonbank MSP with its home country’s capital and financial reporting requirements will satisfy all or parts of the CFTC Capital Rules and all or parts of the CFTC Financial Reporting Rules (such a determination referred to as a “Comparability Determination”).¹⁵ The Commission’s capital adequacy and financial reporting requirements are designed to address and manage risks that arise from a firm’s operation as a SD or MSP. Given their functions, both sets of requirements and rules must be applied on an entity-level basis (meaning that the rules apply on a firm-wide basis, irrespective of the type of

transactions involved) to effectively address risk to the firm as a whole. The availability of such substituted compliance is conditioned upon the Commission issuing a Comparability Determination finding that the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements for non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs are comparable to the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules. The Commission would issue a Comparability Determination in the form of an order (“Comparability Order”).¹⁶

The Commission’s approach for conducting a Comparability Determination with respect to the CFTC Capital Rules and the CFTC Financial Reporting Rules is a principles-based, holistic approach that focuses on assessing whether the applicable foreign jurisdiction’s capital and financial reporting requirements have comparable objectives with, and achieve comparable outcomes to, corresponding CFTC requirements.¹⁷ The Commission’s assessment is not a line-by-line evaluation or comparison of a foreign jurisdiction’s regulatory requirements with the Commission’s requirements.¹⁸ In performing the analysis, the Commission recognizes that jurisdictions may adopt differing approaches to achieving regulatory objectives and outcomes, and the Commission will focus on whether the foreign jurisdiction’s capital and financial reporting requirements are based on regulatory objectives, and produce regulatory outcomes, that are comparable to the Commission’s in purpose and effect, and not whether they are comparable in every aspect or contain identical elements.

A person requesting a Comparability Determination is required to submit an application to the Commission containing: (i) a description of the objectives of the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements applicable to entities that are subject to the CFTC Capital Rules and the CFTC Financial Reporting Rules; (ii) a description (including specific legal and regulatory provisions) of how the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements address the elements of the CFTC Capital Rules and CFTC Financial Reporting Rules, including, at a minimum, the methodologies for

¹³ 7 U.S.C. 6s(f)(1)(A).

¹⁴ 85 FR 57462.

¹⁵ 17 CFR 23.106. Commission Regulation 23.106(a)(1) provides that a request for a Comparability Determination may be submitted by a non-U.S. nonbank SD or a non-U.S. nonbank MSP, a trade association or other similar group on behalf of its SD or MSP members, or a foreign regulatory authority that has direct supervisory authority over one or more non-U.S. nonbank SDs or non-U.S. nonbank MSPs. However, Commission regulations also provide that any non-U.S. nonbank SD or non-U.S. nonbank MSP that is dually-registered with the Commission as a futures commission merchant (“FCM”) is subject to the capital requirements of Commission Regulation 1.17 and may not petition the Commission for a Comparability Determination. 17 CFR 23.101(a)(5) and (b)(4), respectively. Furthermore, substituted compliance is not available to non-U.S. bank SDs and non-U.S. bank MSPs with respect to their respective financial reporting requirements under Commission Regulation 23.105(p). Commission Regulation 23.105(p), however, permits non-U.S. bank SDs and non-U.S. bank MSPs that do not submit financial reports to a U.S. prudential regulator to file with the Commission a statement of financial condition, certain regulatory capital information, and Schedule 1 of appendix C to subpart E of part 23 of the Commission’s regulations prepared and presented in accordance with the accounting standards permitted by the non-U.S. bank SD’s or non-U.S. bank MSP’s home country regulatory authorities. 17 CFR 23.105(p)(2).

⁷ 7 U.S.C. 6s(e)(2).

⁸ 7 U.S.C. 6s(e)(1) and (2).

⁹ *Margin and Capital Requirements for Covered Swap Entities*, 80 FR 74840 (Nov. 30, 2015).

¹⁰ *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 81 FR 636 (Jan. 6, 2016).

¹¹ *Capital Requirements for Swap Dealers and Major Swap Participants*, 85 FR 57462 (Sept. 15, 2020). On April 30, 2024, the Commission amended the capital and financial reporting requirements to revise certain financial reporting obligations, among other changes. See *Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants*, 89 FR 45569 (May 23, 2024). The amendments have limited impact on nonbank SDs covered by this order.

¹² 7 U.S.C. 6s(f).

¹⁶ 17 CFR 23.106(a)(3).

¹⁷ 17 CFR 23.106(a)(3)(ii). See also 85 FR 57462 at 57521.

¹⁸ See 85 FR 57462 at 57521.

establishing and calculating capital adequacy requirements and whether such methodologies comport with international standards; and (iii) a description of the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements. The applicant must also submit, upon request, such other information and documentation as the Commission deems necessary to evaluate the comparability of the capital adequacy and financial reporting requirements of the foreign jurisdiction.¹⁹

The Commission will consider an application for a Comparability Determination to be a representation by the applicant that the laws and regulations of the foreign jurisdiction that are submitted in support of the application are finalized and in force, that the description of such laws and regulations is accurate and complete, and that, unless otherwise noted, the scope of such laws and regulations encompasses the relevant non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs domiciled in the foreign jurisdiction.²⁰ Each non-U.S. nonbank SD or non-U.S. nonbank MSP that seeks to rely on a Comparability Order is responsible for determining whether it is subject to the foreign laws and regulations found comparable in the Comparability Order. A non-U.S. nonbank SD or non-U.S. nonbank MSP that is not legally required to comply with a foreign jurisdiction's laws and/or regulations determined to be comparable in a Comparability Order may not voluntarily comply with such laws and/or regulations in lieu of compliance with the CFTC Capital Rules or the CFTC Financial Reporting Rules.

The Commission may consider all relevant factors in making a Comparability Determination, including: (i) the scope and objectives of the relevant foreign jurisdiction's capital and financial reporting requirements; (ii) whether the relevant foreign jurisdiction's capital and financial reporting requirements achieve

comparable outcomes to the Commission's corresponding capital requirements and financial reporting requirements; (iii) the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements; and (iv) any other facts or circumstances the Commission deems relevant, including whether the Commission and foreign regulatory authority or authorities have a memorandum of understanding ("MOU") or similar arrangement that would facilitate supervisory cooperation.²¹

In performing the comparability assessment for foreign nonbank SDs, the Commission's review will include the extent to which the foreign jurisdiction's requirements address: (i) the process of establishing minimum capital requirements for nonbank SDs and how such process addresses risk, including market risk and credit risk of the nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting minimum requirements; (iii) the financial reports and other financial information submitted by a nonbank SD to its relevant regulatory authority and whether such information provides the regulatory authority with the means necessary to effectively monitor the financial condition of the nonbank SD; and (iv) the regulatory notices and other communications between a nonbank SD and its foreign regulatory authority that address potential adverse financial or operational issues that may impact the firm. With respect to the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the foreign jurisdiction's capital adequacy and financial reporting requirements, the Commission's review will include an assessment of the foreign jurisdiction's surveillance program for monitoring nonbank SDs' compliance with such capital adequacy and financial reporting requirements, and the disciplinary process imposed on firms that fail to comply with such requirements.²²

Commission Regulation 23.106 further provides that the Commission

may impose any terms or conditions that it deems appropriate in issuing a Comparability Determination.²³ Any specific terms or conditions with respect to capital adequacy or financial reporting requirements will be set forth in the Commission's Comparability Order. As a general condition to all Comparability Orders, the Commission will require notification from the applicants of any material changes to information submitted by the applicants in support of a comparability finding, including, but not limited to, changes in the foreign jurisdiction's relevant laws and regulations, as well as changes to the relevant supervisory or regulatory regime.

To rely on a Comparability Order, a nonbank SD or nonbank MSP domiciled in the foreign jurisdiction and subject to supervision by the relevant regulatory authority (or authorities) in the foreign jurisdiction must file a notice with the Commission of its intent to comply with the applicable capital adequacy and financial reporting requirements of the foreign jurisdiction set forth in the Comparability Order in lieu of all or parts of the CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁴ Notices must be filed electronically with the Commission's Market Participants Division ("MPD").²⁵ The filing of a notice by a non-U.S. nonbank SD or non-U.S. nonbank MSP provides MPD staff with the opportunity to engage with the firm and to obtain representations that it is subject to, and complies with, the laws and regulations cited in the Comparability Order and that it will comply with any listed conditions. MPD will issue a letter under delegated authority from the Commission confirming that the non-U.S. nonbank SD or non-U.S. nonbank MSP may comply with foreign laws and regulations cited in the Comparability Order in lieu of complying with the CFTC Capital Rules and CFTC Financial Reporting Rules upon MPD's confirmation through discussions with the non-U.S. nonbank SD or non-U.S. nonbank MSP that the firm is subject to and complies with the applicable foreign laws and regulations, is subject to the jurisdiction of the applicable foreign regulatory authority (or authorities), and can meet the conditions in the Comparability Order.²⁶

¹⁹ 17 CFR 23.106(a)(2).

²⁰ The Commission provides the applicant with an opportunity to review for accuracy and completeness the Commission's description of relevant home country laws and regulations on which a proposed Comparability Determination and a proposed Comparability Order are based. The Commission relies on this review, and any corrections or feedback received, as part of the comparability assessment. A Comparability Determination and Comparability Order based on an inaccurate description of foreign laws and regulations may not be valid.

²¹ 17 CFR 23.106(a)(3) and 85 FR 57462 at 57520–57522.

²² The Commission would conduct a similar analysis, adjusted as appropriate to account for regulatory distinctions, in performing a comparability assessment for foreign nonbank MSPs. Commission Regulation 23.101(b) requires a nonbank MSP to maintain positive tangible net worth. There are no MSPs currently registered with the Commission.

²³ 17 CFR 23.106(a)(5).

²⁴ 17 CFR 23.106(a)(4).

²⁵ Notices must be filed in electronic form to the following email address: MPDFinancialRequirements@cftc.gov.

²⁶ 17 CFR 23.106(a)(4)(ii) and 17 CFR 140.91(a)(11).

Each non-U.S. nonbank SD and each non-U.S. nonbank MSP that receives confirmation from the Commission that it may comply with a foreign jurisdiction's capital adequacy and financial reporting requirements will be deemed by the Commission to be in compliance with the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁷ A non-U.S. nonbank SD or non-U.S. nonbank MSP that receives confirmation of substituted compliance remains subject, however, to the Commission's examination and enforcement authority.²⁸ Accordingly, if a nonbank SD or nonbank MSP fails to comply with the foreign jurisdiction's capital adequacy and/or financial reporting requirements, the Commission may initiate an action for a violation of the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁹ In addition, a finding of a violation by a foreign jurisdiction's regulatory authority is not a prerequisite for the exercise of such examination and enforcement authority by the Commission.

C. Mexico Application for a Comparability Determination for Mexico-Domiciled Nonbank Swap Dealers

On September 29, 2021, Morgan Stanley Mexico, Casa de Bolsa, S.A. de C.V., Goldman Sachs Mexico, Casa de Bolsa, S.A. de C.V., and Casa de Bolsa Finamex, S.A. de C.V. (the "Applicants") submitted an application (the "Mexico Application") requesting that the Commission conduct a Comparability Determination and issue a Comparability Order finding that compliance with certain designated capital requirements of Mexico (the "Mexican Capital Rules") and certain designated financial reporting requirements of Mexico (the "Mexican Financial Reporting Rules") by a Mexican nonbank SD registered with the Mexican Comision Nacional Bancaria y de Valores (Mexican Banking and Securities Commission) ("Mexican Commission")³⁰ as a broker-dealer

satisfies corresponding CFTC Capital Rules and the CFTC Financial Reporting Rules applicable to a nonbank SD under sections 4s(e) and (f) of the CEA and Commission Regulations 23.101 and 23.105.³¹

The Applicants represented that the Securities Market Law (Ley del Mercado de Valores, the "Law")³² and the General Provisions Applicable to Broker-Dealers (Disposiciones de Caracter General Aplicables a las Casa de Bolsa, the "General Provisions")³³ issued by the Mexican Commission contain the Mexican Capital Rules and the Mexican Financial Reporting Rules that apply to broker-dealers,³⁴ including Mexican nonbank SDs.³⁵ The Law and General Provisions impose mandatory capital and liquidity requirements that address quantifiable discretionary risks (credit risk, liquidity risk, and market risk), quantifiable non-discretionary risks (legal risk, operational risk, and technological risk), and non-quantifiable risks.³⁶ The Applicants currently are the only Mexican nonbank SDs registered with the Commission as SDs, and they represent that they are licensed with the

Application provides that: (i) the scope of the Mexican Commission's authority includes inspection, supervision, prevention, and correction powers; (ii) the primary financial entities regulated by the Mexican Commission are commercial banks, national development banks, regulated multiple purpose financial institutions, and broker-dealers, such as Mexican nonbank SDs; and (iii) the Mexican Commission is also in charge of granting and revoking broker-dealer licenses in Mexico. Mexico Application, p. 4 (fn. 10).

³¹ The Mexico Application was submitted by Colin D. Lloyd, Cleary Gottlieb Steen & Hamilton LLP, on behalf of the Applicants. Mexico Application at p. 1. The Mexico Application is available on the Commission's website at: <https://www.cftc.gov/LawRegulation/DoddFrankAct/CDS/CP/index.htm>.

³² Published in the Federal Official Gazette (Diario Oficial de la Federacion) on December 30, 2005, as amended.

³³ Published in the Federal Official Gazette on September 6, 2004, as amended.

³⁴ The Applicants represented that pursuant to the provisions set forth in Article 113 of the Law, broker-dealers, such as Mexican nonbank SDs, among other entities, are the only financial institutions that may conduct securities intermediation transactions. Under Article 2 of the Law, securities intermediation is defined as the customary and professional performance of any of the following activities in Mexico: (i) actions for the purpose of facilitating the contact between the supply and demand of securities; (ii) the execution of transactions with securities for the account of third parties as commission agent, attorney-in-fact, or in any other capacity, participating in the relevant legal transactions either personally or on behalf of third parties; and (iii) the negotiation of securities on an intermediary's own account with the general public or with other intermediaries acting on their own account or on behalf of third parties. The organization and operation of broker-dealers, such as Mexican nonbank SDs, is governed by the Law and General Provisions. Mexico Application at p. 4 (fn. 11).

³⁵ Mexico Application at p. 4.

³⁶ *Id.*

Mexican Commission as broker-dealers subject to the Mexican Capital Rules and Mexican Financial Reporting Rules.

D. Proposed Comparability Determination and Proposed Comparability Order for Mexico-Domiciled Nonbank Swap Dealers

On December 13, 2022, the Commission published the 2022 Proposal, seeking comment on the Mexico Application and the Commission's proposed Comparability Determination and related Comparability Order.³⁷ The 2022 Proposal set forth the Commission's preliminary Comparability Determination and proposed Comparability Order providing that, based on its review of the Mexico Application and applicable Mexican laws and regulations, the Commission preliminarily found that the Mexican Capital Rules and the Mexican Financial Reporting Rules, subject to the conditions set forth in the proposed Comparability Order, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules.³⁸ The Commission, however, noted that there were certain differences between the Mexican Capital Rules and CFTC Capital Rules and certain differences between the Mexican Financial Reporting Rules and the CFTC Financial Reporting Rules. As such, the Commission included conditions in the proposed Comparability Order.³⁹ The proposed conditions were designed to promote consistency in regulatory outcomes and to reflect the scope of substituted compliance that would be available notwithstanding the differences, and to ensure that the Commission and National Futures Association ("NFA") receive information to monitor Mexican nonbank SDs for ongoing compliance with the Comparability Order.⁴⁰ The

³⁷ 2022 Proposal, 87 FR 76374 (Dec. 13, 2022).

³⁸ *Id.* at 76398. Consistent with the process specified in Section I.B. above for conducting Comparability Determinations, the Commission provided the Applicants with an opportunity to review for factual accuracy and completeness the Commission's description of relevant Mexican laws and regulations on which the proposed Comparability Determination and proposed Comparability Order were based. The Commission has relied on Applicants' review, and has incorporated feedback and corrections received from the Applicants. As previously noted, a Comparability Determination and Comparability Order based on an inaccurate description of foreign laws and regulations may not be valid.

³⁹ See 2022 Proposal at 76398.

⁴⁰ NFA is a registered futures association ("RFA") under section 17 of the CEA (7 U.S.C. 21). Each SD registered with the Commission is required to be an NFA member. 17 CFR 170.16. NFA, as an RFA, is also required by the CEA to adopt rules imposing

²⁷ 17 CFR 23.106(a)(4)(ii). As noted above, confirmation will be issued by MPD under authority delegated by the Commission. Commission Regulation 140.91(a)(11). 17 CFR 140.91(a)(11).

²⁸ 17 CFR 23.106(a)(4)(ii).

²⁹ *Id.*

³⁰ The Applicants represented that the Mexican Commission is a governmental agency that is part of the Ministry of Finance, and has independent technical and executive powers. The Applicants further represented that the Mexican Commission is in charge of the supervision and regulation of financial entities, such as Mexican nonbank SDs, with the purpose of ensuring their stability and sound performance, as well as maintaining a safe and sound financial system. The Mexico

Commission further stated that the identified differences would not be inconsistent with providing a substituted compliance framework for Mexican nonbank SDs subject to the conditions specified in the proposed Comparability Order.⁴¹

The proposed Comparability Order was limited to the comparison of the Mexican Capital Rules to the Bank-Based Approach under the CFTC Capital Rules (“Bank-Based Approach”) for computing regulatory capital for nonbank SDs, which is based on certain capital requirements imposed by the Federal Reserve Board for bank holding companies.⁴² As noted by the Commission in the 2022 Proposal, the Applicants had not requested, nor has the Commission performed, a comparison of the Mexican Capital Rules to the Commission’s TNW Approach or NLA Approach.⁴³

E. General Comments on the Mexico Application and the Commission’s Proposed Finding of Comparability Between the CFTC Capital Rules and CFTC Financial Reporting Rules and the Mexican Capital Rules and Mexican Financial Reporting Rules

The public comment period on the Mexico Application and the proposed Comparability Determination and Comparability Order ended on February 13, 2023. The Commission received three substantive comments letters

minimum capital, segregation, and other financial requirements, as applicable, to its members, including SDs, that are at least as stringent as the Commission’s minimum capital, segregation, and other financial requirements for such registrants, and to implement a program to audit and enforce such requirements. 7 U.S.C. 21(p). Therefore, the Commission’s proposed Comparability Order required Mexican nonbank SDs to file certain financial reports and notices with NFA so that it may perform oversight of such firms as required under Section 17 of the CEA. The Commission will refer to NFA in this Comparability Determination when referring to the requirements or obligations of an RFA.

⁴¹ *Id.*

⁴² *Id.* As described in the 2022 Proposal, the CFTC Capital Rules provide nonbank SDs with three alternative capital approaches: (i) the Tangible Net Worth Capital Approach (“TNW Approach”); (ii) the Net Liquid Assets Capital Approach (“NLA Approach”); and (iii) the Bank-Based Approach. See 2022 Proposal at 76377 and 17 CFR 23.101. The Bank-Based Approach is consistent with the Basel Committee on Banking Supervision’s (“BCBS”) international framework for bank capital requirements (“BCBS framework” or “Basel standards”). The BCBS is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Institutions represented on the BCBS include the Federal Reserve Board, the European Central Bank, Deutsche Bundesbank, Bank of England, Bank of France, Bank of Japan, Banco de Mexico, and Bank of Canada. The BCBS framework is available at: https://www.bis.org/basel_framework/index.htm.

⁴³ *Id.*

addressing the proposal from the following interested parties: Better Markets, Inc. (“Better Markets”); William J. Harrington (“Harrington”); and a joint letter from the International Swaps and Derivatives Association (“ISDA”) and the Securities Industry and Financial Markets Association (“SIFMA”).⁴⁴

The Associations expressed support for the proposed Comparability Determination and proposed Comparability Order, agreeing with the Commission’s overall analysis and determination of comparability of the Commission’s Capital and Financial Reporting Rules and the Mexican Capital and Financial Reporting Rules.⁴⁵ Conversely, two commenters disagreed with the CFTC’s proposed Comparability Determination and proposed Comparability Order.⁴⁶ Better Markets asserted that the principles-based, holistic approach applied by the Commission, which assesses whether the applicable foreign jurisdiction’s capital and financial requirements achieve a comparable outcome to the corresponding CFTC’s requirements, is “insufficiently rigorous, leaving far too much room for inaccurate and unwarranted comparability determinations.”⁴⁷

The Commission does not believe that the principles-based, holistic assessment that it conducted on the comparability of the Mexican Capital Rules and Mexican Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules was “insufficiently rigorous,” nor does the Commission believe that it left “room for inaccurate and unwarranted comparability determinations.” The principles-based, holistic approach employed in the Comparability Determination was performed in accordance with the substituted compliance assessment framework adopted by the Commission for capital and financial reporting requirements for

foreign nonbank SDs and set out in Commission Regulation 23.106. Consistent with this assessment framework, the Commission focused on whether the Mexican Capital Rules and Mexican Financial Reporting Rules are designed with the objective of ensuring overall safety and soundness of the Mexican nonbank SDs in a manner that is comparable with the Commission’s overall objective of ensuring the safety and soundness of nonbank SDs.

As stated in the 2022 Proposal, due to the detailed and complex nature of the capital frameworks, differences in how jurisdictions approach and implement the requirements are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS framework.⁴⁸ Furthermore, as discussed in section I.B. above, when adopting Commission Regulation 23.106, the Commission stated that its approach to substituted compliance is a principles-based, holistic approach that focuses on whether the foreign regulations are designed with the objectives of ensuring the overall safety and soundness of the non-US nonbank SD in a manner that is comparable with the Commission’s overall capital and financial reporting requirements, and is not based on a line-by-line assessment or comparison of a foreign jurisdiction’s regulatory requirements with the Commission’s requirements.⁴⁹

The approach and standards contained in Commission Regulation 23.106, with the focus on “comparable outcomes,” are also consistent with the Commission’s precedents of undertaking a principles-based, holistic assessment of the comparability of foreign regulatory regimes for purposes of substituted compliance for cross-border swap transactions. The Commission first outlined its approach to substituted compliance with respect to swaps requirements in 2013, when it issued an Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations.⁵⁰ In the Guidance, the Commission stated that in evaluating whether a particular category of foreign regulatory requirement(s) is comparable and comprehensive to the applicable requirement(s) under the CEA and Commission regulations, the Commission will take into consideration all relevant factors, including but not limited to, the comprehensiveness of those requirement(s), the scope and

⁴⁸ See 2022 Proposal at 76381.

⁴⁹ 85 FR 57462 at 57521.

⁵⁰ *Interpretative Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations*, 78 FR 45292 (July 26, 2013) (“Guidance”).

⁴⁴ Letter from Dennis M. Kelleher, President and CEO, and Cantrell Dumas, Director of Derivatives Policy, Better Markets (Feb. 13, 2023) (“Better Markets Letter”); Letter from William J. Harrington, Croatian Institute (Feb. 13, 2023) (“Harrington Letter”); and Letter from Steven Kennedy, Global Head of Public Policy, ISDA, and Kyle L. Brandon, Managing Director, Head of Derivatives Policy, SIFMA (together, the “Associations”) (Feb. 13, 2023) (“Associations Letter”). The Commission received an additional comment submission that did not provide any substantive comment on the 2022 Proposal. All comment letters for the 2022 Proposal are available at: <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7341> (the public comment file).

⁴⁵ Associations Letter at p. 2.

⁴⁶ Better Markets Letter at p. 2; Harrington Letter at p. 11.

⁴⁷ Better Markets Letter at p. 2.

objectives of the relevant regulatory requirement(s), the comprehensiveness of the foreign regulator's supervisory compliance program, as well as the home jurisdiction's authority to support and enforce its oversight of the registrant.⁵¹ The Commission emphasized that in this context, "comparable does not necessarily mean identical."⁵² Rather, the Commission stated that it would evaluate whether the home jurisdiction's regulatory requirement is comparable to, and as comprehensive as, the corresponding U.S. regulatory requirement(s).⁵³ In conducting comparability determinations based on the policy set forth in the Guidance, the Commission noted that the "outcome-based" approach recognizes that foreign regulatory systems differ and their approaches vary and may differ from how the Commission chose to address an issue, but that the foreign jurisdiction's regulatory requirements nonetheless achieve the regulatory outcome sought to be achieved by a certain provision of the CEA or Commission regulation.⁵⁴

The Commission further elaborated on the required elements of comparability in 2016, when it issued final rules to address the cross-border application of the Commission's margin requirements for uncleared swap transactions. Specifically, the Commission stated that its substituted compliance approach reflects an outcome-based assessment of the comparability of a foreign jurisdiction's margin requirements with the Commission's corresponding requirements.⁵⁵ The Commission further stated that it would evaluate the objectives and outcomes of the foreign margin requirements in light of foreign regulator(s)' supervisory and enforcement authority.⁵⁶ Consistent with its previously stated position, the Commission recognized that jurisdictions may adopt different approaches to achieving the same outcome and, therefore, the assessment would focus on whether the foreign jurisdiction's margin requirements are comparable to the Commission's in purpose and effect, not whether they are

comparable in every aspect or contain identical elements.⁵⁷ The Commission's policy thus reflects an understanding that a line-by-line evaluation of a foreign jurisdiction's regulatory regime is not the optimum approach to assessing the comparability of complex structures whose individual components may differ based on jurisdiction-specific considerations, but which achieve the objective and outcomes set forth in the Commission's framework.

With respect to the Mexico Application, the process leading to the Commission's Comparability Determination involved Commission staff obtaining English language translations of relevant Mexican laws, rules, and regulations cited in the Mexico Application. Staff verified the assertions and citations contained in the Mexico Application regarding the specific Mexican Capital Rules and Mexican Financial Reporting Rules to the relevant English language versions of the Mexican laws, rules, and regulations.⁵⁸ Commission staff also evaluated the comparability of the Mexican Capital Rules and Mexican Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules with respect to the following areas: (i) the process of establishing minimum capital requirements for Mexican nonbank SDs and how such process addresses risk, including market risk and credit risk of the Mexican nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting a Mexican nonbank SD's minimum capital requirements; (iii) the financial reports and other financial information submitted by a Mexican nonbank SD to the Mexican Commission, and whether such information provides the Mexican Commission with the means necessary to effectively monitor the financial condition of the Mexican nonbank SD; and (iv) the regulatory notices and other communications between a Mexican nonbank SD and the Mexican Commission that address potential adverse financial or operational issues that may impact the firm.⁵⁹ With respect to the ability of the Mexican Commission to supervise and enforce compliance with the Mexican Capital Rules and Mexican Financial Reporting

Rules, the Commission's assessment included a review of the Mexican Commission's surveillance program for monitoring compliance by Mexican nonbank SDs with the Mexican Capital Rules and Mexican Financial Reporting Rules, and the disciplinary process imposed on firms that fail to comply with such requirements.⁶⁰

Contrary to the position articulated by Better Markets regarding the nature of the comparability assessment, the Commission believes that the principles-based, holistic assessment of the Mexican Capital Rules and Mexican Financial Reporting Rules against the CFTC Capital Rules and CFTC Financial Reporting Rules, as outlined above and discussed in detail in section II below, was sufficiently rigorous for purposes of determining if the Mexican laws and regulations are comparable in purpose and effect to the CEA and Commission regulations.

Better Markets further asserted that even under a principles-based, holistic approach, the Mexican capital and financial reporting requirements for Mexican nonbank SDs do not satisfy the test for an order granting substituted compliance as the Mexican Commission's regulatory framework governing capital and financial reporting is not comparable to the corresponding CFTC requirements.⁶¹ Better Markets cited the Commission's inclusion of conditions in the proposed Comparability Order as demonstrating the Commission's need "to compensate for the acknowledged gaps in the Mexican Commission's framework."⁶² Better Markets claimed that the Commission proposed 12 filing requirements that must be met as a condition for the comparability determination, and stated that the Commission was not conducting a comparability assessment, but was engaging in a "de facto rewriting" of Mexico's laws and rules in the form of conditions.⁶³

The Commission disagrees that the inclusion of conditions in the Comparability Order precludes a finding of comparability with respect to the Mexican Capital Rules and Mexican Financial Reporting Rules. The Commission's comparability assessment process, consistent with the holistic approach, contemplates the potential need for a Comparability Order to contain conditions. Specifically, Commission Regulation 23.106(a)(5) states that the Commission may impose

⁵¹ Guidance at 45343.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See e.g., *Comparability Determination for the European Union: Certain Entity-Level Requirements*, 78 FR 78923 (December 27, 2013) at 78926.

⁵⁵ *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements*, 81 FR 34817, 34836–34837 (May 31, 2016).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Staff also reviewed the Mexican Commission's website to confirm various provisions of Mexican laws and regulations that were relevant to the proposed Comparability Determination and proposed Comparability Order.

⁵⁹ 2022 Proposal at 76381.

⁶⁰ *Id.*

⁶¹ Better Markets Letter at p. 3.

⁶² *Id.*

⁶³ *Id.* at p. 2.

any terms and conditions it deems appropriate in issuing a Comparability Order, including conditions with respect to capital adequacy and financial reporting requirements of non-U.S. nonbank SDs.⁶⁴

The process employed in this Comparability Determination is consistent with the Commission's established approach to conducting comparability assessments. Upon a finding of comparability, the Commission's policy generally is that eligible entities may comply with a substituted compliance regime subject to the conditions the Commission places on its finding, and subject to the Commission's retention of its examination authority and its enforcement authority.⁶⁵ In this regard, the Commission has stated that certain conditions included in a Comparability Order may be designed to ensure the Commission's direct access to books and records required to be maintained by an SD registered with the Commission.⁶⁶ Other conditions may address areas where the foreign jurisdiction lacks analogous requirements.⁶⁷ The inclusion of conditions in a Comparability Order was contemplated as an integral part of the Commission's holistic, principles-based approach to conducting comparability assessments and is not inconsistent with a grant of substituted compliance.

In particular, Commission Regulation 23.106(a)(5) states the Commission's authority to impose conditions in issuing a Comparability Determination in connection with the CFTC Capital Rules and the CFTC Financial Reporting Rules. As further discussed below, the conditions proposed in the 2022 Proposal are clearly of the nature contemplated by Commission Regulation 23.106(a)(5).

The Commission also does not believe that the inclusion of conditions in the proposed Comparability Order reflects a "rewriting" of the Mexican laws and

regulations as asserted by Better Markets. Consistent with the Commission's policy described above, a majority of the conditions contained in the proposed Comparability Order are designed to ensure that: (i) the Mexican nonbank SD is eligible for substituted compliance based on the Mexican laws and regulations that were reviewed by the Commission in performing the comparability assessment, and (ii) the Commission and the NFA receive timely financial information and notices to effectively monitor a Mexican nonbank SD's compliance with the Comparability Order and to assess the ongoing safety and soundness of the Mexican nonbank SD. Specifically, there are 23 conditions in the final Comparability Order. Four conditions set forth criteria that a Mexican nonbank SD must meet to be eligible for substituted compliance pursuant to the Comparability Order.⁶⁸ The four conditions ensure that only Mexican nonbank SDs that are within the scope of, and comply with, the Mexican Capital Rules and Mexican Financial Reporting Rules that were part of the Commission's comparability assessment may apply for substituted compliance.

Eight additional conditions require Mexican nonbank SDs within the scope of the Comparability Order to provide notice to the Commission and NFA of certain defined events,⁶⁹ and a further two conditions require Mexican nonbank SDs to file with the Commission and NFA copies of certain unaudited and audited financial reports

that the firms provide to their applicable authorities.⁷⁰ In addition, two additional conditions reflect administrative matters necessary to implement the substituted compliance framework.⁷¹ Lastly, six conditions impose obligations on Mexican nonbank SDs that align with certain of the Commission's requirements for nonbank SDs. The six conditions require a Mexican nonbank SD to: (i) maintain a minimum amount of fundamental capital equal to or in excess the equivalent of \$20 million (Condition 5); (ii) provide notice if it seeks the approval of the Mexican Commission to use internal models to compute market risk and/or credit risk and refrain from using internal models to compute regulatory capital without the authorization of the Commission (Condition 7); (iii) prepare and keep current financial books and records (Condition 8); (iv) file a monthly schedule of the firm's financial positions on Schedule 1 of appendix B to Subpart E of part 23 of the Commission's regulations (Condition 11); (v) file a monthly report listing the custodians holding margin posted by, and collected by, the Mexican nonbank SD, the amount of margin held by each custodian, and the aggregate amount of margin required to be posted and collected by the Mexican nonbank SD

⁷⁰ The two conditions provide that a Mexican nonbank SD must file with the Commission and NFA: (i) English language copies of certain financial reporting templates that the Mexican nonbank SD is required to submit to the relevant Mexican authorities pursuant to Article 203 of the General Provisions and Article 202 and Exhibit 9 of the General Provisions, as applicable (Condition 9), and (ii) English language copies of its annual audited financial statements and management report that are required to be prepared and published pursuant to Article 203 of the General Provisions (Condition 10).

⁷¹ One of the administrative conditions provides that a Mexican nonbank SD must provide a notice to the Commission of its intent to comply with the Comparability Order and the Mexican Capital Rules and Mexican Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Financial Reporting Rules. The notice must include the Mexican nonbank SD's representation that the firm is organized and domiciled in Mexico, is licensed by the Mexican Commission as a *casa de bolsa*, and is subject to, and complies with, the Mexican Capital Rules and the Mexican Financial Reporting Rules (Condition 6). A second administrative condition provides that a Mexican nonbank SD must file any documents with the Commission and NFA via electronic transmission (Condition 23). With respect to Condition 6, the Commission also notes that the language of the proposed condition required that a Mexican nonbank SD provide a notice of its intent to comply with "applicable" Mexican Capital Rules and Mexican Financial Reporting Rules. Given that "Mexican Capital Rules" and "Mexican Financial Reporting Rules" are terms defined in the Comparability Order to include laws and regulations that apply to Mexican nonbank SDs, the word "applicable" is superfluous and is, therefore, not included in the final Comparability Order.

⁶⁴ 17 CFR 23.106(a)(5). Commission Regulation 23.106(a)(3) establishes the Commission's standard of review for performing a Comparability Determination and provides that the Commission may consider all relevant factors, including whether the relevant foreign jurisdiction's capital adequacy and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital adequacy and financial reporting requirements for SDs. 17 CFR 23.106(a)(3)(ii).

⁶⁵ 85 FR 57462 at 57520. See also Guidance at 45342–45344 and *Comparability Determination for the European Union: Certain Transaction Level Requirements*, 78 FR 78878 (December 27, 2013) at 78880.

⁶⁶ *Comparability Determination for the European Union: Certain Transaction Level Requirements*, 78 FR 78878 (December 27, 2013) at 78880.

⁶⁷ Guidance at 45343.

⁶⁸ The four criteria provide that the Mexican nonbank SD: (i) is not subject to capital rules of a U.S. prudential regulator (Condition 1); (ii) is organized and domiciled in Mexico (Condition 2); (iii) is licensed by the Mexican Commission as a broker-dealer (*i.e.*, *casa de bolsa*) (Condition 3); and (iv) is subject to the Mexican Capital Rules and the Mexican Financial Reporting Rules that are part of the Commission's comparability assessment (Condition 4).

⁶⁹ The eight conditions require a Mexican nonbank SD to provide notice to the Commission in the event that the firm: (i) is informed by the Mexican Commission that it failed to comply with any component of the Mexican Capital Rules or Mexican Financial Reporting Rules (Condition 15); (ii) it breaches its capital conservation buffer requirement (Condition 16); (iii) fails to maintain regulatory capital in the form of fundamental capital of at least the equivalent of \$20 million (Condition 17); (iv) experiences a 30 percent or more decrease in its excess regulatory capital as compared to that the excess regulatory capital last reported (Condition 18); (v) fails to make or keep current financial books and records (Condition 19); (vi) fails to post or collect margin for uncleared swaps and non-cleared security-based swaps with one or more counterparties in amounts that exceed defined limits (Condition 20); (vii) changes its fiscal year end date (Condition 21); and (viii) is subject to material changes to the Mexican Capital Rules, Mexican Financial Reporting Rules, or the supervisory authority of the Mexican Commission (Condition 22).

(Condition 13); and (vi) submit, with each filing of financial information, a statement by an authorized representative that, to the best knowledge and belief of the person making the representation, the information is true and correct (Condition 14).⁷²

As the substance of these conditions demonstrates, the primary objective of a majority of the conditions is not to compensate for regulatory gaps in the Mexican capital and financial reporting framework, but rather to ensure that the Commission and NFA receive information to conduct ongoing monitoring of Mexican nonbank SDs for compliance with relevant capital and financial reporting requirements. As discussed above, in issuing a Comparability Order, the Commission is not ceding its supervisory and enforcement authorities. The Comparability Order permits Mexican nonbank SDs to satisfy the Commission's capital and financial reporting requirements by complying with certain laws and/or regulations of Mexico that have been found to be comparable to the Commission's laws and/or regulations in purpose and effect. The Commission and NFA, however, have a continuing obligation to conduct ongoing oversight, including potential examination, of Mexican nonbank SDs to ensure compliance with the Comparability Order, including its conditions. To that effect, the notice and financial reporting conditions set forth in the Comparability Order provide the Commission and NFA with information necessary to monitor for such compliance and to evaluate the operational condition and ongoing financial condition of Mexican nonbank SDs. The Commission may also initiate an enforcement action against a Mexican nonbank SD that fails to comply with the conditions of the Comparability Order.⁷³

⁷² Another condition specifies that Mexican nonbank SDs that are registered with the U.S. Securities and Exchange Commission ("SEC") as security-based swap dealers ("SBSDs") and required to file with the SEC, or its designee, Form X-17A-5 ("FOCUS Report"), must file a copy of such FOCUS Report with the Commission and NFA within 35 calendar days after the end of each month (Condition 12). A Mexican nonbank SD that files a FOCUS Report pursuant to Condition 12 will not be required to file the reports and schedules specified in Conditions 9 and 11. Currently, no Mexican nonbank SD is registered as a SBSD.

⁷³ As the Commission stated in the 2022 Proposal, a non-U.S. nonbank SD that operates under a Comparability Order issued by the Commission remains subject to the Commission's examination and enforcement authority. Specifically, the Commission may initiate an enforcement action against a non-U.S. nonbank SD that fails to comply with its home-country capital adequacy and/or financial reporting requirements cited in a

Furthermore, to the extent that a condition imposes a new obligation on Mexican nonbank SDs, the imposition of such condition is also consistent with Commission Regulation 23.106 and the Commission's established policy with regard to comparability determinations. As discussed above, the Commission contemplated that even in circumstances where the Commission finds two regulatory regimes comparable, the Commission may impose requirements on entities relying on substituted compliance where the Commission determines that the home jurisdiction's regime lacks comparable and comprehensive regulation on a specific issue.⁷⁴ The Commission's authority to impose such conditions is set out in Commission Regulation 23.106(a)(5), which states that the Commission may impose "any terms and conditions it deems appropriate, including certain capital adequacy and financial reporting requirements [on SDs]." ⁷⁵

Better Markets further stated that, if the Commission grants substituted compliance with regard to materially different regulatory requirements, it must make a well-supported comparability determination by, at a minimum, clearly and specifically setting forth the desired regulatory outcome and providing a detailed, evidence-based explanation as to how the jurisdiction's different legal requirements nonetheless lead to a comparable regulatory outcome.⁷⁶ Better Markets further asserted that "[a] determination that a foreign jurisdiction's nonbank SDs rules would produce comparable regulatory outcomes is the beginning, not the end, of the CFTC's obligation to ensure that the activities of the foreign nonbank SD entities do not pose risks to the U.S. financial system. As time goes on, regulatory requirements that, in theory, are expected to produce one regulatory outcome may, in practice, produce a different one. And, of course, the regulatory requirements may themselves be changed in a variety of ways. Finally, the effectiveness of an authority's supervision and enforcement program

Comparability Order. See 2022 Proposal at 76376–76377. See also 17 CFR 23.106(a)(4)(ii), which provides that the Commission may examine all nonbank SDs, regardless of whether the nonbank SDs rely on substituted compliance, and that the Commission may initiate an enforcement action under the Commission's capital and financial reporting regulations against a non-U.S. nonbank SD that fails to comply with a foreign jurisdiction's capital adequacy and financial reporting requirements.

⁷⁴ Guidance at 45343.

⁷⁵ 17 CFR 23.106(5).

⁷⁶ Better Markets Letter at pp. 7–8.

can become weakened for any number of reasons—the CFTC cannot assume that an enforcement program that is presently effective will continue to be effective."⁷⁷ Better Markets further asserted that to fulfill its obligation to protect the U.S. financial system, the Commission must ensure, on an ongoing basis, that each grant of substituted compliance remains appropriate over time by, at a minimum, requiring each Comparability Order, and each MOU with a foreign regulatory authority, to impose an obligation on the applicant, as appropriate, to: (i) periodically apprise the Commission of the activities and results of its supervision and enforcement programs, to ensure that they remain sufficiently robust to deter and address violations of the law; and (ii) immediately apprise the Commission of any material changes to the regulatory regime, including changes to rules or interpretations of rules.⁷⁸

Although the Commission disagrees that the Mexican Capital Rules and the Mexican Financial Reporting Rules, as a whole, are materially different or do not achieve comparable regulatory outcomes when compared to the CFTC Capital Rules and CFTC Financial Reporting Rules, the Commission concurs that granting substituted compliance should be the result of a well-supported comparability assessment. Consistent with that view, the Commission believes that this final Comparability Determination articulates the Commission's analysis in sufficient detail and provides an appropriate explanation of how the foreign jurisdiction's requirements are comparable in purpose and effect with the Commission's requirements, and lead to comparable regulatory outcomes with the Commission's requirements. Specifically, section III of the 2022 Proposal and section II of the final Comparability Determination reflect, among other observations, the Commission's detailed analysis with respect to each of the elements for consideration listed in Commission Regulation 23.106(a)(3).

The Commission also concurs that the availability of substituted compliance is conditioned upon a non-US nonbank SD's ongoing compliance with the terms and conditions of the final Comparability Order, and the Commission's ongoing assessment that the Mexican Capital Rules and Mexican Financial Reporting Rules remain comparable in purpose and effect with the CFTC Capital Rules and CFTC

⁷⁷ *Id.* at p. 8.

⁷⁸ *Id.*

Financial Reporting Rules. As noted above, and discussed in more detail in sections II.D. and E. below, Mexican nonbank SDs are subject to notice and financial reporting requirements under the final Comparability Order that provide Commission and NFA staff with the ability to monitor the Mexican nonbank SDs' ongoing compliance with the conditions set forth in the final Comparability Order. In addition, the final Comparability Order requires the Applicants to inform the Commission of changes to the relevant Mexican Capital Rules and Mexican Financial Reporting Rules so that the Commission may assess the continued effectiveness of the Comparability Order in ensuring that the Mexican laws and regulations have the comparable regulatory objectives of the CEA and Commission regulations of ensuring the safety and soundness of nonbank SDs.⁷⁹ Commission staff will also monitor the Mexican nonbank SDs directly as part of its supervisory program and will discuss with the firms any proposed or pending revisions to specific laws and rules cited in the final Comparability Order. Lastly, in addition to assessing the effectiveness of the Comparability Order as a result of revisions or proposed revisions to the Mexican laws, regulations, or supervisory regime, the Commission further notes that future material changes to the CFTC Capital Rules or CFTC Financial Reporting Rules, or the Commission's or NFA's supervisory programs, may necessitate an amendment to the Comparability Determination and Comparability Order to reflect those changes.⁸⁰

Another commenter, Harrington, stated that the Commission "must prevent every regulated [SD] globally from providing a non-margined swap contract with a flip clause [. . .]."⁸¹ Harrington has elsewhere referred to a description of a "flip clause" as a provision in swap contracts with structured debt issuers that reverses or "flips" the priority of payment obligations owed to the swap counterparty on the one hand, and the noteholders on the other, following a

specified event of default.⁸² Based on Harrington's description, flip clauses present a risk to the SD in synthetic transactions where payments under a swap contract are secured with the same collateral that would serve to cover payments under the notes issued by a structured debt issuer. In such circumstances, an "event of default" by the SD would cause the SD's priority of payment from the collateral under a swap to "flip" to a more junior priority position, including for mark-to-market gains on "in the money" swaps.⁸³ Harrington argued that "[each] flip clause exposes a derivative contract provider to the maximum loss of 100% of contract value of each swap-contract-with-flip-clause."⁸⁴ Harrington recognized, however, that the CFTC margin requirements for uncleared swap transactions address his concerns associated with the inclusion of a flip clause.⁸⁵ Nonetheless, according to the Harrington, risks arise in circumstances when non-U.S. margin rules exempt SDs from margin obligations in connection with swaps with a structured debt issuer.⁸⁶

The Commission recognizes that given regulatory differences, some transactions that are subject to the CFTC margin requirements for uncleared swaps may not be subject to regulatory margin requirements in another jurisdiction. In connection with this Comparability Determination, however, the Commission notes that both under the CFTC Capital Rules and the Mexican Capital Rules, uncollateralized exposures from uncleared swap transactions would generate a higher counterparty credit risk exposure amount than the exposures resulting from transactions under which the counterparties have posted collateral.⁸⁷

⁸² William J. Harrington, Submission to the U.S. Securities and Exchange Commission Re: File No. S7-08-12 (Nov. 19, 2018) at p.8.

⁸³ For additional information on the legal mechanics of a flip clause, see *Lehman Brothers Special Financing Inc v. Bank of America N.A.*, No. 18-1079 (2nd Cir. 2020).

⁸⁴ Harrington Letter at p. 11.

⁸⁵ Harrington Letter at p. 4 (noting that the requirement for SDs to post and collect variation margin for swap contracts with a securitization or structured debt issuer "generates the immense benefit of inducing U.S. securitization and structured debt issuers to forswear all swap contracts").

⁸⁶ *Id.* (arguing that "non-U.S. swap margin rules de facto exempt a swap provider from collecting or posting variation margin under a new contract with most securitization and structured debt issuers").

⁸⁷ 12 CFR 217.34 and 12 CFR 217.132 (indicating that nonbank SDs may recognize the risk-mitigating effects of financial collateral for collateralized derivatives contracts) and Article 160 of the General Provisions (similarly indicating that Mexican nonbank SDs are allowed to recognize the risk-mitigating effect of collateral by deducting the amount of collateral from the exposure amount).

Accordingly, the Commission does not believe that the respective sets of rules adopt a conflicting approach or lead to a disparate outcome with respect to the capital treatment of uncollateralized uncleared swap exposures that would warrant a finding of non-comparability of the CFTC Capital Rules and the Mexican Capital Rules.

II. Final Capital and Financial Reporting Comparability Determination and Comparability Order

The following section provides the Commission's comparative analysis of the Mexican Capital Rules and the Mexican Financial Reporting Rules with the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules, as described in the 2022 Proposal, further modified to address comments received. As emphasized in the 2022 Proposal, the capital and financial reporting regimes are complex structures comprised of a number of interrelated regulatory components.⁸⁸ Differences in how jurisdictions approach and implement these regimes are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS framework.

The Commission performed the analysis by assessing the comparability of the Mexican Capital Rules for Mexican nonbank SDs, as set forth in the Mexico Application and in the English language translation of certain applicable Mexican laws and regulations, with the Commission's Bank-Based Approach for nonbank SDs. The Commission understands that, as of the date of the final Comparability Determination, the Applicants are subject to a bank-based capital approach under the Mexican Capital Rules. Accordingly, when the Commission makes its final determination herein about the comparability of the Mexican Capital Rules with the CFTC Capital Rules, the determination pertains to the comparability of the Mexican Capital Rules with the Bank-Based Approach under the CFTC Capital Rules. The Commission notes that any material changes to the information submitted in the Mexico Application, including, but not limited to, proposed and final material changes to the Mexican Capital Rules or Mexican Financial Reporting Rules, as well as any proposed and final material changes to the Mexican Commission's supervisory authority or supervisory regime will require notification to the Commission and NFA pursuant to Condition 22 of the final

⁷⁹ Condition 22 of the final Comparability Order requires the Applicants to notify the Commission of any material changes to the information submitted in their application, including, but not limited to, proposed and final material changes to the Mexican Capital Rules or Mexican Financial Reporting Rules and proposed and final material changes to the Mexican Commission's supervisory authority or supervisory regime over Mexican nonbank SDs. The Commission notes that it made certain non-substantive, clarifying changes to the language of final Condition 22 as compared to the proposed condition.

⁸⁰ 2022 Proposal at 76381 (n. 91).

⁸¹ Harrington Letter at p. 4.

⁸⁸ 2022 Proposal at 76381.

Comparability Order.⁸⁹ Therefore, if there are subsequent material changes to the Mexican Capital Rules, Mexican Financial Reporting Rules, or the supervisory authority or supervisory regime, the Commission will review and assess the impact of such changes on the final Comparability Determination and Comparability Order as they are then in effect, and may amend or supplement the Comparability Order as appropriate.⁹⁰

A. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules and Mexican Capital Rules and Mexican Financial Reporting Rules

1. Preliminary Determination

As reflected in the 2022 Proposal and discussed above, the Commission preliminarily determined that the overall objectives of the Mexican Capital Rules and CFTC Capital Rules are comparable in that both sets of rules are intended to ensure the safety and soundness of nonbank SDs by establishing regulatory regimes that require nonbank SDs to maintain a sufficient amount of qualifying regulatory capital to absorb losses, including losses from swaps and other trading activities, and to absorb decreases in the value of firm assets and increases in the value of firm liabilities without the nonbank SDs becoming insolvent.⁹¹ The Commission further noted that the Mexican Capital Rules and CFTC Capital Rules are also based on, and consistent with, the BCBS framework, which was designed to ensure that banking entities hold sufficient levels of capital to absorb losses, decreases in the value of firm assets, and increases in the value of firm liabilities without the banks becoming insolvent.⁹²

The Commission observed that Mexican Capital Rules and CFTC

Capital Rules provide for a comparable approach to the calculation of on-balance sheet and off-balance sheet risk exposures using non-model, standardized approaches.⁹³ In addition, as discussed in the 2022 Proposal, the Mexican Capital Rules' and CFTC Capital Rules' requirements for identifying and measuring on-balance sheet and off-balance sheet exposures under the standardized approaches are also consistent with the requirements set forth under the BCBS framework for identifying and measuring on-balance sheet and off-balance sheet exposures.⁹⁴

Finally, the Commission preliminarily found that the Mexican Capital Rules and CFTC Capital Rules achieve comparable outcomes and are comparable in purpose and effect in that both limit the types of capital instruments that qualify as regulatory capital to cover the on-balance sheet and off-balance sheet risk exposures to high quality equity capital and qualifying subordinated debt instruments that meet conditions designed to ensure that the holders of the debt have effectively subordinated their claims to other creditors of the nonbank SD.⁹⁵ As discussed in the 2022 Proposal and in section II.B. below, both the Mexican Capital Rules and the CFTC Capital Rules define high quality capital by the degree to which the capital represents permanent capital that is contributed, or readily available to a nonbank SD, on an unrestricted basis to absorb unexpected losses, including losses from swaps trading and other activities, decreases in the value of firm assets, and increases in the value of firm liabilities without the nonbank SD becoming insolvent.⁹⁶

The Commission further stated that it preliminarily found the Mexican Financial Reporting Rules to be comparable in purpose and effect to the CFTC Financial Reporting Rules as both sets of rules require nonbank SDs to provide the Mexican Commission and the Banco de Mexico ("Mexican Central Bank"), as applicable, and the CFTC, respectively, with periodic financial reports, including unaudited financial reports and an annual audited financial report, detailing their financial operations and demonstrating their compliance with minimum capital requirements.⁹⁷ As discussed in the 2022 Proposal, in addition to providing the CFTC and Mexican Commission with information necessary to

comprehensively assess the financial condition of a nonbank SD on an ongoing basis, the financial reports further provide the CFTC and Mexican Commission with information regarding potential changes in a nonbank SD's risk profile by disclosing changes in account balances reported over a period of time.⁹⁸ Such changes in account balances may indicate, among other things, that the nonbank SD has entered into new lines of business, has increased its activity in an existing line of business relative to other activities, or has terminated a previous line of business.⁹⁹

In assessing the comparability between the CFTC Financial Reporting Rules and the Mexican Financial Reporting Rules, the Commission noted that the prompt and effective monitoring of the financial condition of nonbank SDs through the receipt and review of periodic financial reports supports the CFTC and the Mexican Commission in meeting their respective objectives of ensuring the safety and soundness of nonbank SDs. In this regard, the Commission stated that the early identification of potential financial issues provides the CFTC and the Mexican Commission with an opportunity to address such issues with the nonbank SD before they develop to a state where the financial condition of the firm is impaired such that it may no longer hold a sufficient amount of qualifying regulatory capital to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, or to cover losses from the firm's business activities, including the firm's swap dealing activities and obligations to swap counterparties.¹⁰⁰

2. Comment Analysis and Final Determination

In response to the Commission's request for comment, Better Markets identified certain differences between the CFTC Capital Rules and CFTC Financial Reporting Rules and the Mexican Capital Rules and Mexican Financial Reporting Rules and stated that the differences mandated denial of the request for a comparability determination.¹⁰¹ Better Markets further

⁸⁹ Condition 22 of the final Comparability Order. The Commission notes that it made certain non-substantive changes to the language of final Condition 22 as compared to the proposed condition.

⁹⁰ See 2022 Proposal at 76381. As stated in the 2022 Proposal, the Commission may also amend or supplement the Comparability Order to address any material changes to the CFTC Capital Rules and CFTC Financial Reporting Rules, including rule amendments to capital rules of the Federal Reserve Board that are incorporated into the CFTC Capital Rules' Bank-Based Approach under Commission Regulation 23.101(a)(1)(i), that are adopted after the final Comparability Order is issued. See *id.*, (n. 91).

⁹¹ See 2022 Proposal at 76382.

⁹² The BCBS's mandate is to strengthen the regulation, supervision and practices of banks with the purpose of enhancing financial stability. See *Basel Committee Charter* available on the Bank for International Settlement website: www.bis.org/bcbs/charter.htm. See also 2022 Proposal at 76382.

⁹³ See 2022 Proposal at 76382.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 76383.

¹⁰¹ Better Markets Letter at pp. 8–13. Better Markets asserted that the Mexican capital rules are different from the Commission's capital rules with respect to the definition and types of capital permitted to meet regulatory requirements; the approaches to ensuring adequate levels of capital; and, the minimum dollar amount of regulatory capital required. Better Markets also stated that the reporting requirements are different as demonstrated by the number of conditions included

stated that the imposition of conditions to achieve comparability between the regimes is a de facto admission that the regulations are not comparable and that the request should be denied.¹⁰² Better Markets observed that the conditions added another set of capital and reporting requirements that Mexican nonbank SDs will have to abide by in addition to the Mexican laws and rules, requiring the CFTC to monitor compliance with all of the conditions, exacerbating the complexity of the administration of the capital and financial reporting rules.¹⁰³

As described herein and in the 2022 Proposal, Commission staff has engaged in a detailed, comprehensive study and evaluation of the Mexican capital and financial reporting framework and has confirmed that its understanding of the elements and application of the framework is accurate. The Commission has also concluded, based on its evaluation, that the Mexican Commission has a comprehensive oversight program for monitoring Mexican nonbank SD's compliance with relevant Mexican Capital Rules.

Furthermore, as discussed in section I.E. above, the conditions set forth in the Comparability Order are generally intended to ensure that: (i) only Mexican nonbank SDs that are subject to the laws and regulations assessed under the Comparability Determination are eligible for substituted compliance; (ii) the Mexican nonbank SDs are subject to supervision by the Mexican Commission; and (iii) the Mexican nonbank SDs provide information to the Commission and NFA that is relevant to the ongoing supervision of their operations and financial condition. Considering this thorough analysis and the ongoing requirement for Mexican nonbank SDs to provide information to the Commission and NFA demonstrating compliance with the Comparability Order, the Commission is confident that it is capable of effectively conducting, together with NFA, oversight of the Mexican nonbank SDs in a manner consistent with the conduct of oversight of U.S.-domiciled nonbank SDs. In light of the Commission's ultimate conclusion that the Mexican capital and financial reporting requirements are comparable based on the standards articulated in Commission Regulation 23.106(a)(3), the Commission believes that a failure to issue a Comparability Determination and

Comparability Order would in fact be "suboptimal and undesirable" as it would impose duplicative requirements that would result in increased costs for registrants and market participants without a commensurate benefit from an oversight perspective.

As discussed in sections I.B. and E. above, and detailed herein, the Commission finds that the CFTC Capital Rules and CFTC Financial Reporting Rules and the Mexican Capital Rules and Mexican Financial Reporting Rules are comparable in purpose and effect, and have overall comparative objectives, notwithstanding the identified differences. In this regard, the Commission notes that instead of conducting a line-by-line assessment or comparison of the Mexican Capital and Mexican Financial Reporting Rules and the CFTC Capital and CFTC Financial Reporting Rules, it has applied in the assessment set forth in this determination and order, a principles-based, holistic approach in assessing the comparability of the rules, consistent with the standard of review it adopted in Commission Regulation 23.106(a)(3). Based on that principles-based, holistic assessment, the individual elements which are described in more detail below in sections II.B through II.F. below, the Commission has determined that both sets of rules are designed to ensure the safety and soundness of nonbank SDs and achieve comparable outcomes. As such, the Commission adopts the Comparability Determination and Comparability Order as proposed with respect to the analysis of the regulatory objectives of the CFTC Capital Rules and Financial Reporting Rules and the Mexican Capital and Financial Reporting Rules.

B. Nonbank Swap Dealer Qualifying Capital

1. Preliminary Determination

As discussed in the 2022 Proposal, the Commission preliminarily determined that the Mexican Capital Rules are comparable in purpose and effect to CFTC Capital Rules with regard to the types and characteristics of a nonbank SD's equity that qualifies as regulatory capital in meeting its minimum requirements.¹⁰⁴ The Commission explained that the Mexican Capital Rules and the CFTC Capital Rules for nonbank SDs both require a nonbank SD to maintain a quantity of high-quality and permanent capital, all defined in a manner that is consistent with the BCBS framework, that based on the firm's activities and on-balance

sheet and off-balance sheet exposures, is sufficient to absorb losses and decreases in the value of firm assets and increases in the value of firm liabilities without resulting in the firm becoming insolvent.¹⁰⁵ The Commission observed that the Mexican Capital Rules and the CFTC Capital Rules permit nonbank SDs to recognize comparable forms of equity capital and qualifying subordinated debt instruments toward meeting minimum capital requirements, with both the Mexican Capital Rules and the CFTC Capital Rules emphasizing high quality capital instruments.

In support of its preliminary Comparability Determination, the Commission noted that the CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital in the form of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in amounts that meet certain stated minimum requirements set forth in Commission Regulation 23.101.¹⁰⁶ Common equity tier 1 capital is generally composed of an entity's common stock instruments, and any related surpluses, retained earnings, and accumulated other comprehensive income, and is a more conservative or permanent form of capital that is last in line to receive distributions in the event of the entity's insolvency.¹⁰⁷ Additional tier 1 capital is generally composed of equity instruments such as preferred stock and certain hybrid securities that may be converted to common stock if triggering events occur and may have a preference in distributions over common equity tier 1 capital in the event of an insolvency.¹⁰⁸ Total tier 1 capital is composed of common equity tier 1 capital and further includes additional tier 1 capital. Tier 2 capital includes certain types of instruments that include both debt and equity characteristics such as qualifying subordinated debt.¹⁰⁹ Subordinated debt must meet certain conditions to qualify as tier 2 capital under the CFTC Capital Rules.¹¹⁰

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 76383 (citing to Commission Regulation 23.101(a)(1)(i)). The terms "common equity tier 1 capital," "additional tier 1 capital," and "tier 2 capital" are defined in the bank holding company regulations of the Federal Reserve Board. See 12 CFR 217.20.

¹⁰⁷ 12 CFR 217.20(b).

¹⁰⁸ 12 CFR 217.20(c).

¹⁰⁹ 12 CFR 217.20(d).

¹¹⁰ The subordinated debt must meet the requirements set forth in SEC Rule 18a-1d. Specifically, subordinated debt instruments must have a term of at least one year (with the exception of approved revolving subordinated debt agreements which may have a maturity term that is

Continued

in the 2022 Proposal that would require Mexican nonbank SDs to file additional reports with the Commission. Better Markets comments are addressed in the appropriate sections below.

¹⁰² *Id.* at p. 2.

¹⁰³ *Id.* at p. 13.

¹⁰⁴ See 2022 Proposal at 76384.

The preliminary Comparability Determination also noted that the Mexican Capital Rules limit the composition of regulatory capital to common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in a manner consistent with the BCBS framework.¹¹¹ As the Commission observed, the Mexican Capital Rules provide that: (i) common equity tier 1 capital may generally be composed of retained earnings and common equity instruments; (ii) additional tier 1 capital may include other capital instruments and certain long-term convertible debt instruments; and (iii) tier 2 capital may include certain qualifying subordinated debt instruments.¹¹²

Based on its comparative assessment, the Commission preliminarily found that equity instruments that qualify as common equity tier 1 capital and additional tier 1 capital under the Mexican Capital Rules and the CFTC Capital Rules have similar characteristics (e.g., the equity must be in the form of high-quality, committed, and permanent capital) and the equity instruments generally have no priority to the distribution of firm assets or income with respect to other shareholders or creditors of the firm, which makes this equity available to a nonbank SD to absorb unexpected losses, including counterparty defaults.¹¹³

The Commission also found that instruments that qualify as tier 2 capital under the Mexican Capital Rules and the CFTC Capital Rules have similar characteristics. Specifically, the Commission noted that the qualifying conditions imposed on subordinated debt instruments under the Mexican Capital Rules and the CFTC Capital Rules are comparable in that they are designed to ensure that the subordinated debt has qualities that support its recognition by a nonbank SD as equity for capital purposes.¹¹⁴ The

less than one year), and contain terms that effectively subordinate the rights of lenders to receive any payments, including accrued interest, to other creditors of the firm. 17 CFR 23.101(a)(1)(i)(B) and 17 CFR 240.18a–1d.

¹¹¹ See 2022 Proposal at 76383 and Article 162 of the General Provisions. As discussed in the 2022 Proposal, the Mexican Capital Rules employ different terminology to refer to the components of total capital than the CFTC Capital Rules and the BCBS framework. For example, the Mexican Capital Rules refer to total capital as “net capital,” common equity tier 1 capital as “fundamental capital,” and the 8 percent requirement is described as a “capitalization index” requirement. 2022 Proposal at 76379 (n. 67). Where appropriate, this Comparability Determination uses the same terminology that is used in the CFTC Capital Rules and in the BCBS framework, for ease of reference.

¹¹² See 2022 Proposal at 76383.

¹¹³ *Id.*

¹¹⁴ *Id.*

proposed conditions include, in the case of the CFTC Capital Rules, regulatory requirements that effectively subordinate the claims of debt holders to interest and repayment of the debt to the claims of other creditors of the nonbank SD, and, in the case of the Mexican Capital Rules, regulatory requirements that provide Mexican nonbank SDs with the right to cancel scheduled interest payments and to convert the debt to common equity of the firm.¹¹⁵

2. Comment Analysis and Final Determination

The Commission did not receive comments regarding its preliminary determination that the Mexican Capital Rules are comparable in purpose and effect to the CFTC Rules with respect to the types of and characteristics of a nonbank SD’s equity and subordinated debt that qualifies as regulatory capital to meet minimum regulatory capital requirements. Therefore, the Commission finds that the Mexican Capital Rules and the CFTC Capital Rules, are comparable in purpose and effect, and achieve comparable regulatory outcomes, with respect to the types of capital instruments that qualify as regulatory capital. Both the Mexican Capital Rules and the CFTC Capital Rules limit regulatory capital to permanent and conservative forms of capital, including common equity, capital surpluses, retained earnings, and subordinate debt where debt holders effectively subordinate their claims to repayment to all other creditors of the nonbank SD in the event of the firm’s insolvency. Limiting regulatory capital to the above categories of equity and debt instruments promotes the safety and soundness of the nonbank SD by helping to ensure that the regulatory capital is not withdrawn or converted to other equity instruments that may have rights or priority with respect to payments, such as dividends or distributions in insolvency, over other creditors, including swap counterparties. The Commission, therefore, is adopting the Comparability Order as proposed with respect to the types and characteristics of equity and subordinated debt that qualifies as regulatory capital to meet minimum capital requirements under the Mexican Capital Rules.

¹¹⁵ *Id.*, (referencing 17 CFR 240.18a–1d and Articles 162 and 162 Bis of the General Provisions).

C. Nonbank Swap Dealer Minimum Capital Requirement

1. Introduction to Nonbank Swap Dealer Minimum Capital Requirements

As reflected in the 2022 Proposal, the CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital in an amount that satisfies each of the following criteria: (i) an amount of common equity tier 1 capital of at least \$20 million; (ii) an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital equal or greater than 8 percent of the nonbank SD’s total risk-weighted assets, provided that common equity tier 1 capital comprises at least 6.5 percent of the 8 percent; (iii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or in excess of 8 percent of the nonbank SD’s uncleared swap margin amount; ¹¹⁶ and (iv) the amount of capital required by NFA.¹¹⁷

In comparison, the Mexican Capital Rules require each Mexican nonbank SD to maintain qualifying regulatory capital to satisfy the following capital ratios, expressed as a percentage of the firm’s total risk-weighted assets: (i) common equity tier 1 capital equal to at least 4.5 percent of the firm’s risk-weighted assets; (ii) total tier 1 capital (*i.e.*, common equity tier 1 capital plus additional tier 1 capital) equal to at least 6 percent of the firm’s risk-weighted assets; (iii) total capital (*i.e.*, an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) equal to at least 8 percent of the firm’s risk-weighted assets; and (iv) an additional capital conservation buffer of 2.5 percent of the firm’s risk-

¹¹⁶ The term “uncleared swap margin” is defined in Commission Regulation 23.100 to generally mean the amount of initial margin that a nonbank SD would be required to collect from each counterparty for each outstanding swap position of the nonbank SD. 17 CFR 23.100. A nonbank SD must include all swap positions in the calculation of the uncleared swap margin amount, including swaps that are exempt or excluded from the scope of the Commission’s uncleared swap margin regulations. A nonbank SD must compute the uncleared swap margin amount in accordance with the Commission’s margin rules for uncleared swaps. 17 CFR 23.154.

¹¹⁷ 17 CFR 23.101(a)(1)(i). See also 2022 Proposal at 76388. Commission Regulation 23.101(a)(1)(i) sets forth one of the minimum thresholds that a nonbank SD must meet as the “the amount of capital required by a registered futures association.” As previously noted, NFA is currently the only entity that is a registered futures association. NFA has adopted the Commission’s capital requirements as its own requirements, and has not adopted any additional or stricter minimum capital requirements. See, NFA rulebook, Financial Requirements Section 18 Swap Dealer and Major Swap Participant Financial Requirements, available at [nfa.futures.org](https://www.nfa.futures.org).

weighted asset that must be met with common equity tier 1 capital.¹¹⁸

2. Preliminary Determination and Comment Analysis

While noting certain differences in the minimum capital requirements and calculation of regulatory capital between the Mexican Capital Rules and the CFTC Capital Rules, the Commission preliminarily found that the Mexican Capital Rules and CFTC Capital Rules, subject to the proposed conditions in the 2022 proposed Comparability Determination and proposed Comparability Order, achieve comparable outcomes by requiring a nonbank SD to maintain a minimum level of qualifying regulatory capital and subordinated debt to absorb losses from the firm's business activities, including its swap dealing activities, and decreases in the value of the firm's assets and increases in the firm's liabilities without the nonbank SD becoming insolvent.¹¹⁹ As further discussed below, the Commission's preliminary finding of comparability was based on a principles-based, holistic comparative analysis of the three minimum capital requirement thresholds of the CFTC Capital Rules' Bank-Based Approach referenced above and the respective elements of the Mexican Capital Rules' requirements.

a. Fixed Amount Minimum Capital Requirement

As noted above, prong (i) of the CFTC Capital Rules requires each nonbank SD electing the Bank-Based Approach to maintain a minimum of \$20 million of common equity tier 1 capital. The CFTC's \$20 million fixed-dollar minimum capital requirement is intended to ensure that each nonbank SD maintains a level of regulatory capital, without regard to the level of the firm's dealing and other activities, sufficient to meet its obligations to swap market participants given the firm's status as a CFTC-registered nonbank SD, and to help ensure the safety and soundness of the nonbank SD.¹²⁰

In comparison, the Commission observed that the Mexican Capital Rules contain a requirement that each Mexican nonbank SD maintain a fixed amount of minimum paid-in capital that is based on the services or activities performed by the firm.¹²¹ The minimum

paid-in capital requirement is a fixed value of capital that is indexed annually to "Unidades de Inversión" (Inflation Indexed Units) ("UDIs"). Mexican nonbank SDs that performed the broadest array of activities as of the year ending December 31, 2021 were subject to a minimum paid-in capital requirement that equaled approximately MXN \$90,000,000 (or USD \$4,300,000).¹²²

Although the Mexican Capital Rules and the CFTC Capital Rules both require nonbank SDs to hold a minimum amount of regulatory capital that is not based on the risk-weighted assets of the firms, the Commission recognized that the \$20 million of common equity tier 1 capital required under the CFTC Capital Rules is materially higher than the estimated \$4.3 million of minimum paid-in capital required under the Mexican Capital Rules. In the Commission's view, the \$20 million represented a more appropriate level of minimum capital to help ensure the safety and soundness of the nonbank SD that is engaging in uncleared swap transactions.¹²³ As such, the Commission proposed to condition the Comparability Order to require each Mexican nonbank SD to maintain, at all times, a minimum amount of peso-denominated fundamental capital equal to or in excess of the equivalent of \$20 million.¹²⁴ The Commission proposed that a Mexican nonbank SD might convert the peso-denominated amount of this minimum capital requirement to the U.S. dollar equivalent based on a commercially reasonable and observed exchange rate.¹²⁵

One commenter, Better Markets, asserted that the difference between the CFTC Capital Rules \$20 million minimum common equity tier 1 capital requirement and the Mexican Capital Rules minimum paid-in capital requirement of approximately \$4.3 million "demonstrates a fatal lack of comparability" between the CFTC

capital requirement, Mexican Central Bank also imposes limits on a Mexican nonbank SD's overall leverage. See 2022 Proposal at 76387 and Section C.B1 of Circular 115/2002, issued by the Mexican Central Bank on November 11, 2002, as amended.

¹²² Considering an exchange rate per USD of MXN \$20.7882 as published by the Mexican Central Bank in the Federal Official Gazette (Diario Oficial de la Federación) on July 12, 2022. See 2022 Proposal at 76388.

¹²³ See 2022 Proposal at 76388.

¹²⁴ *Id.* The Commission proposed that the minimum fixed amount of capital be held in fundamental capital, given that the Commission had preliminarily found that fundamental capital, as defined in Articles 162 and 162 Bis of the General Provisions, is comparable to common equity tier 1 capital required under the CFTC Capital Rules.

¹²⁵ *Id.*

Capital Rules and the Mexican Capital Rules.¹²⁶ As noted above, the Commission recognized the difference in the requirement under the Mexican Capital Rules and the CFTC Capital Rules with respect to the \$20 million minimum dollar amount of regulatory capital a nonbank SD is required to maintain. The Commission's proposed a condition, however, effectively addresses this difference by providing that a Mexican nonbank SD may not avail itself of substituted compliance unless it maintains an amount of fundamental capital denominated in pesos that is equal to or in excess of the equivalent of \$20 million. The imposition of the condition was consistent with the Commission authority under Commission Regulation 23.106(a)(5). Furthermore, as discussed in section I.E. above, the Commission has stated that entities relying on substituted compliance may be required to comply with certain Commission imposed requirements in situations where comparable regulation in their home jurisdiction are deemed to be lacking.¹²⁷ Therefore, the Commission believes that the requirement for Mexican nonbank SDs to maintain an amount of regulatory capital in the form of fundamental capital, as defined in Article 162 and Article 162 Bis of the General Provisions, equal to or in excess of the equivalent of \$20 million will impose an equally stringent standard to the analogue requirement under the CFTC Capital Rules and will appropriately address the substantially lower minimum fixed amount capital requirement under the Mexican Capital Rules. The Commission proposed that the minimum fixed amount of capital be held in fundamental capital, given that the Commission had preliminarily found that fundamental capital, as defined in Articles 162 and 162 Bis of the General Provisions, is comparable to common equity tier 1 capital required under the CFTC Capital Rules.¹²⁸

In conclusion, the Commission finds that the Mexican Capital Rules and the CFTC Capital Rules, with the imposition of the condition for Mexican nonbank SDs to maintain a minimum level of fundamental capital in an amount equivalent to at least \$20 million, are comparable in purpose and effect and achieve comparable regulatory outcomes with respect to capital requirements based on a minimum dollar amount. The requirement for a nonbank SD with limited swap dealing or other business activities to maintain

¹¹⁸ 2022 Proposal at 76386 and Articles 172 and 173 of the Law and Article 162 of the General Provisions.

¹¹⁹ See 2022 Proposal at 76388.

¹²⁰ 85 FR 57492.

¹²¹ See 2022 Proposal at 76388, citing Article 10 of the General Provisions. The Commission also noted that, in addition to the minimum paid-in-

¹²⁶ Better Markets Letter at p. 11.

¹²⁷ Guidance at 45343.

¹²⁸ 2022 Proposal at 76388.

a minimum level of regulatory capital equivalent to \$20 million helps to ensure the firm's safety and soundness by allowing it to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to swap counterparties, other creditors, and market participants, without the firm becoming insolvent.

b. Minimum Capital Requirement Based on Risk-Weighted Assets

Prong (ii) of the CFTC Capital Rules' minimum capital requirements described above requires each nonbank SD electing the Bank-Based Approach to maintain an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, with common equity tier 1 capital comprising at least 6.5 percent of the 8 percent.¹²⁹ Risk-weighted assets are a nonbank SD's on-balance sheet and off-balance sheet exposures, including market risk and credit risk exposures, and include exposures associated with proprietary swap, security-based swap, equity, and futures positions, weighted according to risk. The requirements and capital ratios set forth in prong (ii) are based on the Federal Reserve Board's capital requirements for bank holding companies¹³⁰ and are consistent with the BCBS framework.¹³¹ The requirement for each nonbank SD to maintain regulatory capital in an amount that equals or exceeds 8 percent of the firm's total risk-weighted assets is intended to help ensure that the nonbank SD's level of capital is sufficient to absorb decreases in the value of the firm's assets, absorb increases in the value of the firm's liabilities, and cover unexpected losses resulting from the firm's business activities, including losses resulting from collateralized and uncollateralized defaults from swap counterparties, without the nonbank SD becoming insolvent.¹³²

The Mexican Capital Rules contain capital requirements for Mexican nonbank SDs that the Commission preliminarily found comparable in purpose and effect to the requirements in prong (ii) of the CFTC Capital Requirements.¹³³ Specifically, the Mexican Capital Rules require each Mexican nonbank SD to maintain: (i) common equity tier 1 capital equal to at least 4.5 percent of the Mexican nonbank SD's risk-weighted assets; (ii) total tier 1 capital (*i.e.*, common equity tier 1 capital plus additional tier 1 capital) equal to at least 6 percent of the Mexican nonbank SD's risk-weighted assets; and (iii) total capital (*i.e.*, an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) equal to at least 8 percent of the Mexican nonbank SD's risk-weighted assets.¹³⁴ In addition, the Mexican Capital Rules require each Mexican nonbank SD to maintain an additional capital conservation buffer¹³⁵ equal to 2.5 percent of the Mexican nonbank SD's risk-weighted assets, which must be met with common equity tier 1 capital.¹³⁶ Thus, a Mexican nonbank SD is effectively required to maintain total qualifying regulatory capital equal to or greater than 10.5 percent of the firm's risk-weighted assets, which is a higher capital ratio than the 8 percent required of nonbank SDs under prong (iii) of the CFTC Capital Rules.¹³⁷

The Commission also preliminarily found that the Mexican Capital Rules and the CFTC Capital Rules to be comparable with respect to the approaches used in the calculation of risk-weighted amounts for market risk and credit risk in determining the nonbank SD's risk-weighted assets.¹³⁸ The Commission also noted that Mexican nonbank SDs are not currently authorized by the Mexican Commission to use models to compute market risk or credit risk exposures.¹³⁹ Therefore,

Mexican nonbank SDs must compute risk-weighted assets using standardized market risk and credit risk amounts set forth in the Mexican Capital Rules, which generally results in calculated risk-weighted asset amounts that are higher than model-based amounts.¹⁴⁰

As the Commission observed, the standardized approaches under the Mexican Capital Rules and CFTC Capital Rules for calculating risk-weighted asset amounts for market risk and credit risk are both consistent with the approach under the BCBS framework and follow the same structure that is now the common global standard: (i) allocating assets to categories according to risk and assigning each category a risk weight; (ii) allocating counterparties according to risk assessments and assigning each a risk factor; (iii) calculating gross exposures based on valuation of assets; (iv) calculating a net exposure allowing offsets following well defined procedures and subject to clear limitations; (v) adjusting the net exposure by the market risk weights; and finally, (vi) for credit risk exposures, multiplying the sum of net exposures to each counterparty by their corresponding risk factor.¹⁴¹

More specifically, with respect to the calculation of standardized risk-weighted asset amounts for market risk, the Commission explained that the CFTC Capital Rules incorporate by reference the standardized market risk charges set forth in Commission Regulation 1.17 for FCMs and SEC Rule 18a-1 for nonbank security-based swap dealers ("SBSDs").¹⁴² The standardized market risk charges under Commission

internal models that comply with the guidelines issued by the Mexican Commission, the Applicants represented that, as of the filing date of the Application, no Mexican nonbank SD was approved to use internal models nor had any Mexican nonbank SD filed a model approval application with the Mexican Commission. *See* 2022 Proposal at 76380.

¹⁴⁰ For clarity, the Commission notes that it has not reviewed or evaluated the use of internal models to compute market or credit risk exposure amounts under the Mexican Capital Rules. Therefore, a Mexican nonbank SD that obtains the approval of the Mexican Commission to use models to compute market risk or credit risk exposure amounts and seeks to use such models in lieu of the standardized charges under the Commission's Comparability Order, may do so only after the Commission has reviewed and evaluated the use of the subject models for purpose of comparison to the corresponding CFTC requirements. The request to use internal market or credit risk models in lieu of standardized risk-weighting requirements may require the Commission to amend the Comparability Order. *See* 2022 Proposal at 76380 and 76389.

¹⁴¹ *See* 2022 Proposal at 76389.

¹⁴² *See* paragraph (3) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

¹²⁹ *See* 2022 Proposal at 76388.

¹³⁴ Articles 172 and 173 of the Law and Article 162 of the General Provisions.

¹³⁵ Mexico Application, p. 5.

¹³⁶ Articles 172 and 173 of the Law and Article 162 of the General Provisions.

¹³⁷ As noted above, the total capital requirement is the sum of the capital requirement equal to 8 percent of the firm's risk-weighted assets, plus the capital conservation buffer of 2.5 percent of the firm's risk-weighted assets. Articles 162 and 162 Bis of the General Provisions. *See* 2022 Proposal at 76388–76389.

¹³⁸ 2022 Proposal at 76389.

¹³⁹ As discussed in the 2022 Proposal, the Mexican Capital Rules do not permit Mexican nonbank SDs to use internal models to compute credit risk exposure amounts. Article 150 Bis of the General Provisions. Also, although the Mexican Capital Rules permit a Mexican nonbank SD to calculate market risk exposure amounts using

¹²⁹ 17 CFR 23.101(a)(1)(i)(B).

¹³⁰ 12 CFR 217.10(a)(1). The minimum capital requirement for a bank holding company under the Federal Reserve Board's rules requires bank holding companies to satisfy their 8 percent minimum capital ratio requirement with a minimum of 4.5 percent of common equity tier 1 capital. The CFTC Capital Rules, however, require a nonbank SD to meet its minimum 8 percent capital ratio with at least 6.5 percent of common equity tier 1 capital. 17 CFR 23.101(a)(1)(i)(B).

¹³¹ *Risk-based capital requirements RBC20, Calculation of minimum risk-based capital requirements* (Version effective as of 01 January 2023), published by the BCBS and available here: https://www.bis.org/basel_framework/chapter/RBC/20.htm?inforce=20230101&published=20201126.

¹³² *See generally* 85 FR 57461 at 57530.

Regulation 1.17 and SEC Rule 18a–1 are calculated as a percentage of the market value or notional value of the nonbank SD's assets, including marketable securities and derivatives positions, with the percentages applied to the market value or notional value increasing as the expected or anticipated risk of the positions increases.¹⁴³ For example, CFTC Capital Rules require nonbank SDs to calculate standardized market risk-weighted asset amounts for uncleared swaps based on notional values of the swap positions multiplied by percentages set forth in the applicable rules.¹⁴⁴ In addition, market risk-weighted asset amounts for readily marketable equity securities are calculated by multiplying the fair market value of the securities by 15 percent.¹⁴⁵

Under the CFTC Capital Rules, the resulting total market risk-weighted asset amount is multiplied by a factor of 12.5 to cancel the effect of the 8 percent multiplication factor applied to all of the nonbank SD's risk-weighted assets under prong (ii) of the rules' minimum capital requirements described above. As a result, a nonbank SD is effectively required to hold qualifying regulatory capital equal to or greater than 100 percent of the amount of its market risk exposure amount.¹⁴⁶

Comparable to the CFTC Capital Rules, the Mexican Capital Rules require a Mexican nonbank SD to calculate its risk-weighted asset amounts for market risk based on standardized risk-weighting requirements published by the Mexican Commission, which include market risk-weighted amounts for interest rate,

foreign exchange, precious metals, and equity price risks.¹⁴⁷ For derivatives positions, a Mexican nonbank SD is required to calculate the risk-weighted asset amounts for market risk by using standardized risk weights based on the nature of the instrument underlying the derivatives position.¹⁴⁸ The market risk-weighted asset amounts are based on cumulative calculations for individual derivatives positions with limited recognition of offsets.¹⁴⁹ The resulting total market risk-weighted asset amount, including market risk amount for derivative positions, is multiplied by a factor of 12.5 to adjust the 8 percent multiplication factor applied to all of the Mexican nonbank SD's risk-weighted assets, which effectively requires a Mexican nonbank SD to hold qualifying regulatory capital equal to or greater than 100 percent of the firm's market risk exposure amount.¹⁵⁰

With respect to standardized risk-weighted asset amounts for credit risk from non-derivatives positions, the Commission explained that under the CFTC Capital Rules, a nonbank SD must compute its on-balance sheet and off-balance sheet exposures in accordance with the standardized risk-weighting requirements adopted by the Federal Reserve Board and set forth in subpart D of 12 CFR 217 as if the SD itself were a bank holding company subject to subpart D.¹⁵¹ Standardized risk-weighted asset amounts for credit risk are computed by multiplying the amount of the exposure by defined counterparty credit risk factors that range from 0 percent to 150 percent.¹⁵² A nonbank SD with off-balance sheet exposures is required to calculate a risk-weighted asset amount for credit risk by multiplying each exposure by a credit conversion factor that ranges from 0

percent to 100 percent, depending on the type of exposure.¹⁵³

With respect to credit risk exposures for derivatives positions, the Commission explained that under the CFTC Capital Rules, a nonbank SD may compute standardized counterparty credit risk exposures using either the current exposure method ("CEM") or the standardized approach for measuring counterparty credit risk ("SA–CCR").¹⁵⁴ Both CEM and SA–CCR are non-model, rules-based approaches to calculating counterparty credit risk exposures for derivatives positions. Credit risk exposure under CEM is the sum of: (i) the current exposure (*i.e.*, the positive mark-to-market) of the derivatives contract; and (ii) the potential future exposure, which is calculated as the product of the notional principal amount of the derivatives contract multiplied by a standard credit risk conversion factor set forth in the rules of the Federal Reserve Board.¹⁵⁵ Credit risk exposure under SA–CCR is defined as the exposure at default amount of a derivatives contract, which is computed by multiplying a factor of 1.4 by the sum of: (i) the replacement costs of the contract (*i.e.*, the positive mark-to-market); and (ii) the potential future exposure of the contract.¹⁵⁶

In comparison, the Commission noted that Mexican Capital Rules also require a Mexican nonbank SD to calculate risk-weighted amounts for credit risk, for both non-derivative and derivative positions, under a standardized approach by taking the accounting value of each of its on-balance sheet and off-balance sheet positions, determining a conversion value to credit risk determined pursuant to Mexican regulation, and then applying a specific risk weight based on the type of issuer or counterparty, as applicable, and the assets' credit quality.¹⁵⁷ The resulting credit risk-weighted asset amount is also multiplied by a factor of 12.5 to adjust

¹⁴³ 17 CFR 1.17(c)(5) and 17 CFR 240.18a–1(c)(1).

¹⁴⁴ 17 CFR 1.17(c)(5)(iii).

¹⁴⁵ 17 CFR 1.17(c)(5)(v), referencing SEC Rule 15c3–1(c)(2)(vi) (17 CFR 240.15c3–1(c)(2)(vi)).

¹⁴⁶ 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*). As noted, a nonbank SD is required to maintain qualifying capital (*i.e.*, an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) in an amount that equals or exceeds 8 percent of its risk-weighted assets. The regulations, however, require the nonbank SD to effectively maintain qualifying capital equal to or in excess of 100 percent of its market risk-weighted assets by requiring the nonbank SD to multiply its market-risk weighted assets by a factor of 12.5. For example, the market risk exposure amount for marketable equity securities with a current fair market value of \$250,000 is \$37,500 (market value of \$250,000 × .15 standardized market risk factor). The nonbank SD is required to maintain regulatory capital equal to or in excess of full market risk exposure amount of \$37,500 (risk exposure amount of \$37,500 × 8 percent regulatory capital requirement equals \$3,000; the regulatory capital requirement is then multiplied by a factor of 12.5, which effectively requires the nonbank SD to hold regulatory capital in an amount equal to at least 100 percent of the market risk exposure amount (\$3,000 × 12.5 factor equals \$37,500)).

¹⁴⁷ See 2022 Proposal at 76386 and Article 150 Bis of the General Provisions. The Mexican Capital Rules do not have market risk charges specific to commodity risk as Mexican nonbank SDs are not permitted to engage in physical commodity transactions. See *id.*

¹⁴⁸ See 2022 Proposal at 76386 and Article 151 of the General Provisions.

¹⁴⁹ See 2022 Proposal at 76386 and Article 152 of the General Provisions.

¹⁵⁰ *Id.*

¹⁵¹ Commission Regulation 23.101(a)(1)(i)(B) and paragraph (1) of the definition of the term *BHC equivalent risk-weighted assets* in Commission Regulation 23.100. See also 2022 Proposal at 76385.

¹⁵² 12 CFR 217.32. Lower credit risk factors are assigned to entities with lower credit risk and higher credit risk factors are assigned to entities with higher credit risk. For example, a credit risk factor of 0 percent is applied to exposures to the U.S. government, the Federal Reserve Bank, and U.S. government agencies (12 CFR 217.32(a)(1)), and a credit risk factor of 100 percent is assigned to an exposure to foreign sovereigns that are not members of the Organization of Economic Cooperation and Development (12 CFR 217.32(a)(2)).

¹⁵³ 12 CFR 217.33. See also discussion in 2022 Proposal at 76385.

¹⁵⁴ 17 CFR 217.34 and 17 CFR 23.100 (defining the term *BHC risk-weighted assets* and providing that a nonbank SD that does not have model approval may use either CEM or SA–CCR to compute its exposures for over-the-counter derivative contracts without regard to the status of its affiliate with respect to the use of a calculation approach under the Federal Reserve Board's capital rules). See also discussion in 2022 Proposal at 76385.

¹⁵⁵ 12 CFR 217.34.

¹⁵⁶ 12 CFR 217.132(c).

¹⁵⁷ See 2022 Proposal at 76386–76387 and Articles 159, 160, and 161 of the General Provisions. Mexican nonbank SDs are required to use a standardized approach to computing all credit risk exposures as the Mexican Capital Rules do not authorize the use of internal credit risk models. Mexico Application at p. 11.

the 8 percent multiplication factor applied to all of the firm's risk-weighted assets, which effectively requires the Mexican nonbank SD to hold regulatory capital equal to or greater than 100 percent of the firm's total credit risk exposure.¹⁵⁸

The Commission also noted certain differences between the Mexican Capital Rules and the CFTC Capital Rules with respect to a nonbank SD's computation of its market risk exposures and credit risk exposures that are included in the firm's risk-weighted assets. As noted above, the CFTC Capital Rules and Mexican Capital Rules both require a nonbank SD to maintain regulatory capital equal to or greater than 100 percent of the firm's market risk exposure amount.¹⁵⁹ The Mexican Capital Rules, however, also require a Mexican nonbank SD to maintain regulatory capital equal to or greater than 100 percent of its credit risk exposure amount.¹⁶⁰ The CFTC Capital Rules impose such requirement with respect to the credit risk exposure amount only to nonbank SDs using internal models to compute their risk-weighted asset amounts for credit risk.¹⁶¹ The difference in approaches to computing risk-weighted assets would generally result in a nonbank SD having a larger amount of risk-weighted assets, and a higher minimum capital requirement based on risk-weighted assets, under the Mexican Capital Rules as compared to the CFTC Capital Rules.¹⁶²

As further discussed in section III.C.1.c. below, the Commission also recognized that under the Mexican Capital Rules Mexican nonbank SDs are required to account for operational risk, in addition to market risk and credit

risk, in computing their minimum capital requirements.¹⁶³

The Commission did not receive comments specifically addressing the Commission's comparative analysis of the minimum capital requirement based on risk-weighted assets. In conclusion, the Commission finds that the Mexican Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the computation of minimum capital requirements based on a nonbank SD's risk-weighted assets. In this regard, the Commission finds that notwithstanding the differences discussed above, the Mexican Capital Rules and the CFTC Capital rules have a comparable approach to the computation of risk-weighted asset amounts for market risk and credit risk for on-balance sheet and off-balance sheet exposures, which are intended to ensure that a nonbank SD maintains a sufficient level of regulatory capital to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to counterparties and creditors, without the firm becoming insolvent.

c. Minimum Capital Requirement Based on the Uncleared Swap Margin Amount

As noted above, prong (ii) of the CFTC Capital Rules' Bank-Based Approach requires a nonbank SD to maintain regulatory capital in an amount equal to or greater than 8 percent of the firm's total uncleared swaps margin amount associated with its uncleared swap transactions to address potential operational, legal, and liquidity risks.¹⁶⁴ The Commission stated that the intent of the requirement was to establish a method of developing a minimum amount of required capital for a nonbank SD to meet its obligations as a SD to market participants, and to cover potential operational, legal, and liquidity risks.¹⁶⁵

The Mexican Capital Rules differ from the CFTC Capital Rules in that they do not impose a capital requirement on Mexican nonbank SDs based on a percentage of the margin for uncleared swap transactions. In the 2022 Proposal, the Commission described, however,

how certain Mexican capital and liquidity requirements may compensate for the lack of direct analogue to the 8 percent uncleared swap margin amount requirement.¹⁶⁶ Specifically, the Commission noted that the Mexican Capital Rules require a Mexican nonbank SD to account for operational risk in computing their minimum capital requirements.¹⁶⁷ In this connection, the Mexican Capital Rules require a Mexican nonbank SD to calculate an operational risk exposure amount equal to 15 percent of a Mexican nonbank SD's average annual net positive income for the last three years, on a rolling basis.¹⁶⁸ The Mexican nonbank SD is then required to multiply the operational risk exposure amount by a factor of 12.5 and add the resultant amount to the total operational risk-weighted assets, which has the effect of requiring the Mexican nonbank SD to hold regulatory capital equal to or greater than 100 percent of its operational risk exposure amount.¹⁶⁹

In addition, the Mexican Capital Rules require Mexican nonbank SDs to meet quantitative liquidity requirements, whereby a Mexican nonbank SD must hold or invest at least 20 percent of the firm's total capital in liquid assets comprised of: (i) bank deposits; (ii) highly liquid debt securities registered in Mexico; (iii) shares of debt investment funds; (iv) reserve funds created to maintain funds available to cover contingencies; and (v) high and low marketability shares subject to market value discounts of 20 and 25 percent, respectively.¹⁷⁰

Addressing the Commission's request for comment regarding the comparability in purpose and effect between the requirement under the Mexican Capital Rules for a Mexican nonbank SD to account for operational risk by holding qualifying capital in an amount equal to 15 percent of its average annual net positive income from the last three years and the CFTC's capital requirement based on a nonbank SD's uncleared swap margin amount, one commenter, Better Markets stated that the requirements are not

¹⁵⁸ 2022 Proposal at 76387.

¹⁵⁹ The CFTC Capital Rules and the Mexican Capital Rules both require a nonbank SD to maintain regulatory capital equal to or in excess of 8 percent of the firm's total risk-weighted assets. Both sets of rules further require that the nonbank SD multiply its total market risk exposure amount by a factor of 12.5 and add the resultant amount to its total risk-weighted assets, which has the effect of requiring the nonbank SD to hold regulatory capital equal to or greater than 100 percent of its market risk exposure amount.

¹⁶⁰ The Mexican Capital Rules require a Mexican nonbank SD to multiply its total credit risk exposure amount by a factor of 12.5 and to add the resultant amount to its total credit risk-weighted assets, which has the effect of requiring the Mexican nonbank SD to hold regulatory capital equal to or greater than 100 percent of its credit risk exposure amount.

¹⁶¹ A nonbank SD that computes its credit risk exposures using internal models must multiply the resulting capital requirement by a factor of 12.5. 12 CFR 217.131(e)(1)(iii), 217.131(e)(2)(iv), and 217.132(d)(9)(iii).

¹⁶² See 2022 Proposal at 76389.

¹⁶³ See 2022 Proposal at 76387.

¹⁶⁴ More specifically, in establishing the requirement that a nonbank SD must maintain a level of regulatory capital in excess of 8 percent of the uncleared swap margin amount associated with the firm's swap transactions, the Commission stated that the intent of the uncleared swap margin amount was to establish a method of developing a minimum amount of capital for a nonbank SD to meet its obligations as a SD to market participants, and to cover potential operational risk, legal risk and liquidity risk, and not just the risks of its trading portfolio. 85 FR 57462 at 57485.

¹⁶⁵ See *id.*

¹⁶⁶ See 2022 Proposal at 76389–76390.

¹⁶⁷ 2022 Proposal at 76387 and Article 161 Bis of the General Provisions.

¹⁶⁸ The amount of the operational risk exposure is also subject to a floor equal to 5 percent and a ceiling equal to 15 percent of the monthly average sum of market and credit risk exposure amounts, calculated over the prior 36 months, also on a rolling basis. Article 161 Bis 3 of the General Provisions.

¹⁶⁹ See 2022 Proposal at 76387 and Article 161 Bis 5 of the General Provisions.

¹⁷⁰ See 2022 Proposal at 76390 and Article 146 of the General Provisions.

comparable.¹⁷¹ In this connection, Better Markets asserted that the inclusion of operational risk as an additional risk exposure element in the calculation of the nonbank SD's total risk-weighted assets, the Mexican approach does not specifically address potential operational risks for uncleared swaps. More specifically, Better Markets argued that the approach mandated by the Mexican Capital Rules, which addresses the nonbank SD's total operational risk in the calculation of risk-weighted assets, provides for a lower capital amount to cover uncleared swaps margin.¹⁷²

In contrast, the Associations Letter stated that the Mexican Capital Rules set out minimum capital level requirements that are sound, reflect similar regulatory concerns, and lead to comparable regulatory outcomes as the CFTC's Capital Rules, even if the Mexican Capital Rules do not include a stand-alone requirement based on the uncleared swap margin associated with an SD's swap transactions.¹⁷³ The Associations added that although Mexico's capital framework does not have a direct analogue to the 8 percent uncleared swap margin requirement, it has various other measures that achieve the same regulatory objective of ensuring that an SD maintains an amount of capital that is sufficient to cover the full range of risks a Mexican SD may face. The Associations explained that Mexico's capital framework requires that a Mexican SD calculate risk weighted assets incorporating risk exposure amounts composed of market, credit and equity exposures, and operational risk. The Associations further stated that Mexican SDs are subject to liquidity requirements that are designed to ensure that an SD has sufficient liquid assets to meet its ongoing obligations and that Mexican SDs are subject to leverage limitations that, similar to the uncleared swap margin requirement, are based principally on volume and counterparties without regard to risk-weighting. Lastly, as noted by the Associations, Mexican SDs must conduct regular stress tests to ensure that they have sufficient resources to withstand adverse economic scenarios.¹⁷⁴ Based on its holistic assessment, the Commission believes that the requirement to include an operational risk-weighted asset amount in the Mexican nonbank SD's total risk-weighted assets, as well as the various

regulatory measures seeking to ensure that Mexican nonbank SDs hold sufficient capital to cover the full range of risks that they may face, support the comparability of the Mexican Capital Rules and the CFTC Capital Rules even in the absence of a separate, stand-alone capital requirement that Mexican nonbank SDs must have qualified capital equal to or greater than 8 percent of the amount of uncleared swap margin.

In conclusion, the Commission finds that the Mexican Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the requirement that a nonbank SD's minimum level of regulatory capital reflects potential operational risk exposures in addition to market risk and credit risk exposures. The Commission emphasizes that the intent of the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin is to establish a minimum capital requirement that would help ensure that the nonbank SD meets its obligations as an SD to market participants, and to cover potential operational risk, legal risk, and liquidity risk in addition to the risks associated with its trading portfolio.¹⁷⁵ The Commission further notes that the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin amount was conceived as a proxy, not an exact measure, for inherent risk in the SD's positions and operations, including operational risk, legal risk, and liquidity risk.¹⁷⁶ As the Commission noted in adopting the CFTC Capital Rules, although the amount of capital required of a nonbank SD under the uncleared swap margin calculation is directly related to the volume, size, complexity, and risk of the covered SD's positions, the minimum capital requirement is intended to cover a multitude of potential risks faced by the SD.¹⁷⁷ The Commission understands that other jurisdictions may adopt alternative measures to cover the same risks. In this regard, the Mexican Capital Rules address comparable risks albeit not through a requirement based on a Mexican nonbank SD's uncleared swap margin amount. Specifically, Mexican nonbank SDs are required to maintain a minimum level of regulatory capital based on an aggregate of the firm's total risk-weighted asset exposure amounts for market risk, credit risk, and operational risk exposures. The

Commission finds that, notwithstanding the differences in approaches, the Mexican Capital Rules and CFTC Capital Rules are comparable in purpose and effect in requiring nonbank SDs to maintain a minimum level of regulatory capital that addresses potential market risk, credit risk, and operational risk to help ensure the safety and soundness of the firm, and to ensure that the firm has sufficient capital to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to counterparties and creditors, without the firm becoming insolvent.

3. Final Determination

Based on its analysis of comments and its holistic assessment of the respective requirements discussed in sections II.C.2.a., b., and c. above, the Commission adopts the Comparability Determination and Comparability Order as proposed with respect to the minimum capital requirements and the calculation of regulatory capital, subject to the condition that Mexican nonbank SDs must maintain a minimum level of regulatory capital in the form of fundamental capital that equals or exceeds the equivalent of \$20 million U.S. dollars.

D. Nonbank Swap Dealer Financial Reporting Requirements

1. Proposed Determination

The Commission detailed the requirements of the CFTC Financial Reporting Rules in the 2022 Proposal.¹⁷⁸ Specifically, the 2022 Proposal notes that the CFTC Financial Reporting Rules require nonbank SDs to file with the Commission and NFA periodic unaudited and annual audited financial reports.¹⁷⁹ The unaudited financial reports must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement demonstrating compliance with, and calculation of, the applicable regulatory minimum capital requirement; (iv) a statement of changes in ownership equity; (v) a statement of changes in liabilities subordinated to claims of general creditors; and (vi) such further material information necessary to make the required statements not misleading.¹⁸⁰ The annual audited financial reports must include the same financial statements that are required to be included in the unaudited financial reports, and must further include: (i) a statement of cash flows; (ii) appropriate footnote disclosures; and (iii) a reconciliation of any material

¹⁷¹ Better Markets Letter at pp. 10–11.

¹⁷² *Id.* at 10.

¹⁷³ Associations Letter at pp. 2–3.

¹⁷⁴ *Id.*

¹⁷⁵ See 2022 Proposal at 76384–76385 (referencing 85 FR 57462 at 57492).

¹⁷⁶ 85 FR 57462 at 57497.

¹⁷⁷ 85 FR 57462 at 57485 and 57497.

¹⁷⁸ 2022 Proposal at 76391–76392.

¹⁷⁹ *Id.* and 17 CFR 23.105(d) and (e).

¹⁸⁰ *Id.* and 17 CFR 23.105(d)(2).

differences between the financial statements contained in the annual audited financial reports and the financial statements contained in the unaudited financial reports prepared as of the nonbank SD's year end date.¹⁸¹ In addition, a nonbank SD must attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct.¹⁸² The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.¹⁸³

The CFTC Financial Reporting Rules also require a nonbank SD to file the following financial information with the Commission and NFA on a monthly basis: (i) a schedule listing the nonbank SD's financial positions reported at fair market value;¹⁸⁴ (ii) schedules showing the nonbank SD's counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries;¹⁸⁵ and, (iii) for nonbank SDs approved to use internal capital models, certain model metrics, such as aggregate value-at-risk ("VaR") and counterparty credit risk information.¹⁸⁶

The CFTC Financial Reporting Rules further require a nonbank SD to provide the Commission and NFA with information regarding the custodianship of margin for uncleared swap transactions ("Margin Report").¹⁸⁷ The Margin Report must contain: (i) the name and address of each custodian holding initial margin or variation margin on behalf of the nonbank SD or its swap counterparties; (ii) the amount of initial and variation margin required by the uncleared margin rules held by each custodian on behalf of the nonbank

SD and on behalf its swap counterparties; and (iii) the aggregate amount of initial margin that the nonbank SD is required to collect from, or post with, swap counterparties for uncleared swap transactions subject to the uncleared margin rules.¹⁸⁸

A nonbank SD electing the Bank-Based Capital Approach is required to file the unaudited financial report, Schedule 1, schedules of counterparty credit exposures, and the Margin Report with the Commission and NFA no later than 17 business days after the applicable month-end reporting date.¹⁸⁹ A nonbank SD must file its annual report with the Commission and NFA no later than 60 calendar days after the end of its fiscal year.¹⁹⁰

The 2022 Proposal also detailed relevant financial reporting requirements of the Mexican Financial Reporting Rules.¹⁹¹ The Mexican Financial Reporting Rules require a Mexican nonbank SD to submit to the Mexican Commission quarterly consolidated financial reports.¹⁹² The reports must contain a balance sheet, a statement of income/loss, a statement of changes in equity, a statement of cash flows, and a statement showing the firm's compliance with minimum capital requirements.¹⁹³ The quarterly consolidated financial reports must be for the quarters ending March, June, and September of each year, and must be filed with the Mexican Commission within the month following the last day of each quarter.¹⁹⁴

A Mexican nonbank SD is also required to submit an annual consolidated financial report.¹⁹⁵ The annual report must contain the same statements that are required to be included in the quarterly consolidated financial report and must further include appropriate footnote disclosures relating to, among other topics, nominal amounts of derivatives contracts by type of instrument and by underlying valuation results, as well as the results obtained in the assessment of the adequacy of the firm's regulatory capital in relation to credit, market, and operational risk requirements.¹⁹⁶ The annual consolidated financial report must be filed within 90 calendar days of the Mexican nonbank SD's fiscal year end, and must contain an audit report

issued by an independent external auditor.¹⁹⁷

In addition to the above consolidated financial reports, a Mexican nonbank SD must provide the Mexican Commission, on a monthly basis, with a balance sheet and income statement, along with additional financial information.¹⁹⁸ Such reports are due within 20 days following the end of the respective month.¹⁹⁹ On a quarterly basis, a Mexican nonbank SD also must provide the Mexican Commission with additional financial information regarding deferred income taxes, consolidation with respect to balance sheet and income statements, stockholders equity statements, and cash flow statements.²⁰⁰

A Mexican nonbank SD licensed to enter into derivatives transactions for its own account is also required to file with the Mexican Central Bank, during May of each year, a written communication issued by the Mexican nonbank SD's internal audit committee evidencing compliance in the performance of its derivatives transactions with each and all applicable legal provisions and, when required by the Mexican Central Bank, a Mexican nonbank SD also must provide the Mexican Central Bank with all the information related to the derivatives transactions performed by the firm.²⁰¹ Furthermore, a Mexican nonbank SD licensed to perform derivatives transactions is required to file a report with the Mexican Central Bank on a daily basis containing all the derivatives transactions performed by the Mexican nonbank SD.²⁰²

Based on its review of the Mexico Application and the relevant Mexican laws and regulations, the Commission preliminarily determined that, subject to the conditions specified in the 2022 Proposal and discussed below, the Mexican Financial Reporting Rules are comparable to the CFTC Financial Reporting Rules in purpose and effect.²⁰³ The Commission noted that both rule sets provide the Mexican Commission and Mexican Central Bank, as applicable, and the Commission and NFA, respectively, with financial information to monitor a nonbank SD's compliance with capital requirements and to assess a nonbank SD's overall safety and soundness. Specifically, both the CFTC Financial Reporting Rules and the Mexican Financial Reporting Rules

¹⁸¹ *Id.* and 17 CFR 23.105(e)(4).

¹⁸² *Id.* and 17 CFR 23.105(f).

¹⁸³ *Id.*

¹⁸⁴ *Id.* and 17 CFR 23.105(l) and Schedule 1 of appendix B to subpart E of part 23 ("Schedule 1"). Schedule 1 includes a nonbank SD's holding of U.S. Treasury securities, U.S. government agency debt securities, foreign debt and equity securities, money market instruments, corporate obligations, spot commodities, and cleared and uncleared swaps, security-based swaps, and mixed swaps in addition to other position information.

¹⁸⁵ *Id.* and 17 CFR 23.105(l) and schedules 2, 3 and 4, respectively, of appendix B to subpart E of part 23.

¹⁸⁶ *Id.* and 17 CFR 23.105(k) and (l), and appendix B to subpart E of part 23.

¹⁸⁷ *Id.* and 17 CFR 23.105(m).

¹⁸⁸ *Id.*

¹⁸⁹ 17 CFR 23.105(k), (l), and (m).

¹⁹⁰ 17 CFR 23.105(e)(1).

¹⁹¹ 2022 Proposal at 76392.

¹⁹² *Id.* and Article 203 of the General Provisions.

¹⁹³ *Id.* and Article 180 of the General Provisions.

¹⁹⁴ *Id.* and Article 203 of the General Provisions.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* and Article 180 of the General Provisions.

¹⁹⁷ *Id.* and Article 203 of the General Provisions.

¹⁹⁸ *Id.* and Article 202 of the General Provisions.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* and Exhibit 9 of the General Provisions.

²⁰¹ *Id.* and Provision 3.1.3 of the Rule 4/2012 issued by the Mexican Central Bank.

²⁰² *Id.*, and Mexico Application at p. 19.

²⁰³ 2022 Proposal at 76392.

require nonbank SDs to file statements of financial condition, statements of profit and loss, and statements of regulatory capital that collectively provide information for the Mexican Commission, CFTC, and NFA to assess a nonbank SD's overall ability to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, and cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.²⁰⁴

The proposed conditions in the proposed Comparability Order were intended to ensure that the Commission and NFA receive appropriate and timely financial information from Mexican nonbank SDs to monitor the firms' compliance with the Mexican Commission's capital requirements and to assess the firms' overall safety and soundness. The proposed conditions would require a Mexican nonbank SD to provide the Commission and NFA with copies of the monthly financial information, including a copy of its balance sheet and income statement, that the firm files with the Mexican Commission pursuant to Article 202 and Exhibit 9 of the General Provisions, as well as copies of the quarterly consolidated reports and annual audited financial reports that the firm files with the Mexican Commission pursuant to Article 203 of the General Provisions.²⁰⁵ In addition, the Commission proposed a condition to require a Mexican nonbank SD to provide as part of its monthly filing, a statement of regulatory capital.²⁰⁶ The proposed conditions would also require the annual audited and the unaudited monthly and quarterly financial reports to be translated into the English language.²⁰⁷ The unaudited monthly and quarterly financial reports also must have balances converted from Mexican pesos to U.S. dollars.²⁰⁸ Although the unaudited monthly and quarterly financial reports must have balances converted from Mexican pesos to U.S. dollars, the Commission stated that it would permit the annual audited financial report to be presented in either U.S. dollars or Mexican pesos to avoid potential negative impacts that such conversion may have on the firm's annual audit and the audit opinion expressed by the external auditor.²⁰⁹ The proposed conditions also would require a Mexican nonbank SD to file

with the Commission and NFA the requisite information and financial reports within 15 business days of the earlier of the date the reports are filed with the Mexican Commission or the date the reports are required to be filed with the Mexican Commission.²¹⁰ The Commission stated that, in its preliminary view, the proposed filing dates provided sufficient time for the respective reports to be translated into the English language with balances converted from Mexican pesos to U.S. dollars, as applicable.²¹¹

In the Commission's preliminary view, its approach of requiring Mexican nonbank SDs to provide the Commission and NFA with copies of the monthly financial information, and the quarterly and annual financial reports, that the firms file with the Mexican Commission struck an appropriate balance of ensuring that the Commission receives the financial reporting necessary for the effective monitoring of the financial condition of the nonbank SDs, while also recognizing the propriety of providing substituted compliance based on the existing Mexican financial reporting requirements and regulatory structure.²¹²

The Commission also proposed a condition to require Mexican nonbank SDs to file with the Commission and NFA, on a monthly basis, Schedule 1 showing the aggregate securities, commodities, and swap positions of the firm at fair market value as of the reporting date.²¹³ The Commission explained that Schedule 1 provides the Commission and NFA with detailed information regarding the fair market value of nonbank SD's financial positions as of the end of each month, including the firm's swaps positions, which allows the Commission and NFA to monitor the types of investments and other activities that the firm engages in and would assist the Commission and NFA in monitoring the safety and soundness of the firm.²¹⁴ The Commission proposed to require that Schedule 1 be filed by a Mexican nonbank SD along with the firm's monthly financial information filed pursuant to Article 202 and Exhibit 9 of the General Provisions.²¹⁵ The Commission also proposed to require that Schedule 1 be prepared in the

English language with balances reported in U.S. dollars.

The Commission also proposed a condition to require a Mexican nonbank SD to submit a statement by an authorized representative or representatives of the Mexican nonbank SD that, to the best knowledge and belief of the person(s), the information contained within the monthly financial information, the quarterly financial report, and the audited annual report, is true and correct, including as it relates to the translation of the reports into the English language and the conversion of balances to U.S. dollars.²¹⁶ The statement by an authorized representative or representatives of the Mexican nonbank SD was intended to be the equivalent of the oath or affirmation required of nonbank SDs under Commission Regulation 23.105(f),²¹⁷ to ensure that reports filed with the Commission and NFA were prepared and submitted by firm personnel with knowledge of the financial reporting of the firm who can attest to the accuracy of the reporting and translation.²¹⁸

The Commission further proposed a condition that would require a Mexican nonbank SD to file a Margin Report with the Commission and NFA on a monthly basis.²¹⁹ The Commission noted that a Margin Report would assist the Commission and NFA in their assessment of the safety and soundness of the Mexican nonbank SDs by providing information regarding the firm's swaps book and the extent to which it has uncollateralized swap exposures to counterparties or has not met its margin obligations to swap counterparties. The Commission explained that this information, along with the list of custodians holding both the firm's and counterparties' swaps collateral, would assist with identifying potential financial impacts to the nonbank SD resulting from defaults on its swap transactions.²²⁰

²¹⁶ *Id.* and proposed Condition 12.

²¹⁷ 17 CFR 23.105(f). Commission Regulation 23.105(f) requires a nonbank SD to attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct. The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.

²¹⁸ 2022 Proposal at 76393.

²¹⁹ *Id.* and proposed Condition 13.

²²⁰ 2022 Proposal at 76394.

²⁰⁴ *Id.*

²⁰⁵ 2022 Proposal at 76393.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* and proposed Conditions 9 and 10.

²¹² *Id.* at 76393.

²¹³ *Id.* and proposed Condition 11.

²¹⁴ *Id.*

²¹⁵ *Id.*

2. Comment Analysis and Final Determination

The Commission received comments regarding the comparability of financial reporting and specific comments addressing several of the financial reporting issues on which the Commission solicited feedback. Better Markets expressed a general disagreement with the Commission's preliminary finding of comparability, arguing that the number and variety of conditions regarding financial reporting are the most compelling evidence that the requirements are not comparable.²²¹ More specifically, Better Markets asserted that the 2022 Proposal did not provide a sufficient analysis supporting the Commission's preliminary finding of comparability between the various reports required under the Mexican Financial Reporting Rules and their U.S. counterparts.²²² In support of its statement, Better Markets noted that the Commission did not provide its basis for determining that the financial reports submitted by Mexican nonbank SDs would be useful to the Commission in monitoring the firms' financial condition.²²³ In this regard, Better Markets stated that the Commission did not mention or describe whether the Mexican nonbank SDs must comply with the U.S. Generally Accepted Accounting Principles (GAAP), the International Financial Reporting Standards (IFRS), or another accounting standard adopted by Mexican authorities and that without knowing this important information, it is impossible to comment on whether the financial reports would be useful to the Commission.²²⁴

Better Markets also noted that the proposed comparability determination was conditioned on a Mexican nonbank SD submitting a statement by an authorized representative that, to the best knowledge and belief of the person, the information contained in reports submitted to the Commission is true and correct, in lieu of the oath or affirmation required by Commission Regulation 23.105(f).²²⁵ Better Markets stated that there are material legal differences between a statement and the oath or affirmation required by the CFTC Financial Reporting Rules, further highlighting the differences between the regulatory reporting requirements of the U.S. and those of Mexico.²²⁶

As discussed in section I.E. above, the Commission does not believe that the inclusion of conditions in the Comparability Order demonstrates that the Mexican Financial Reporting Requirement are not comparable to CFTC Financial Reporting Requirements in achieving the overall objectives of ensuring the safety and soundness and effective monitoring of nonbank SDs. In addition, with respect to the comment related to the proposed Comparability Order's conditions regarding applicable accounting standards, the Commission notes that, as discussed in the 2022 Proposal, the quarterly and annual financial reports submitted by Mexican nonbank SDs will be prepared in accordance with the Accounting Criteria for Broker-Dealers.²²⁷ For purposes of clarity, the Commission confirms that Mexican nonbank SDs may present the financial information required to be provided to the Commission and NFA under the final Comparability Order in accordance with generally accepted accounting principles that the Mexican nonbank SD uses to prepare general purpose financial statements in Mexico. This clarification is consistent with proposed Condition 8, which the Commission adopts subject to a minor modification in the final Comparability Order, requiring that the Mexican nonbank SD prepares and keeps current ledgers and other similar records "in accordance with accounting principles permitted by the Mexican Commission."²²⁸ In taking the position that Mexican nonbank SDs may provide financial reporting prepared in accordance with the accounting standards applicable in their home jurisdiction, the Commission considered the nature of the financial reporting information that the Commission requires from nonbank SDs for purposes of monitoring their overall financial condition and compliance with capital requirements. Specifically, the Commission notes that calculating a firm's risk-weighted assets and capital ratio follows a rules-based approach consistent with the Basel standards and, consequently, the Commission does not

anticipate that a variation in the applicable accounting standards would materially impact this calculation.²²⁹ In this regard, the Commission notes that Mexican nonbank SDs currently submit financial reports, including a statement of financial condition and a statement of regulatory capital, pursuant to CFTC Staff Letter 22-10.²³⁰ The reports provide the Commission with appropriate information to assess the

²²⁹ Furthermore, the Commission's approach to permitting Mexican nonbank SDs to maintain financial books and records, and to file financial reports and other financial information, prepared in accordance with local accounting standards is consistent with the SEC's final comparability determinations for non-U.S. SBSBs. See *Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin*, 86 FR 59797 (Oct. 28, 2021) at 59812 and *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a-7*, 86 FR 59208 (Oct. 26, 2021) ("SEC Manner and Format Order") at 59219. Specifically, the SEC stated that the use of local reporting requirements will avoid non-U.S. SBSBs "having to perform and present two Basel capital calculations (one pursuant to local requirements and one pursuant to U.S. requirements)." SEC Manner and Format Order at 59219. The SEC noted, in this regard, that the Basel standards are international standards that have been adopted in the U.S. and in jurisdictions where substituted compliance is available for capital under the SEC comparability determinations and that, therefore, requirements for how firms calculate capital pursuant to the Basel standards generally should be similar. *Id.* In addition, if a Mexican nonbank SD becomes registered with the SEC as an SBSB and is required to file an unaudited SEC Form X-17A-5 Part II ("FOCUS Report"), the Commission's approach to permitting Mexican nonbank SDs to maintain financial books and records, and to file financial information, prepared in accordance with local accounting standards would facilitate financial reporting by such dually-registered entity. In such case, dually registered entities would not have to perform multiple calculations under different accounting standards or submit two different FOCUS Reports.

²³⁰ CFTC Staff Letter No. 22-10, *Extension of Time-Limited No-Action Position for Foreign Based Nonbank Swap Dealers domiciled in Japan, Mexico, the United Kingdom, and the European Union*, issued by MPD on August 17, 2022. CFTC Staff Letter No. 22-10, which extended the expiration of CFTC Letter 21-20, provides that MPD would not recommend an enforcement action to the Commission if a non-U.S. nonbank SD covered by the letter, subject to certain conditions, complied with their respective home-country capital and financial reporting requirements in lieu of the Commission's capital and financial reporting requirements set forth in Commission Regulations 23.100 through 23.106, pending the Commission's determination of whether the capital and financial reporting requirements of certain foreign jurisdictions are comparable to the Commission's corresponding requirements.

²²⁷ See 2022 Proposal at 76392.

²²⁸ 2022 Proposal at 76399. Proposed Condition 8 stated that Mexican nonbank SDs must prepare and keep current ledgers and other similar records "in accordance with accounting principles required by the Mexican Commission." To promote consistency across the Comparability Determinations the Commission is adopting with respect to several other jurisdictions and to reflect the fact that certain jurisdictions may not issue a formal approval of the accounting standards used by nonbank SDs, the Commission is replacing the adjective "required" with the adjective "permitted" to refer to the accounting standards to be used by Mexican nonbank SDs.

²²¹ Better Markets Letter at p. 12.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

financial and operational condition of Mexican nonbank SDs, as well as the firms' compliance with the capital ratios imposed on Mexican nonbank SDs under the Mexican Capital Rules.

With respect to the comment related to the requirement for Mexican nonbank SDs to submit a statement from an authorized representative, the Commission notes, for completeness, that the proposed condition requires that an authorized representative of the Mexican nonbank SD provide a statement that, to the best of the knowledge and belief of the representative, the information contained in the financial reports filed with the Commission and NFA is true and correct, including the applicable translation of the reports to the English language and the conversion of balances to U.S. dollars. The proposed condition was based on current Commission Regulation 23.105(f), which provides that a nonbank SD must attach to each unaudited and annual audited financial report filed with the Commission and NFA an oath or affirmation that to the best knowledge and belief of the individual making the oath or affirmation the information in the financial reports is true and correct. Similar to the intent of Commission Regulation 23.105(f), the purpose of the proposed condition is to obtain a formal attestation from a representative with the appropriate knowledge and authority that the information provided in the requisite financial reports is accurate and properly translated. The Commission's choice of language in using the term "statement" was not intended to make a legal distinction between this term and the terms "oath" or "affirmation," but rather to select a generic term that is universally understood across jurisdictions to reflect the above-referenced purpose. In practice, the Commission does not believe that there is a material legal difference between the language of the proposed condition and the required oath or affirmation required under Commission Regulation 23.105(f). Instead, the Commission is of the view that the proposed condition would have the same legal effect as Commission Regulation 23.105(f) of providing the Commission with a stronger basis to take legal action if a Mexican nonbank SD files erroneous information.

Finally, the Associations addressed the Commission's request for comment on the compliance dates for the reporting conditions that the proposed Comparability Order would impose on Mexican nonbank SDs.²³¹ The

Associations requested that the Commission set the compliance date at least six months following the issue date of the final Comparability Order to allow Mexican nonbank SDs to adequately prepare for compliance with the reporting conditions imposed by the Comparability Order.²³²

The Commission believes that granting an additional period of time to allow Mexican nonbank SDs to develop and implement the necessary systems and processes for compliance with the Comparability Order is appropriate with respect to new reporting obligations imposed on Mexican nonbank SDs under the final Order. For other reporting obligations, for which a process already exists, such as the reports that Mexican nonbank SDs currently submit to the Commission and NFA pursuant to CFTC Staff Letter 22–10 and/or prepare pursuant to the Mexican Financial Reporting Rules, additional time for compliance does not appear necessary. Accordingly, the Commission is setting a compliance date of 180 calendar days after publication of the final Comparability Order in the **Federal Register** for Mexican nonbank SDs to file Schedule 1 and the Margin Report with the Commission and NFA under Conditions 11 and 13, respectively.

In an effort to align, where appropriate, the filing deadlines for financial reporting obligations imposed by the Comparability Order on Mexican nonbank SDs with the filing deadlines that the Commission proposed for nonbank SDs domiciled in several other jurisdictions, the Commission is also setting the filing deadline in final Condition 9 for the monthly financial information to 35 calendar days after the end of each month.²³³ The filing deadline will apply to the monthly financial information filed with the Mexican Commission pursuant to Article 202 and Exhibit 9 of the General Provisions Applicable to Broker-Dealers, as well as to Schedule 1 and the Margin Report, which pursuant to final

Conditions 11 and 13 must be filed with the monthly financial information.

In summary, the Commission adopts the final Comparability Order and conditions substantially as proposed with respect to the comparability of the CFTC Financial Reporting Rules and Mexican Financial Reporting Requirements. The Commission also specifies, in final Conditions 9, 11, and 13, that the conversion of balances to U.S. dollars must be done using a commercially reasonable and observable Mexican peso/U.S. dollar spot rate as of the date of the respective report. Finally, the Commission grants an additional compliance period for the new reporting obligations imposed on Mexican nonbank SDs under the final Order set forth below.

E. Notice Requirements

1. Preliminary Determination

The Commission noted in the 2022 Proposal that the CFTC Financial Reporting Rules require nonbank SDs to provide the Commission and NFA with written notice of certain defined events.²³⁴ Commission Regulation 23.105(c) requires a nonbank SD to file written notice with the Commission and NFA of the following events: (i) the nonbank SD's regulatory capital is less than the minimum amount required; (ii) the nonbank SD's regulatory capital is less than 120 percent of the minimum amount required; (iii) the nonbank SD fails to make or to keep current required financial books and records; (iv) the nonbank SD experiences a reduction in the level of its excess regulatory capital of 30 percent or more from the amount last reported in a financial report filed with the Commission; (v) the nonbank SD plans to distribute capital to equity holders in an amount in excess of 30 percent of the firm's excess regulatory capital; (vi) the nonbank SD fails to post to, or collect from, a counterparty (or group of counterparties under common ownership or control) required initial and variation margin a counterparty, and the aggregate amount of such margin equals or exceeds 25 percent of the nonbank SD's minimum capital requirement; (vii) the nonbank SD fails to post to, or collect from, swap counterparties required initial and variation margin, and the aggregate amount of such margin equals or exceeds 50 percent of the nonbank SD's minimum capital requirement; and (viii) the nonbank SD is registered with the SEC as an SBSB and files a notice with the SEC under applicable SEC Rules.²³⁵

²³² *Id.*

²³³ See *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union*, 88 FR 41774 (June 27, 2023) and *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Capital and Financial Reporting Requirements of the United Kingdom and Regulated by the United Kingdom Prudential Regulation Authority*, 89 FR 8026 (Feb. 5, 2024).

²³⁴ 2022 Proposal at 76395 and 17 CFR 23.105(c).

²³⁵ 17 CFR 23.105(c).

²³¹ Associations Letter at p. 4.

The notices are part of the Commission's overall program of helping to ensure the safety and soundness of nonbank SDs and the swaps markets in general.²³⁶ Notices provide the Commission and NFA with an opportunity to assess whether there is an actual or potential financial and/or operational issue at a nonbank SD. In situations where there is an underlying issue, Commission and NFA staff engage with the nonbank SD in an effort to minimize potential adverse impacts on the firm, swap counterparties, and the larger swaps market.²³⁷

With respect to Mexican nonbank SDs, the Commission noted that the Mexican Financial Reporting Rules do not include explicit, predefined notice provisions that require the firms to file prompt notice with the Mexican Commission, or other relevant Mexican regulatory authority, in a manner that is comparable to the notice provisions set forth in Commission Regulation 23.105(c).²³⁸ Therefore, the Commission proposed to condition the Comparability Order to require Mexican nonbank SDs to file certain notices mandated by Commission Regulation 23.105(c) with the Commission and NFA.²³⁹ Specifically, the Commission proposed to require a Mexican nonbank SD to file notice with the Commission and NFA, within the timeframes set forth in the proposed conditions, if the firm: (i) fails to make or keep current the books and records required by the Mexican Commission; (ii) is informed by the Mexican Commission that the firm is not in compliance with any component of the Mexican Capital Rules or Mexican Financial Reporting Rules; (iii) maintains regulatory capital at a level that is below 120 percent of the minimum capital requirement set by the Mexican Capital Rules; (iv) experiences a 30 percent or more decrease in its excess regulatory capital as compared to the excess capital last reported in its financial forms filed with the Mexican Commission pursuant to Article 202 and Exhibit 9 of the General Provisions; (v) fails to post or collect initial margin or variation margin required under Mexican law and/or regulations or CFTC margin rules to be exchanged for uncleared swaps and non-cleared security-based swaps in amounts that exceed defined thresholds; and (vi) has received the approval of the Mexican Commission to a change in the firm's

fiscal year end date.²⁴⁰ The notices would have to be translated into English prior to being filed with the Commission and NFA.²⁴¹

The Commission proposed these conditions so that it and NFA would be alerted to the occurrence of any of the defined events in a prompt manner, which would allow the Commission and NFA to communicate with the impacted Mexican nonbank SD to assess the seriousness of the matter and the effectiveness of any actions that the Mexican nonbank SD may have taken to remediate the matter. As previously noted, the notices provide the Commission with "early warning" of potential adverse financial and operational issues at a nonbank SD. The receipt of "early warning" notices are an important component of the Commission's and NFA's programs for effectively overseeing the safety and soundness of nonbank SDs.

2. Comment Analysis and Final Determination

Better Markets stated that the proposed notice provisions in the proposed Comparability Determination and proposed Comparability Order represent regulatory gaps between the Mexican Financial Reporting Rules and the CFTC Financial Reporting Rules.²⁴² The Commission recognized that the Mexican Financial Reporting Rules do not include regulatory notices in a manner comparable to the CFTC Financial Reporting Rules. To address the lack of regulatory notices under the Mexican Financial Reporting Rules, the Commission included proposed conditions in the proposed Comparability Order that are consistent with the notice provisions imposed by the Commission on nonbank SDs under Commission Regulation 23.105(c). The proposed notice conditions are intended to ensure that the Commission and NFA receive necessary information to conduct ongoing monitoring of Mexican nonbank SDs for compliance with

relevant capital and financial reporting requirements.

As discussed in section I.E. above, in issuing a Comparability Order, the Commission is not ceding its supervisory and enforcement authorities. The Comparability Order permits Mexican nonbank SDs to satisfy the Commission's capital and financial reporting requirements by complying with certain laws and/or regulations of Mexico that have been found to be comparable to the Commission's laws and/or regulations in purpose and effect. The Commission and NFA, however, have a continuing obligation to conduct ongoing oversight, including potential examination, of Mexican nonbank SDs to ensure compliance with the Comparability Order, including its conditions. To that effect, the notice conditions set forth in the Comparability Order provide the Commission and NFA with information necessary to monitor for Mexican nonbank SDs for compliance with the Comparability Order and to evaluate the firms' operational and financial conditions.

Furthermore, to the extent that the notice conditions impose new obligations on Mexican nonbank SDs beyond what is currently in Mexican laws or regulations, the imposition of such conditions is consistent with Commission Regulation 23.106 and the Commission's established policy with regard to comparability determinations. As discussed in section I.E. above, the Commission contemplated that even in circumstances where the Commission finds two regulatory regimes comparable, the Commission may impose requirements on entities relying on substituted compliance where the Commission determines that the home jurisdiction's regime lacks comparable and comprehensive regulation on a specific issue.²⁴³ The Commission's authority to impose such conditions is also evident from the language of Commission Regulation 23.106(a)(5), which states that the Commission may impose "any terms and conditions it deems appropriate, including certain capital adequacy and financial reporting requirements [on SDs]." ²⁴⁴ Therefore, the Commission believes that the imposition of conditions in the Comparability Order to require Mexican nonbank SDs to file notices of certain events with the Commission and NFA in a manner consistent with requirements imposed by the Commission on nonbank SDs under Commission Regulation 23.105(c)

²³⁶ *Id.*

²³⁷ See 2022 Proposal at 76395.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ The Commission noted that it was aware of the Mexican Commission's intent to issue final rules addressing the margin requirements for uncleared swaps. See 2022 Proposal at 76396 (n. 237). As further noted in the 2022 Proposal, however, Mexican nonbank SDs are currently subject to the CFTC margin requirements for uncleared swap transactions as set forth in Commission Regulation 23.160 for cross-border transactions. *Id.* Commission Regulation 23.160 governs the cross-border application of the CFTC margin requirements for uncleared swaps depending on the category of entities involved in the transactions and the availability of substituted compliance.

²⁴¹ *Id.* at 76396.

²⁴² Better Markets Letter at p. 12.

²⁴³ Guidance at 45343.

²⁴⁴ 17 CFR 23.106(5).

appropriately addresses the fact that the Mexican Financial Reporting Rules do not include comparable regulatory requirements.

The Associations recommended in their joint comment letter that with respect to the proposed conditions to require that Mexican nonbank SDs provide notice if the firm experiences a 30 percent or more decrease in excess regulatory capital or if the firm fails to make or keep current books and records, that the Commission require a Mexican nonbank SD to file a notice within a defined period of time of when the firm “knows” or becomes “aware of” the reportable event instead of when the firm “experiences” or “should have known” of the reportable event.²⁴⁵ In support of the recommendation, the Associations noted that it was practically challenging for a firm to submit a notification prior to the discovery of the relevant failure.²⁴⁶

With regard to the proposed requirement that a Mexican nonbank SD notify the Commission and NFA if the firm “experiences” a 30 percent or more decrease in its excess regulatory capital, the Commission believes that it is appropriate to impose the condition as proposed to ensure consistency with Commission Regulation 23.105(c)(4).²⁴⁷ In this regard, a nonbank SD will be expected to maintain diligent recordkeeping allowing it to become aware of substantial reductions in capital in a timely manner and to establish procedures for the timely provision of the requisite notification. As to the proposed requirement in Condition 17 (renumbered Condition 19 in the final Comparability Order) that a Mexican nonbank SD notify the Commission and NFA within 24 hours of when it “knows or should have known that it has failed to make or keep current the books and records required by the Mexican Commission,” the Commission will align the language of the condition with the timing standard of Commission Regulation 23.105(c)(3), while also granting additional time for the notice to be translated into English. As such, the Commission will require the notice to be provided within 24 hours “if [the firm] fails to make or keep” current the books and records. Although the Commission is adjusting

the language in Condition 19 of the final Comparability Order, the Commission emphasizes that this condition imposes a requirement to provide a prompt notice upon the occurrence of the reportable event. Maintaining current books and records of all financial transactions is a fundamental recordkeeping requirement for a registered nonbank SD, and is essential to provide management with the information necessary to ensure that transactions are timely and accurately reported and that the firm complies with capital and other regulatory requirements. The Commission believes that it is necessary for a nonbank SD to maintain internal controls and procedures to affirmatively monitor that books and records are being maintained on a current basis. For further clarification of this condition, the Commission confirms that the notice requirement will apply with respect to books and records addressing the Mexican nonbank SD’s financial condition and financial reporting requirements, and has revised the condition to so specify.

Separately, to promote consistency across the Comparability Determinations the Commission is adopting with respect to other jurisdictions, the Commission will revise the proposed early warning notice condition requiring a Mexican nonbank SD to provide a notice to the Commission and NFA if its regulatory capital falls below 120 percent of the minimum capital requirement.²⁴⁸ Instead of requiring a notice if the Mexican nonbank SD’s capital falls below 120 percent of the minimum capital requirement, the Commission will require that the Mexican nonbank SD provide a notice to the Commission and NFA if it breaches its capital conservation buffer requirement.²⁴⁹ The notice must be prepared in the English language. The Commission believes that this condition, combined with the condition requiring that a Mexican nonbank SD provide notice to the Commission and NFA if it experiences 30 percent or more decrease in its excess regulatory capital, would provide a timely opportunity to the Commission and NFA to initiate conversations and fact finding with a Mexican nonbank SD that may be experiencing operational or financial issues that may adversely

impact the firm’s ability to meet its obligations to market participants, including customers or swap counterparties. Given that Mexican nonbank SDs are subject to the requirement to maintain a capital conservation buffer pursuant to the Mexican Capital Rules, the condition requiring notice in case of a breach of the buffer requirement will not have a material operational impact on Mexican nonbank SDs.

The Associations also requested that the Commission set the compliance date at least six months following the issue date of the Comparability Order to adequately prepare for compliance with the notice reporting obligations imposed by the Comparability Order.²⁵⁰ Similar to its position with regard to the financial reporting obligations, the Commission believes that it is appropriate to grant an additional period of time to allow Mexican nonbank SDs to establish and implement the necessary systems and processes to comply with the newly imposed notice reporting obligations that require monitoring of thresholds for which Mexican nonbank SDs do not have an established process.

Accordingly, the Commission is setting a compliance date of 180 calendar days after publication of the final Comparability Order in the **Federal Register** with respect to the notice obligations under final Conditions 18 and 20 of the Comparability Order. Given the nature of the remaining notice obligation, the Commission believes that Mexican nonbank SDs should be in a position to comply with all other notice obligations, including those requiring Mexican nonbanks SDs to provide notice to the Commission and NFA if they fail to make or keep current financial books and records, or if they fail to maintain regulatory capital equal to, or in excess of, the U.S. dollar equivalent of \$20 million, immediately upon effectiveness of the Comparability Order.

With regard to Condition 20, which requires a Mexican nonbank SD to provide notice if it fails to post or collect initial or variation margin exceeding certain thresholds, the Commission notes, for clarity, that in proposing a notice condition based on thresholds of “required” margin, the Commission’s intent was to set the notice trigger by reference to margin amounts that are legally required to be exchanged under the applicable margin requirements. To determine the applicable margin requirements, the Commission will consider the

²⁴⁵ Associations Letter at p. 4.

²⁴⁶ *Id.*

²⁴⁷ 17 CFR 23.105(c)(4). For clarity, by “excess regulatory capital,” the Commission refers to the capital ratio by which the firm’s capital exceeds the core capital ratio requirement of 8 percent of the firm’s risk-weighted assets. For instance, if a firm maintains a capital ratio of 20 percent, its excess regulatory capital would be 12 percent. In this example, 30 percent of the excess regulatory capital would equal 3.6 percent.

²⁴⁸ 17 CFR 23.105(c)(2).

²⁴⁹ As noted in Section II.C.2.b., Mexican nonbank SDs are required to maintain a capital conservation buffer of 2.5 percent of the Mexican nonbank SD’s risk-weighted assets that must be met with fundamental capital. Articles 172 and 173 of the Law and Articles 162 and 162 Bis of the General Provisions.

²⁵⁰ Associations Letter at p. 4.

framework set forth in Commission Regulation 23.160.²⁵¹ To the extent Mexican nonbank SDs intending to rely on the Comparability Order have inquiries regarding the scope of uncleared swap margin transactions to be monitored for purposes of complying with final Condition 20, MPD will discuss such inquiries with the Mexican nonbank SD during the confirmation process referenced in final Condition 6 of the Comparability Order.

The Commission did not receive any comments with respect to the following proposed notice conditions: (i) the Mexican nonbank SD files notice with the Commission and NFA within 24 hours of being informed by the Mexican Commission that the firm is not in compliance with any component of the Mexican Capital Rules or Mexican Financial Reporting Rules (proposed Condition 14); (ii) the Mexican nonbank SD provides notice to the Commission and NFA if it initiates the process of seeking the approval of the Mexican Commission to use internal models to compute market risk and/or credit risk (proposed Condition 7); or (iii) the Mexican nonbank SD files notice of the Mexican Commission approving a change in the firm's fiscal year-end date, which must be filed with the Commission and NFA at least 15 business days prior to the effective date of the change (proposed Condition 19).

The Commission, having considered the 2022 Proposal, is adopting the above conditions as proposed.²⁵² The Commission is also revising the final conditions by adding Condition 17 to the Comparability Order, which requires a Mexican nonbank SD to file notice with the Commission and NFA within 24 hours if the firm fails to maintain regulatory capital in the form of fundamental capital, as defined by Article 162 and Article 162 Bis of the General Provisions, equal to or in excess of the equivalent of \$20 million. The requirement to provide such notice will impose a consistent condition and obligation on non-U.S. nonbank SDs across the non-U.S. jurisdictions that are the subject to Commission Comparability Orders, and will provide the Commission and NFA with information to monitor the financial condition of non-bank SDs.

The Commission is also adopting a compliance date for certain notice requirements as discussed above in the final Comparability Order.

F. Supervision and Enforcement

1. Preliminary Determination

The 2022 Proposal contained a discussion of the Commission's and NFA's ongoing supervision of nonbank SDs to assess their compliance with the CEA, Commission regulations, and NFA rules by reviewing financial reports, risk exposure reports, and other filings submitted by nonbank SDs with the Commission and NFA.²⁵³ As discussed, the Commission and NFA also conduct periodic examinations as part of their supervision of nonbank SDs, including routine on-site examinations of nonbank SDs' books, records, and operations to ensure compliance with CFTC and NFA requirements.²⁵⁴

The Commission also referred to the financial reports and notices required under the CFTC Financial Reporting Rules, noting that the reports and notices provide the Commission and NFA with information necessary to ensure the nonbank SD's compliance with minimum capital requirements; assess the firm's overall safety and soundness and ability to meet its financial obligations to customers, counterparties, creditors, and general market participants; and identify potential issues at a nonbank SD that may impact the firm's ability to maintain compliance with the CEA, Commission regulations, and NFA requirements.²⁵⁵ As discussed, the Commission and NFA also have the authority to require a nonbank SD to provide any additional financial and/or operational information as the Commission or NFA may specify to monitor the safety and soundness of the firm.²⁵⁶

The Commission further noted that it has authority to take disciplinary actions against a nonbank SD for failing to comply with the CEA and Commission regulations. In this regard, section 4b–1(a) of the CEA²⁵⁷ provides the Commission with exclusive authority to enforce the capital

requirements imposed on nonbank SDs adopted under section 4s(e) of the CEA.²⁵⁸

With respect to the Mexican authorities' power to supervise Mexican nonbank SDs and to carry out enforcement actions, the Commission noted that the Mexican Commission has supervisory, inspection, and surveillance powers, which include the authority to require a Mexican nonbank SD to provide the Mexican Commission with all necessary information and documentation to verify the Mexican nonbank SD's compliance with the Mexican Law and General Provisions.²⁵⁹ In addition, as noted in section II.D.1. above, the Mexican Central Bank requires a Mexican nonbank SD licensed to enter into derivatives transactions for its own account to file, with the Mexican Central Bank, an annual written communication issued by the Mexican nonbank SD's internal audit committee evidencing compliance in the performance of its derivatives transactions with each and all applicable legal provisions.²⁶⁰ When required by the Mexican Central Bank, a Mexican nonbank SD also must provide the Mexican Central Bank with all the information related to the derivatives transactions performed by the firm.²⁶¹ Furthermore, the Mexican Commission also has the authority to require a Mexican nonbank SD to adopt any necessary measures to correct irregular activities, and the Mexican Commission has the authority to conduct all necessary on-site inspections of a Mexican nonbank SD.²⁶² The Commission also explained that the Mexican Commission uses information provided through the mandatory financial reporting and annual stress test assessments that Mexican nonbank SDs are required to conduct, to monitor Mexican nonbank SDs' compliance with the Mexican

²⁵⁸ 7 U.S.C. 6s(e).

²⁵⁹ 2022 Proposal at 76396 and Article 350 of the Law, Articles 5 and 19 of the Mexican Commission Law and the Supervision Regulations of the Mexican Commission.

²⁶⁰ Provision 3.1.3. of the Rule 4/2012 issued by the Mexican Central Bank. *See also* 2022 Proposal at 76392.

²⁶¹ *Id.*

²⁶² Pursuant to Article 358 of the Law, the Mexican Commission and the Mexican Central Bank are authorized to provide foreign financial authorities with information that they deem appropriate within the scope of their competence, such as documents, records, declarations and other evidence that the authorities have in their possession by virtue of having obtained the information in the exercise of their powers and duties, provided that there is an agreement with the relevant foreign financial authorities for the exchange of information, in consideration of the principle of reciprocity. *See* 2022 Proposal at 76396.

²⁵³ 2022 Proposal at 76396.

²⁵⁴ Section 17(p)(2) of the CEA (7 U.S.C. 21(p)(2)) requires NFA as a registered futures association to establish minimum capital and financial requirements for non-bank SDs and to implement a program to audit and enforce compliance with such requirements. Section 17(p)(2) further provides that NFA's capital and financial requirements may not be less stringent than the capital and financial requirements imposed by the Commission. *See* 2022 Proposal at 76396.

²⁵⁵ *See* 2022 Proposal at 76396.

²⁵⁶ 17 CFR 23.105(h). *See also* 2022 Proposal at 76396. Regulation 23.105(h) provides that the Commission or NFA may, by written notice, require a nonbank SD to file financial or operational information on a daily basis or other basis with the Commission and/or NFA.

²⁵⁷ 7 U.S.C. 6b–1(a).

²⁵¹ 17 CFR 23.160.

²⁵² The Commission is renumbering proposed Conditions 14, 18, and 19 as Conditions 15, 20, and 21, respectively, in the final Comparability Order.

Capital Rules and to assess the firm's overall safety, soundness, and ability to meet financial obligations to customers, counterparties, and creditors.²⁶³ As discussed in the proposed Comparability Determination, the Mexican Commission also uses financial reporting from Mexican nonbank SDs as a component of its risk-based methodology in setting the frequency and scope of its examinations of Mexican nonbank SDs.²⁶⁴ The Mexican Commission generally conducts an examination, including on-site visits, of each firm at least once every two years. The Mexican Commission will also conduct an examination of a firm, including an on-site visit, to the extent that its daily, routine surveillance indicates a need for an immediate review.²⁶⁵

As noted in the proposed Comparability Determination, the Mexican Commission may also impose fines against Mexican nonbank SDs for failing to comply with relevant Mexican laws and regulations²⁶⁶ and may order a Mexican nonbank SD that fails to comply with the applicable regulatory capital ratios, including the 2.5 percent common equity tier 1 capital buffer, to take corrective measures.²⁶⁷ The Mexican Commission may also revoke a Mexican nonbank SD's license to operate as a broker-dealer if the firm fails to comply with the above

corrective measures or if the firm reports losses that reduce its capital to a level below the minimum required.²⁶⁸

Based on its review of the Application and its analysis of the relevant laws and regulations, the Commission preliminarily found that the Mexican Commission has the necessary powers to supervise, investigate, and discipline entities for compliance with its capital, financial and reporting requirements, and to detect and deter violations of, and ensure compliance with, the applicable capital and financial reporting requirements in Mexico.²⁶⁹ Furthermore, the Commission also noted that it retains supervision, examination, and enforcement authority over Mexican nonbank SDs that are covered by a Comparability Order.²⁷⁰ Specifically, the Commission noted that a non-U.S. nonbank SD that operates under substituted compliance remains subject to the Commission's examination authority and may be subject to a Commission enforcement action if the firm fails to comply with a foreign jurisdiction's capital adequacy or financial reporting requirements.²⁷¹ The ability of the Commission to exercise its enforcement authority over a Mexican nonbank SD is not conditioned upon a finding by the Mexican Commission of a violation of the Mexican Capital Rules or Mexican Financial Reporting Rules. In addition, as each Mexican nonbank SDs is a member of NFA, the firm is subject to NFA membership rules, examination authority, and disciplinary process.²⁷²

2. Comment Analysis and Final Determination

In response to the request for comment, Better Markets asserted that while the 2022 Proposal states that the Mexican Commission has the necessary powers to supervise, investigate, and discipline Mexican nonbank SDs for compliance with applicable capital, financial, and reporting requirements, the Commission does not provide details regarding the demonstrated past effectiveness of the Mexican Commission's supervision and enforcement of Mexican nonbank SDs.²⁷³ The Commission does not believe that Commission Regulation

23.106 requires the Commission to perform an assessment of the historical effectiveness of the foreign jurisdictions' supervision and enforcement programs.

The Commission's evaluation of the laws and regulations granting the Mexican authorities' supervisory and enforcement authority, as discussed in section II.F.1. above, is consistent with the standard of review articulated in Commission Regulation 23.106(a)(3). Specifically, Commission Regulation 23.106(a)(3) provides that the Commission may consider all relevant factors in performing the comparability assessment, including the ability of the relevant regulatory authority to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements.

The Commission's assessment of the Mexican Commission's supervisory program included an evaluation of the Mexican Commission's ability to supervise Mexican nonbank SDs based on current Mexican laws and regulations, as discussed in section II.F.1. above. This evaluation included an assessment of the financial reporting that Mexican nonbank SDs are required to provide to the Mexican Commission, the authority of the Mexican Commission to conduct examinations, including onsite inspections of Mexican nonbank SDs, and the authority of the Mexican Commission to impose sanctions or take other action to address noncompliance with applicable laws and regulations. Based upon its evaluation, the Commission preliminarily determined that Mexican laws and regulations are comparable in purpose and effect to the CEA and Commission regulations, and that the Mexican Commission has appropriate authority to supervise Mexican nonbank SDs for compliance with applicable Mexican Capital Rules and Mexican Financial Reporting Rules. The Commission further determined, based on applicable Mexican laws and regulations, that the Mexican Commission has the ability to sanction Mexican nonbank SDs for failing to comply with regulatory requirements. Specifically, as discussed in section II.F.1. above, the Mexican Commission has the authority to impose fines²⁷⁴ and may order a Mexican nonbank SD that fails to comply with the applicable regulatory capital ratios to take corrective measures, including the suspension of payment of compensation to senior officials and a limitation on the execution of new transactions that

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.* Fines may range from approximately \$130,000 to \$432,000 for failing to maintain sufficient regulatory capital in relation to the risks in the Mexican nonbank SD's operations and from approximately \$43,000 to \$432,000 if a Mexican nonbank SD for failing to comply with applicable information or documentation requirements made by the Mexican Commission or to provide the required periodic informational filings. Article 392 paragraphs I, subparagraph (a) and paragraph III, subparagraph (v), of the Law.

²⁶⁷ Corrective measures may include the following: (i) a prohibition on entering into transactions whose execution would cause a total capital ratio to be less than 8 percent of the risk-weighted assets; (ii) a requirement that the Mexican nonbank SD submit for the approval of the Mexican Commission a recovery capital plan; (iii) a suspension of the payment of dividends; (iv) a suspension of the programs of acquisition of shares of the capital stock of the Mexican nonbank SD; (v) a suspension of payments of compensation, extraordinary bonuses, or other remuneration in addition to the salary of the chief executive officer ("CEO") and officials of the two hierarchical levels below the CEO, as well as a requirement to refrain from granting new compensation in the future for the CEO and officials; (vi) an engagement with external auditors or other specialized third parties to carry out special audits on specific issues; and (vii) a limitation on the execution of new transactions that may cause an increase in risk-weighted assets and/or cause greater impairment in the Mexican nonbank SD's regulatory capital ratios. See 2022 Proposal at 76396 and Article 153 of the Law.

²⁶⁸ *Id.*

²⁶⁹ 2022 Proposal at 76397–76398.

²⁷⁰ 2022 Proposal at 76377.

²⁷¹ *Id.* See also, 17 CFR 23.106(a)(4)(ii), which provides that all nonbank SDs, regardless of whether they rely on a Comparability Order or Comparability Determination, remain subject to the Commission's examination and enforcement authority.

²⁷² 7 U.S.C. 21(p).

²⁷³ Better Markets Letter at p. 13, citing 2022 Proposal at 76397.

²⁷⁴ Article 392 paragraphs I, subparagraph (a) and paragraph III, subparagraph (v), of the Law.

may cause an increase in risk-weighted assets.²⁷⁵ The Mexican Commission may also revoke a Mexican nonbank SD's license to operate as a broker-dealer if the firm fails to comply with the above corrective measures or if the firm reports losses that reduce its capital to a level below the minimum required.²⁷⁶

Better Markets further stated that an information sharing agreement is necessary for the Commission to communicate and consult with the Mexican Commission to facilitate cooperation and information sharing regarding the supervision of Mexican nonbank SDs.²⁷⁷ Better Markets further stated that the proposed Comparability Order does not contain a draft of the terms and conditions of an information sharing agreement, include a discussion of the timing of entering into an information sharing agreement, or condition the Comparability Order on the Commission entering into an information sharing agreement with the Mexican Commission.²⁷⁸ Better Markets further asserted that given that enforcement is a critical component of any comparability determination, any comparability determination must be conditioned upon first executing an appropriate information sharing agreement.²⁷⁹

The substituted compliance framework set forth in Commission Regulation 23.106 allows a Mexican nonbank SD to satisfy the Commission's capital and financial reporting rules by complying with Mexican capital and financial reporting rules that the Commission has found comparable in purpose and effect and has specified in the Comparability Order, subject to conditions that are also specified in the Comparability Order. Commission Regulation 23.106 does not precondition the Commission's ability to issue a Comparability Order on the Commission and the authority or authorities in the relevant foreign jurisdiction entering into a formal MOU or similar arrangement.

As discussed in this Comparability Determination, by issuing a Comparability Order, the Commission is not ceding its supervision and enforcement authorities. Mexican nonbank SDs that are subject to a Comparability Order are registered with the Commission as SDs and are members of NFA, and, as such, are subject to the CEA, Commission

regulations, and NFA membership rules and requirements. Mexican nonbank SDs covered by a Comparability Order also remain subject to the Commission's examination and enforcement authority with respect to all elements of the CEA and Commission regulations, including capital and financial reporting.²⁸⁰ In this regard, Mexican nonbank SDs are required to directly provide the Commission with additional information upon the Commission's request to facilitate the ongoing supervision of such firms.²⁸¹ Furthermore, section 17 of NFA's SD Financial Requirements rule provides that each SD member of NFA must file the financial, operational, risk management and other information required by NFA in the form and manner prescribed by NFA.²⁸² The ability to obtain information directly from Mexican nonbank SDs ensures that the Commission and NFA have access to the information necessary to monitor the financial condition of such firms and to assess the firms' compliance with applicable capital and financial reporting requirements.

In addition, as detailed in section I.E. above, the conditions set forth in the Comparability Order reflect that the Commission and NFA have a continuing obligation to conduct ongoing oversight, including potential examination, of Mexican nonbank SDs to ensure compliance with the Comparability Order. Specifically, as part of this oversight, the conditions require Mexican nonbank SDs to file directly with the Commission and NFA financial reports and notices that are comparable to the financial reports and notices filed by nonbank SDs domiciled in the U.S. In addition to requiring Mexican nonbank SDs to maintain current books and records reflecting all transactions,²⁸³ the conditions further require each Mexican nonbank SD covered by the Comparability Order to file directly with the Commission and NFA: (i) notice that the firm was informed by the Mexican Commission that it is not in compliance with any component of the Mexican Capital Rules or Mexican Financial Reporting Rules;²⁸⁴ (ii) monthly, quarterly, and annual financial reports;²⁸⁵ (iii) notice that the firm has experienced a decrease

of 30 percent or more in its excess regulatory capital as compared to the last excess regulatory capital reported in filings with the Commission and NFA;²⁸⁶ (iv) notice that the firm has breached its capital conservation buffer;²⁸⁷ (v) notice that the firm has failed to maintain regulatory capital in the form of fundamental capital in amount equal to or in excess of the equivalent of \$20 million;²⁸⁸ and (vi) notice that the firm has failed to make or keep current financial books and records required by the Mexican Commission.²⁸⁹ The Comparability Order further requires the Applicants to provide notice to the Commission of any material changes to the information submitted in the application, including, but not limited to, proposed and final material changes to the Mexican Capital Rules or Mexican Financial Reporting Rules and proposed and final material changes to the Mexican Commission's supervisory authority or supervisory regime over Mexican nonbank SDs.²⁹⁰ The financial information and notices required to be filed directly with the Commission and NFA under the Comparability Order, and through the Commission's and NFA's direct authority to obtain additional information from Mexican nonbank SDs, will allow the Commission and NFA to conduct ongoing oversight of such firms to assess their overall safety and soundness.

Although Commission Regulation 23.106 does not condition the issuance of a Comparability Order on the Commission and the authority or authorities in the relevant foreign jurisdiction having entered into a formal MOU or similar arrangement, the Commission recognizes the benefit that such an arrangement may provide.²⁹¹ Specifically, although Commission staff may engage directly with Mexican nonbank SDs to obtain information regarding their financial and operational condition, it may not be able to exchange and discuss such firm-specific information²⁹² with the relevant

²⁸⁶ Condition 18 of the final Comparability Order.

²⁸⁷ Condition 16 of the final Comparability Order.

²⁸⁸ Condition 17 of the final Comparability Order.

²⁸⁹ Condition 19 of the final Comparability Order.

²⁹⁰ Condition 22 of the final Comparability Order.

²⁹¹ In an enforcement-related context, both the Commission and the Mexican Commission are signatories to the *International Organization of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012).

²⁹² The sharing of non-public information by CFTC staff would require assurances related to the use and treatment of such information in a manner consistent with section 8(e) of the CEA, 7 U.S.C. 12(e).

²⁸⁰ 17 CFR 23.106(a)(4)(ii).

²⁸¹ 17 CFR 23.105(h).

²⁸² *NFA Financial Requirements, Section 17. Swap Dealer and Major Swap Participant Reporting Requirements*, available at NFA's website: <https://www.nfa.futures.org/rulebooksql/index.aspx>.

²⁸³ Condition 8 of the final Comparability Order.

²⁸⁴ Condition 15 of the final Comparability Order.

²⁸⁵ Conditions 9 and 10 of the final Comparability Order.

²⁷⁵ Article 153 of the Law.

²⁷⁶ *Id.*

²⁷⁷ Better Markets Letter p. 13.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

authorities or reach shared expectations on procedures for conducting on-site examinations in Mexico. Therefore, Commission staff will continue its engagement with staff of the Mexican authorities to negotiate and finalize an MOU or similar arrangement to facilitate the joint supervision of Mexican nonbank SDs.

Based on the analysis set out above, the Commission finds that the Mexican Commission and the Mexican Central Bank maintain supervisory programs over Mexican nonbank SDs that are comparable to the Commission's supervisory program over nonbank SDs. The Mexican authorities' supervisory programs are comparable in purpose and effect to the Commission's supervisory program in that the respective programs are designed to monitor the safety and soundness of nonbank SDs through a combination of periodic financial reporting and examinations. Also, as noted above, the Commission and NFA will receive notices from Mexican nonbank SDs that are comparable to the notices received from nonbank SDs. The Commission and NFA will use the above information to assess compliance with the Comparability Order and the financial condition of Mexican nonbank SDs.

In addition, the Commission finds that the Mexican Commission has sufficient enforcement authority over nonbank SDs, comparable to the CFTC's enforcement authority. As discussed in section II.F.1. above, the Mexican Commission and the CFTC may sanction nonbank SDs for noncompliance with capital and financial reporting requirements by imposing fines or, if necessary, revoking the firms' registration. Furthermore, as discussed above, NFA may also take disciplinary action against a nonbank SD for failure to comply with its rules, including nonbank SD capital and financial reporting requirements. Accordingly, the Commission is adopting the Comparability Order as proposed with respect to the Commission's analysis concerning the comparability of the supervisory programs and enforcement authorities of the Commission, NFA, and the Mexican authorities with respect to nonbank SD capital and financial reporting.

III. Final Comparability Determination and Comparability Order

A. Commission's Final Comparability Determination

Based on the Mexico Application and the Commission's review of applicable Mexican laws and regulations, as well as the review of comments submitted in

response to the Commission's request for comment on the Mexico Application and the proposed Comparability Determination and Comparability Order, the Commission finds that the Mexican Capital Rules and the Mexican Financial Reporting Rules, subject to the conditions set forth in the Comparability Order below, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules. In reaching this conclusion, the Commission recognizes that there are certain differences between the Mexican Capital Rules and CFTC Capital Rules and certain differences between the Mexican Financial Reporting Rules and the CFTC Financial Reporting Rules. The Comparability Order below is subject to conditions that are necessary to promote consistency in regulatory outcomes, or to reflect the scope of substituted compliance that would be available notwithstanding certain differences. In the Commission's view, the differences between the two rule sets would not be inconsistent with providing a substituted compliance framework for Mexican nonbank SDs subject to the conditions specified in the proposed Order below.

Furthermore, the Comparability Determination and Comparability Order are limited to the comparison of the Mexican Capital Rules to the Bank-Based Approach under the CFTC Capital Rules. As noted previously, the Applicants have not requested, and the Commission has not performed, a comparison of the Mexican Capital Rules to the Commission's NLA Approach or TNW Approach.

B. Order Providing Conditional Capital Comparability Determination for Mexican Nonbank Swap Dealers

It is hereby determined and ordered, pursuant to Commodity Futures Trading Commission ("CFTC" or "Commission") Regulation 23.106 (17 CFR 23.106) under the Commodity Exchange Act ("CEA") (7 U.S.C. 1 *et seq.*) that a swap dealer ("SD") organized and domiciled in Mexico and subject to the Commission's capital and financial reporting requirements under sections 4s(e) and (f) of the CEA (7 U.S.C. 6s(e) and (f)) may satisfy the capital requirements under section 4s(e) of the CEA and Commission Regulation 23.101(a)(1)(i) (17 CFR 23.101(a)(1)(i)) ("CFTC Capital Rules"), and the financial reporting rules under section 4s(f) of the CEA and Commission Regulation 23.105 (17 CFR 23.105) ("CFTC Financial Reporting Rules"), by complying with certain specified

Mexican laws and regulations cited below and otherwise complying with the following conditions, as amended or superseded from time to time:

(1) The SD is not subject to regulation by a prudential regulator defined in section 1a(39) of the CEA (7 U.S.C. 1a(39));

(2) The SD is organized under the laws of Mexico and is domiciled in Mexico (a "Mexican nonbank SD");

(3) The Mexican nonbank SD is a licensed casa de bolsa (broker-dealer) with the Mexican Comision Nacional Bancaria y de Valores (Mexican Banking and Securities Commission) (the "Mexican Commission");

(4) The Mexican nonbank SD is subject to and complies with: Articles 2, 113, 153, 172, 173, 228, 350, 358, and 392 of the Ley del Mercado de Valores (Securities Market Law) (referred to as "the Law"); Articles 5 and 19 of the Mexican Commission Law, the Supervision Regulations of the Mexican Commission; Articles 10, 137, 144, 146, 150 through 158 Bis, 159, 160, 161, 161 Bis through 161 Bis 5, 162, 162 Bis, 162 Bis 1, 163, 163 Bis, 169, 169 Bis, 175, 176, 179, 180, 201, 202, 203, 204 Bis 1, 204 Bis 2, 204 Bis 3, 204 Bis 7 through Bis 21, 214, 216, 217, Exhibits 5 and 9 of the Disposiciones de Caracter General Aplicables a las Casa De Bolsa ("General Provisions Applicable to Broker-Dealers"); section C.B1 of Circular 115/2002, issued by Banco de Mexico (the "Mexican Central Bank"); and Provision 3.1.3 of Rule 4/2012, issued by the Mexican Central Bank (collectively, the "Mexican Capital Rules" and "Mexican Financial Reporting Rules");

(5) The Mexican nonbank SD maintains at all times fundamental capital, as defined in Article 162 and Article 162 Bis of the General Provisions Applicable to Broker-Dealers, equal to or in excess of the equivalent of \$20 million in United States dollars ("U.S. dollars"). The Mexican nonbank SD shall use a commercially reasonable and observed peso/U.S. dollar exchange rate to convert the value of the peso-denominated fundamental capital to U.S. dollars;

(6) The Mexican nonbank SD has filed with the Commission a notice stating its intention to comply with the Mexican Capital Rules and Mexican Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Financial Reporting Rules. The notice of intent must include the Mexican nonbank SD's representations that the firm is organized and domiciled in Mexico; is a licensed casa de bolsa with the Mexican Commission; and is subject to, and complies with, the Mexican Capital Rules and Mexican Financial Reporting

Rules. The Mexican nonbank SD may not rely on this Comparability Order until it receives confirmation from Commission staff, acting pursuant to authority delegated by the Commission under Commission Regulation 140.91(a)(11) (17 CFR 140.91(a)(11)), that the Mexican nonbank SD may comply with the Mexican Capital Rules and Mexican Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Financial Reporting Rules. Each notice filed pursuant to this condition must be prepared in the English language and submitted to the Commission via email to the following address: *MPDFinancialRequirements@cftc.gov*;

(7) The Mexican nonbank SD shall provide notice to the Commission and National Futures Association (“NFA”) if at any time it initiates the process of seeking the approval of the Mexican Commission to use internal models to compute market risk and/or credit risk. The Mexican nonbank SD shall not use internal models to compute its regulatory capital under the terms of this Comparability Order without the authorization of the Commission or NFA;

(8) The Mexican nonbank SD prepares and keeps current ledgers and other similar records in accordance with accounting principles permitted by the Mexican Commission;

(9) The Mexican nonbank SD files with the Commission and with NFA a copy of its quarterly financial report filed with the Mexican Commission pursuant to Article 203 of the General Provisions Applicable to Broker-Dealers and a copy of the monthly financial information, including the monthly balance sheet and income statement, filed with the Mexican Commission pursuant to Article 202 and Exhibit 9 of the General Provisions Applicable to Broker-Dealers. The Mexican nonbank SD must also include with the monthly information provided to the Commission and NFA a statement of regulatory capital as of each month end. The quarterly financial report and monthly financial information must be translated into the English language and balances must be converted to U.S. dollars, using a commercially reasonable and observable Mexican peso/U.S. dollar spot rate as of the date of the report. The quarterly financial report must be filed with the Commission and NFA within 15 business days of the earlier of the date the quarterly financial report is filed with the Mexican Commission or the date that the financial report is required to be filed with the Mexican Commission. The monthly financial

information must be filed with the Commission and NFA within 35 calendar days after the end of each month;

(10) The Mexican nonbank SD files with the Commission and with NFA a copy of its audited annual financial report that is required to be filed with the Mexican Commission in accordance with Article 203 of the General Provisions Applicable to Broker-Dealers. The audited annual report must be translated into the English language. The audited annual report must be filed with the Commission and NFA within 15 business days of the earlier of the date the audited annual report is filed with the Mexican Commission or the date that the audited annual report is required to be filed with the Mexican Commission;

(11) The Mexican nonbank SD files Schedule 1 of appendix B to subpart E of part 23 of the Commission’s regulations (17 CFR part 23 subpart E—appendix B) with the Commission and NFA on a monthly basis. Schedule 1 must be prepared in the English language with balances reported in U.S. dollars, using a commercially reasonable and observable Mexican peso/U.S. dollar spot rate as of the date of the report, and must be filed with the Commission and NFA together with the financial information set forth in Condition (9);

(12) A Mexican nonbank SD that is a registered securities-based swap dealer with the U.S. Securities and Exchange Commission (“SEC”) and is required to file a monthly Form X-17A-5 (“FOCUS Report”) with the SEC, or its designee, must file a copy of the FOCUS Report with the Commission and NFA within 35 calendar days after the end of each month. A Mexican nonbank SD that files a FOCUS Report with the Commission and NFA pursuant to this condition is not required to file the financial reports and schedules specified in Conditions 9 and 11 of this Comparability Order;

(13) The Mexican nonbank SD files a margin report containing the information specified in Commission Regulation 23.105(m) (17 CFR 23.105(m)) with the Commission and with NFA on a monthly basis (“Margin Report”). The Margin Report must be filed together with the monthly financial information required by Article 202 and Exhibit 9 of the General Provisions Applicable to Broker-Dealers (Condition 9). The margin report must be in the English language and balances reported in U.S. dollars, using a commercially reasonable and observable Mexican peso/U.S. dollar spot rate as of the date of the report;

(14) The Mexican nonbank SD must submit with the monthly financial information, the quarterly financial report, and the audited annual report required under Conditions (9)–(12) of this Comparability Order a statement by an authorized representative or representatives of the Mexican nonbank SD that to the best knowledge and belief of the representative or representatives the information contained in the reports, including the translation of the reports into the English language and the conversion of balances into the reports to U.S. dollars (as applicable), is true and correct. The statement must be prepared in the English language;

(15) The Mexican nonbank SD files a notice with the Commission and NFA within 24 hours of being informed by the Mexican Commission that the firm is not in compliance with any component of the Mexican Capital Rules or Mexican Financial Reporting Rules. The notice must be prepared in the English language;

(16) The Mexican nonbank SD files a notice with the Commission and NFA within 24 hours of when the firm breaches the capital conservation buffer, which the Mexican nonbank SD is required to maintain pursuant to Article 162 of the General Provisions Applicable to Broker-Dealers. The notice must be prepared in the English language;

(17) The Mexican nonbank SD files a notice within 24 hours with the Commission and NFA if it fails to maintain regulatory capital in the form of fundamental capital, as defined in Article 162 and Article 162 Bis of the General Provisions Applicable to Broker-Dealers, equal to or in excess of the U.S. dollar equivalent of \$20 million using a commercially reasonable and observable peso/U.S. dollar exchange rate. The notice must be prepared in the English language;

(18) The Mexican nonbank SD files a notice with the Commission and NFA if it experiences a 30 percent or more decrease in its excess regulatory capital as compared to that last reported in the financial information filed with the Mexican Commission pursuant to Article 202 and Exhibit 9 of the General Provisions Applicable to Broker-Dealers. The notice must be prepared in the English language and filed within two business days of the firm experiencing the 30 percent or more decrease in excess regulatory capital;

(19) The Mexican nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to make or keep current the financial books and records required by the Mexican

Commission. The notice must be prepared in the English language;

(20) The Mexican nonbank SD files a notice with the Commission and NFA within 24 hours of the occurrence of any of the following: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin to the Mexican nonbank SD on uncleared swap and security-based swap positions that, in the aggregate, exceeds 25 percent of the Mexican nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the Mexican nonbank SD for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the Mexican nonbank SD's minimum capital requirement; (iii) a Mexican nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the Mexican nonbank SD's minimum capital requirement; and (iv) the Mexican nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the Mexican nonbank SD's minimum capital requirement. For purposes of the calculation, the Mexican nonbank SD's minimum capital requirement is the core capital requirement under the Mexican Capital Rules, excluding capital buffers. The notice must be prepared in the English language;

(21) The Mexican nonbank SD files a notice with the Commission and NFA of a change in its fiscal year end approved or permitted to go into effect by the Mexican Commission. The notice required by this condition will satisfy the requirement for a nonbank SD to obtain the approval of NFA for a change in fiscal year end under Commission Regulation 23.105(g) (17 CFR 23.105(g)). The notice of change in fiscal year end must be prepared in the English language and filed with the Commission and NFA at least 15 business days prior to the effective date of the Mexican nonbank SD's change in fiscal year end;

(22) The Applicants notify the Commission of any material changes to the information submitted in their application, including, but not limited to, proposed and final material changes to the Mexican Capital Rules or Mexican Financial Reporting Rules and proposed

and final material changes to the Mexican Commission's supervisory authority or supervisory regime over Mexican nonbank SDs. The notice must be prepared in the English language; and

(23) Unless otherwise noted in the conditions above, the reports, notices, and other statements required to be filed by Mexican nonbank SD with the Commission or NFA pursuant to the conditions of this Comparability Order must be submitted electronically to the Commission and NFA in accordance with instructions provided by the Commission or NFA.

*It is also hereby determined and ordered that this Comparability Order becomes effective upon its publication in the **Federal Register**, with the exception of Conditions 11, 13, 18, and 20, which will become effective 180 calendar days after publication of the Comparability Order in the **Federal Register**.*

Issued in Washington, DC, on July 3, 2024, by the Commission.

Christopher Kirkpatrick,
Secretary of the Commission.

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

Appendices to Order Granting Conditional Substituted Compliance in Connection with Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealer Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

I support the Commission's approval of four comparability determinations and related orders finding that the capital and financial reporting requirements in Japan, Mexico, the European Union (France and Germany), and the United Kingdom (for swap dealers (SDs) designated for prudential supervision by the UK Prudential Regulation Authority (PRA)) are comparable to the Commission's capital and financial reporting requirements applicable to nonbank SDs. These are the first comparability determinations that the Commission has finalized for applications filed following the July 2020 adoption of its regulatory

framework for substituted compliance for non-U.S. domiciled nonbank SDs.¹ There are currently 15 non-U.S. nonbank SDs that are eligible to comply with these conditional orders: three in Japan; three in Mexico; two in Germany and one in France for the EU; and six in the UK that are PRA-designated.

As part of the process leading to the Commission's final comparability determinations and orders, Commission staff engaged in a thorough analysis of each foreign jurisdictions' capital and financial reporting frameworks and considered the public comments received on the proposed determinations and orders. Based on those reviews, the Commission has determined that the respective foreign jurisdictions' rules are comparable in purpose and effect, and achieve comparable outcomes, to the CFTC's capital and financial reporting rules. Specifically, the Commission considered the scope and objectives of the foreign regulators' capital adequacy and financial reporting requirements; the ability of those regulators to supervise and enforce compliance with their respective capital and financial reporting requirements; and other facts or circumstances the Commission deemed relevant for each of the applications.

In certain instances, the Commission found that a foreign jurisdiction's rules impose stricter standards. In limited circumstances, where the Commission concluded that a foreign jurisdiction lacks comparable and comprehensive requirements on a specific issue, the Commission included a targeted condition designed to impose an equally stringent standard. The Commission has issued the final orders consistent with its authority to issue a comparability determination with the conditions it deems appropriate. These conditions aim to ensure that the orders only apply to nonbank SDs that are eligible for substituted compliance in these respective jurisdictions and that those non-U.S. nonbank SDs comply with the foreign country's capital and financial reporting requirements as well as certain additional capital, financial reporting, recordkeeping, and regulatory notice requirements. This approach acknowledges that jurisdictions may adopt unique approaches to achieving comparable outcomes. As a result, the Commission has focused on whether the applicable foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the corresponding Commission requirements for nonbank SDs, not whether they are comparable in every aspect or contain identical elements.

With these comparability determinations, the Commission fully retains its enforcement and examination authority as well as its ability to obtain financial and event specific reporting to maintain direct oversight of nonbank SDs located in these four jurisdictions. The avoidance of duplicative requirements without a commensurate benefit to the Commission's oversight function reflects the Commission's approach

¹ *Capital Requirements of Swap Dealers and Major Swap Participants*, 85 FR 57462 (Sept. 15, 2020). The Commission issued the final rule on July 24, 2020.

to recognizing the global nature of the swap markets with dually-registered SDs that operate in multiple jurisdictions, which mandate prudent capital and financial reporting requirements. This is, however, an added benefit and not the Commission's sole justification for issuing these comparability determinations.

The comparability orders will become effective upon their publication in the **Federal Register**. For several order conditions, the Commission is granting an additional compliance period of 180 calendar days. To rely on a comparability order, an eligible non-U.S. nonbank SD must notify the Commission of its intention to satisfy the Commission's capital and financial requirements by substituted compliance and receive a Commission confirmation before relying on a determination.

I appreciate the hard work and dedication of the staff in the Market Participants Division over the past several years to propose and finalize these four determinations. I also thank the staff in the Office of the General Counsel and the Office of International Affairs for their support on these matters.

Appendix 3—Statement of Commissioner Kristin N. Johnson

I support the Commodity Futures Trading Commission's (Commission or CFTC) issuance of four final capital and financial reporting comparability determinations and related orders (together, Final Comparability Determinations) for non-U.S. nonbank swap dealers (foreign nonbank SDs) and non-U.S. nonbank major swap participants (foreign nonbank MSPs) organized and domiciled in the United Kingdom (UK), the European Union (specifically, France and Germany), Mexico, and Japan.¹

The Final Comparability Determinations allow eligible foreign nonbank SDs to satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (CEA) and Commission regulations if they: (1) are subject to, and comply with, comparable capital and financial reporting requirements under the laws and regulations applicable in their home countries and (2) comply with the conditions enumerated in the applicable Final Comparability Determination. Under this conditional substituted compliance framework, foreign nonbank SDs in the relevant jurisdictions that comply with these conditions are deemed to be in compliance with the Commission's capital and financial reporting requirements.

Well-calibrated capital requirements create a cushion to absorb unexpected losses in times of market stress, and well-calibrated financial reporting requirements provide the Commission with information to monitor the business operations and financial condition of registered SDs. These tools are critical to managing systemic risk and fostering the stability of U.S. derivatives markets and the

U.S. financial system. The Commission's substituted compliance framework addresses the need to promote sound global derivatives regulation while mitigating potentially duplicative cross-border regulatory requirements for non-U.S. market participants operating in our markets. Where the Commission permits substituted compliance, it must retain sufficient oversight, examination, and enforcement authority to ensure compliance with the foreign jurisdiction's laws and the conditions to substituted compliance.

Crucially, while these Final Comparability Determinations permit foreign nonbank SDs to comply with home country regulations in lieu of compliance with Commission regulations, the Commission is also imposing important guardrails to ensure continuous supervision of the operations and financial condition of the foreign SD.

Background

For an example of the detrimental consequences of failing to adequately capitalize nonbank swap market participants, one need look no further than the 2008 global financial crisis. According to the U.S. Government Accountability Office, the crisis, which threatened the stability of the U.S. financial system and the health of the U.S. economy, may have led to \$10 trillion in losses, including large declines in employment and household wealth, reduced tax revenues from lower economic activity, and lost economic output.² In response to the crisis, in 2010, the U.S. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which amended the CEA to create a new regulatory framework for swaps.

As amended, section 4s(e) of the CEA directs the Commission and prudential regulators to impose minimum capital requirements on SDs registered with the Commission. Section 4s(e) adopts separate approaches for the imposition of minimum capital requirements on bank and nonbank SDs. For bank SDs, prudential regulators are authorized to set the minimum capital requirements. For nonbank SDs, the Commission is authorized to set those requirements. The amended CEA also sets out financial reporting requirements for SDs. Under section 4s(f) of the CEA, registered SDs are required to make financial condition reports and other reports regarding transactions and positions as mandated by Commission regulations.

In 2020, the Commission adopted regulations implementing both the capital and financial reporting requirements for SDs, which were amended in 2024 (the Capital and Financial Reporting Rules).³ The Capital and Financial Reporting Rules set minimum capital levels that nonbank SDs must maintain and financial reporting

requirements that nonbank SDs must comply with, including filing periodic unaudited financial statements and an annual audited financial report.⁴

Like the U.S., many other nations adopted their own regulatory regimes to govern swaps markets in the aftermath of the financial crisis. Since then, regulators from around the world have endeavored to improve the resilience of swaps markets and establish a global set of standards on critical risk management issues, such as capital and financial reporting requirements. These efforts led to the development of the Principles for Financial Market Infrastructures, to which many jurisdictions, including our own, look for guidance.⁵

The Dodd-Frank Act amendments specifically address the cross-border application of the CFTC's swaps regime. Section 2(i) of the CEA establishes that the CEA's swaps provisions apply to foreign swaps activities that have a "direct and significant" connection to, or effect on, U.S. markets. In line with section 2(i) of the CEA, the Capital and Financial Reporting Rules set out a substituted compliance framework in Commission Regulation 23.106 for foreign nonbank SDs seeking to comply with the Commission's capital and financial reporting requirements.

The substituted compliance framework consists of comparability determinations that afford "due consideration [to] international comity principles" while being "consistent with . . . the Commission's interest in focusing its authority on potential significant risks to the U.S. financial system."⁶ The determinations involve an assessment of the home-country requirements that is a principles-based, holistic approach, focusing on whether the applicable home-country requirements have comparable objectives and achieve comparable outcomes to the Commission's Capital and Financial Reporting Rules.

Today's Final Comparability Determinations

The Final Comparability Determinations will apply to 15 foreign nonbank SDs currently registered with the Commission and subject to oversight by the UK Prudential Regulation Authority, the European Central Bank, the Mexican Comisión Nacional Bancaria y de Valores, and the Financial Services Agency of Japan. I commend staff for their hard work on the Final

⁴ The reporting requirements imposed on bank SD and bank MSPs were "more limited" "as the financial condition of these entities will be predominantly supervised by the applicable prudential regulator and subject to its capital and financial reporting requirements." *Id.* at 57513. In May 2024, the Commission adopted amendments to the Capital and Financial Reporting Rules that codified two previously-issued staff letters providing interpretive guidance and no-action relief and made other technical amendments. 89 FR 45569 (May 23, 2024).

⁵ Principles for Financial Market Infrastructures, Bank for International Settlements and International Organization of Securities Commissions (Apr. 2012), <https://www.bis.org/cpmi/publ/d101a.pdf>.

⁶ Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 FR 56924, 56924 (Sept. 14, 2020).

¹ Though the Final Comparability Determinations will apply to foreign nonbank MSPs in the relevant jurisdictions, there are no such MSPs currently registered with the Commission at this time. I will refer only to SDs herein.

² United States Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act (Jan. 2013), <https://fraser.stlouisfed.org/title/gao-reports-testimonies-6136/financial-regulatory-reform-622249>.

³ Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

Comparability Determinations, including their work to thoroughly and thoughtfully analyze and address comments.

Importantly, while the Final Comparability Determinations permit foreign nonbank SDs in the relevant jurisdictions to comply with home country regulations in lieu of compliance with Commission regulations, there are numerous protections in place to ensure the Commission's ability to supervise on an ongoing basis the adequacy of the foreign nonbank SDs' compliance. The Final Comparability Determinations all include key conditions with which the foreign nonbank SDs must comply. For example, each of the Final Comparability Determinations requires that the foreign nonbank SDs provide monthly and annual financial reports to the Commission—and the Commission can request additional information as required to facilitate ongoing supervision. Each Final Comparability Determination also requires the foreign nonbank SDs to notify the Commission if adverse events occur, such as a significant decrease in excess regulatory capital, a significant failure of a counterparty to post required margin, or non-compliance with certain capital or financial reporting requirements. Finally, in recognition of the fact that a country's capital standards and financial reporting requirements may change over time, the Final Comparability Determinations require the foreign nonbank SDs to provide notice of material changes to the home country capital or financial reporting frameworks.

Moreover, the foreign nonbank SDs subject to these determinations are registered with the Commission and are members of the National Futures Association (NFA). Therefore, these entities are subject to the CEA, Commission regulations, and NFA membership rules, and each entity remains subject to Commission supervisory, examination and enforcement authority. As noted in the Final Comparability Determinations, if a foreign SD fails to comply with its home country's capital and financial reporting requirements, the Commission may initiate an action for a violation of the Commission's Capital and Financial Reporting Rules.

As I have previously noted,⁷ it is important to recognize foreign market participants' compliance with the laws and regulations of their regulators when the requirements lead

to an outcome that is comparable to the outcome of complying with the CFTC's corresponding requirements. Respect for partner regulators in foreign jurisdictions advances the Commission as a global standard setter for sound derivatives regulation and enhances market stability.

I thank the staff in the Market Participants Division for their hard work on these matters, particularly Amanda Olear, Tom Smith, and Lily Bozhanova.

Appendix 4—Statement of Commissioner Caroline D. Pham

I am pleased to support the order granting conditional substituted compliance in connection with certain capital and financial reporting requirements applicable to nonbank swap dealers subject to regulation by the Mexico Comision Nacional Bancaria y de Valores (CNBV) and Banco de Mexico (Mexico Final Order). The Mexico Final Order, on balance, reflects an appropriate approach by the CFTC to collaboration with non-U.S. regulators that is consistent with IOSCO's 2020 report on *Good Practices on Processes for Deference*.¹

I would like to thank Amanda Olear, Thomas Smith, Rafael Martinez, Warren Gorlick, Lilya Bozhanova, and Justin McPhee from the CFTC's Market Participants Division for their truly hard work on the Mexico Final Order and for addressing my concerns regarding the conditions for notice requirements.² I also thank the CNBV and Banco de Mexico for their assistance and support.

The CFTC's capital comparability determinations are the result of tireless efforts spanning over a decade since the global financial crisis. I commend the staff for working together with our regulatory counterparts around the world to promote regulatory cohesion and financial stability, and mitigate market fragmentation and systemic risk.

[FR Doc. 2024–15093 Filed 7–17–24; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the United Kingdom Prudential Regulation Authority

AGENCY: Commodity Futures Trading Commission.

¹ IOSCO Report, "Good Practices on Processes for Deference" (June 2020), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD659.pdf>.

² Concurring Statement of Commissioner Caroline D. Pham Regarding Proposed Order and Request for Comment on an Application for a Capital Comparability Determination (Nov. 10, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement111022>.

ACTION: Order.

SUMMARY: On February 5, 2024, the Commodity Futures Trading Commission issued a notice and request for comment on an application submitted by the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association requesting that the Commission determine that registered nonbank swap dealers organized and domiciled in the United Kingdom may comply with certain capital and financial reporting requirements under the Commodity Exchange Act and Commission regulations by being subject to, and complying with, corresponding capital and financial reporting requirements of the United Kingdom Prudential Regulation Authority. The Commission also solicited public comment on a proposed comparability determination and related order providing for the conditional availability of substituted compliance in connection with the application.

The Commission is adopting the proposed order with certain modifications and clarifications to address comments. The final order provides that a nonbank swap dealer organized and domiciled in the United Kingdom may satisfy the capital requirements under the Commodity Exchange Act and Commission applicable Commission regulations and the financial reporting rules under the Commodity Exchange Act and applicable Commission regulations by complying with certain specified United Kingdom laws and regulations and conditions set forth in the order.

DATES: This determination was made by the Commission on June 24, 2024.

FOR FURTHER INFORMATION CONTACT:

Amanda L. Olear, Director, 202–418–5283, aolear@cftc.gov; Thomas Smith, Deputy Director, 202–418–5495, tsmith@cftc.gov; Rafael Martinez, Associate Director, 202–418–5462, rmartinez@cftc.gov; Liliya Bozhanova, Special Counsel, 202–418–6232, lbozhanova@cftc.gov; Joo Hong, Risk Analyst, 202–418–6221, jhong@cftc.gov; Justin McPhee, Risk Analyst, 202–418–6223, jmchpee@cftc.gov, Market Participants Division; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission ("Commission" or "CFTC") is issuing an order providing that registered nonbank swap dealers ("SDs") organized and domiciled in the

⁷ Kristin N. Johnson, Commissioner, CFTC, Combatting Systemic Risk and Fostering Integrity of the Global Financial System Through Rigorous Standards and International Comity (Jan. 24, 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement012424>; Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Notice and Order on EU Capital Comparability Determination (June 7, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement060723c>; Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Proposed Order and Request for Comment on Mexican Capital Comparability Determination (Nov. 10, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement111022c>; Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Proposed Order on Japanese Capital Comparability Determination (July 27, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072722c>.

United Kingdom (“UK”) may satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (“CEA”)¹ and Commission regulations² by being subject to, and complying with, comparable capital and financial reporting requirements under relevant UK laws and regulations, subject to certain conditions set forth in the order below. The order is based on the proposed comparability determination and related proposed order published by the Commission on February 5, 2024,³ as modified in certain aspects to address comments and to clarify its terms.

I. Introduction

A. Regulatory Background—CFTC Capital, Margin, and Financial Reporting Requirements for Swap Dealers and Major Swap Participants

Section 4s(e) of the CEA⁴ directs the Commission and “prudential regulators”⁵ to impose capital requirements on SDs and major swap participants (“MSPs”) registered with the Commission.⁶ Section 4s(e) also directs the Commission and prudential

regulators to adopt regulations imposing initial and variation margin requirements on swaps entered into by SDs and MSPs that are not cleared by a registered derivatives clearing organization (“uncleared swaps”).

Section 4s(e) applies a bifurcated approach with respect to the above Congressional directives, requiring each SD and MSP that is subject to the regulation of a prudential regulator (“bank SD” and “bank MSP,” respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the applicable prudential regulator, and requiring each SD and MSP that is not subject to the regulation of a prudential regulator (“nonbank SD” and “nonbank MSP,” respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the Commission.⁷ Therefore, the Commission’s authority to impose capital requirements and margin requirements for uncleared swap transactions extends to nonbank SDs and nonbank MSPs, including nonbanking subsidiaries of bank holding companies regulated by the Federal Reserve Board.⁸

The prudential regulators implemented section 4s(e) in 2015 by amending existing capital requirements applicable to bank SDs and bank MSPs to incorporate swap transactions into their respective bank capital frameworks, and by adopting rules imposing initial and variation margin requirements on bank SDs and bank MSPs that engage in uncleared swap transactions.⁹ The Commission adopted final rules imposing initial and variation margin obligations on nonbank SDs and nonbank MSPs for uncleared swap transactions on January 6, 2016.¹⁰ The Commission also approved final capital requirements for nonbank SDs and nonbank MSPs on July 24, 2020, which were published in the **Federal Register** on September 15, 2020 with a compliance date of October 6, 2021 (“CFTC Capital Rules”).¹¹

Section 4s(f) of the CEA addresses SD and MSP financial reporting requirements.¹² Section 4s(f) authorizes the Commission to adopt rules imposing financial condition reporting obligations on all SDs and MSPs (*i.e.*, nonbank SDs, nonbank MSPs, bank SDs, and bank MSPs). Specifically, section 4s(f)(1)(A) provides, in relevant part, that each registered SD and MSP must make financial condition reports as required by regulations adopted by the Commission.¹³ The Commission’s financial reporting obligations were adopted with the Commission’s nonbank SD and nonbank MSP capital requirements, and also had a compliance date of October 6, 2021 (“CFTC Financial Reporting Rules”).¹⁴

B. Commission Capital Comparability Determinations for Non-U.S. Nonbank Swap Dealers and Non-U.S. Nonbank Major Swap Participants

Commission Regulation 23.106 establishes a substituted compliance framework whereby the Commission may determine that compliance by a non-U.S. domiciled nonbank SD or non-U.S. domiciled nonbank MSP with its home country’s capital and financial reporting requirements will satisfy all or parts of the CFTC Capital Rules and all or parts of the CFTC Financial Reporting Rules (such a determination referred to as a “Comparability Determination”).¹⁵ The Commission’s capital adequacy and financial reporting requirements are designed to address and manage risks

¹ 7 U.S.C. 1 *et seq.* The CEA may be accessed through the Commission’s website, www.cftc.gov.

² 17 CFR Chapter I. Commission regulations may be accessed through the Commission’s website, www.cftc.gov.

³ Notice of Proposed Order and Request for Comment on an Application for Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Capital and Financial Reporting Requirements of the United Kingdom and Regulated by the United Kingdom Prudential Regulation Authority, 89 FR 8026 (Feb. 5, 2024) (“2024 Proposal”).

⁴ 7 U.S.C. 6s(e).

⁵ The term “prudential regulators” is defined in the CEA to mean the Board of Governors of the Federal Reserve System (“Federal Reserve Board”); the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency. 7 U.S.C. 1a(39).

⁶ Subject to certain exceptions, the term “swap dealer” is generally defined as any person that: (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. 7 U.S.C. 1a(49).

The term “major swap participant” is generally defined as any person who is not an SD, and: (i) subject to certain exclusions, maintains a substantial position in swaps for any of the major swap categories as determined by the Commission; (ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or (iii) is a financial entity that: (a) is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and (b) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission. 7 U.S.C. 1a(33).

⁷ 7 U.S.C. 6s(e)(2).

⁸ 7 U.S.C. 6s(e)(1) and (2).

⁹ Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015).

¹⁰ Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016).

¹¹ Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020). On April 30, 2024, the Commission amended the capital and financial reporting requirements to revise certain financial reporting obligations, among other changes. See *Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants*, 89 FR 45569 (May 23, 2024). The amendments have limited impact on nonbank SDs covered by this order.

¹² 7 U.S.C. 6s(f).

¹³ 7 U.S.C. 6s(f)(1)(A).

¹⁴ 85 FR 57462.

¹⁵ 17 CFR 23.106. Commission Regulation 23.106(a)(1) provides that a request for a Comparability Determination may be submitted by a non-U.S. nonbank SD or non-U.S. nonbank MSP, a trade association or other similar group on behalf of its SD or MSP members, or a foreign regulatory authority that has direct supervisory authority over one or more non-US nonbank SDs or non-U.S. nonbank MSPs. However, Commission regulations also provide that any non-U.S. nonbank SD or non-U.S. nonbank MSP that is dually-registered with the Commission as a futures commission merchant (“FCM”) is subject to the capital requirements of Commission Regulation 1.17 (17 CFR 1.17) and may not petition the Commission for a Comparability Determination. 17 CFR 23.101(a)(5) and (b)(4), respectively. Furthermore, substituted compliance is not available to non-U.S. bank SDs and non-U.S. bank MSPs with respect to their respective financial reporting requirements under Commission Regulation 23.105(p). Commission Regulation 23.105(p), however, permits non-U.S. bank SDs and non-U.S. bank MSPs that do not submit financial reports to a U.S. prudential regulator to file with the Commission a statement of financial condition, certain regulatory capital information, and Schedule 1 of Appendix C to Subpart E of Part 23 of the Commission’s regulations prepared and presented in accordance with the accounting standards permitted by the non-U.S. bank SD’s or non-U.S. bank MSP’s home country regulatory authorities. 17 CFR 23.105(p)(2).

that arise from a firm's operation as an SD or MSP. Given their functions, both sets of requirements and rules must be applied on an entity-level basis (meaning that the rules apply on a firm-wide basis, irrespective of the type of transactions involved) to effectively address risk to the firm as a whole. The availability of such substituted compliance is conditioned upon the Commission issuing a Comparability Determination finding that the relevant foreign jurisdiction's capital adequacy and financial reporting requirements for non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs are comparable to the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules. The Commission would issue a Comparability Determination in the form of an order ("Comparability Order").¹⁶

The Commission's approach for conducting a Comparability Determination with respect to the CFTC Capital Rules and the CFTC Financial Reporting Rules is a principles-based, holistic approach that focuses on assessing whether the applicable foreign jurisdiction's capital and financial reporting requirements have comparable objectives with, and achieve comparable outcomes to, corresponding CFTC requirements.¹⁷ The Commission's assessment is not a line-by-line evaluation or comparison of a foreign jurisdiction's regulatory requirements with the Commission's requirements.¹⁸ In performing the analysis, the Commission recognizes that jurisdictions may adopt differing approaches to achieving regulatory objectives and outcomes, and the Commission will focus on whether the foreign jurisdiction's capital and financial reporting requirements are based on regulatory objectives, and produce regulatory outcomes, that are comparable to the Commission's in purpose and effect, and not whether they are comparable in every aspect or contain identical elements.

A person requesting a Comparability Determination is required to submit an application to the Commission containing: (i) a description of the objectives of the relevant foreign jurisdiction's capital adequacy and financial reporting requirements applicable to entities that are subject to the CFTC Capital Rules and the CFTC Financial Reporting Rules; (ii) a description (including specific legal and regulatory provisions) of how the

relevant foreign jurisdiction's capital adequacy and financial reporting requirements address the elements of the CFTC Capital Rules and CFTC Financial Reporting Rules, including, at a minimum, the methodologies for establishing and calculating capital adequacy requirements and whether such methodologies comport with international standards; and (iii) a description of the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements. The applicant must also submit, upon request, such other information and documentation as the Commission deems necessary to evaluate the comparability of the capital adequacy and financial reporting requirements of the foreign jurisdiction.¹⁹

The Commission will consider an application for a Comparability Determination to be a representation by the applicant that the laws and regulations of the foreign jurisdiction that are submitted in support of the application are finalized and in force, that the description of such laws and regulations is accurate and complete, and that, unless otherwise noted, the scope of such laws and regulations encompasses the relevant non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs domiciled in the foreign jurisdiction.²⁰ Each non-U.S. nonbank SD or non-U.S. nonbank MSP that seeks to rely on a Comparability Order is responsible for determining whether it is subject to the foreign laws and regulations found comparable in the Comparability Order. A non-U.S. nonbank SD or non-U.S. nonbank MSP that is not legally required to comply with a foreign jurisdiction's laws and/or regulations determined to be comparable in a Comparability Order may not voluntarily comply with such laws and/or regulations in lieu of compliance with the CFTC Capital Rules or the CFTC Financial Reporting Rules.

The Commission may consider all relevant factors in making a Comparability Determination,

¹⁹ 17 CFR 23.106(a)(2).

²⁰ The Commission provides the applicant with an opportunity to review for accuracy and completeness the Commission's description of relevant home country laws and regulations on which a proposed Comparability Determination and a proposed Comparability Order are based. The Commission relies on this review, and any corrections or feedback received, as part of the comparability assessment. A Comparability Determination and Comparability Order based on an inaccurate description of foreign laws and regulations may not be valid.

including: (i) the scope and objectives of the relevant foreign jurisdiction's capital and financial reporting requirements; (ii) whether the relevant foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital requirements and financial reporting requirements; (iii) the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements; and (iv) any other facts or circumstances the Commission deems relevant, including whether the Commission and foreign regulatory authority or authorities have a memorandum of understanding ("MOU") or similar arrangement that would facilitate supervisory cooperation.²¹

In performing the comparability assessment for foreign nonbank SDs, the Commission's review will include the extent to which the foreign jurisdiction's requirements address: (i) the process of establishing minimum capital requirements for nonbank SDs and how such process addresses risk, including market risk and credit risk of the nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting minimum requirements; (iii) the financial reports and other financial information submitted by a nonbank SD to its relevant regulatory authority and whether such information provides the regulatory authority with the means necessary to effectively monitor the financial condition of the nonbank SD; and (iv) the regulatory notices and other communications between a nonbank SD and its foreign regulatory authority that address potential adverse financial or operational issues that may impact the firm. With respect to the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the foreign jurisdiction's capital adequacy and financial reporting requirements, the Commission's review will include an assessment of the foreign jurisdiction's surveillance program for monitoring nonbank SDs' compliance with such capital adequacy and financial reporting requirements, and the disciplinary process imposed on firms that fail to comply with such requirements.²²

²¹ 17 CFR 23.106(a)(3) and 85 FR 57462 at 57520–57522.

²² The Commission would conduct a similar analysis, adjusted as appropriate to account for

¹⁶ 17 CFR 23.106(a)(3).

¹⁷ 17 CFR 23.106(a)(3)(ii). See also 85 FR 57462 at 57521.

¹⁸ 85 FR 57462 at 57521.

Commission Regulation 23.106 further provides that the Commission may impose any terms or conditions that it deems appropriate in issuing a Comparability Determination.²³ Any specific terms or conditions with respect to capital adequacy or financial reporting requirements will be set forth in the Commission's Comparability Order. As a general condition to all Comparability Orders, the Commission will require notification from the applicants of any material changes to information submitted by the applicants in support of a comparability finding, including, but not limited to, changes in the foreign jurisdiction's relevant laws and regulations, as well as changes to the relevant supervisory or regulatory regime.

To rely on a Comparability Order, a nonbank SD or nonbank MSP domiciled in the foreign jurisdiction and subject to supervision by the relevant regulatory authority (or authorities) in the foreign jurisdiction must file a notice with the Commission of its intent to comply with the applicable capital adequacy and financial reporting requirements of the foreign jurisdiction set forth in the Comparability Order in lieu of all or parts of the CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁴ Notices must be filed electronically with the Commission's Market Participants Division ("MPD").²⁵ The filing of a notice by a non-U.S. nonbank SD or non-U.S. nonbank MSP provides MPD staff with the opportunity to engage with the firm and to obtain representations that it is subject to, and complies with, the laws and regulations cited in the Comparability Order and that it will comply with any listed conditions. MPD will issue a letter under delegated authority from the Commission confirming that the non-U.S. nonbank SD or non-U.S. nonbank MSP may comply with the foreign laws and regulations cited in the Comparability Order in lieu of complying with the CFTC Capital Rules and CFTC Financial Reporting Rules upon MPD's confirmation through discussions with the non-U.S. nonbank SD or non-U.S. nonbank MSP that the firm is subject to, and complies with, such foreign laws and regulations, is

regulatory distinctions, in performing a comparability assessment for foreign nonbank MSPs. Commission Regulation 23.101(b) requires a nonbank MSP to maintain positive tangible net worth. There are no MSPs currently registered with the Commission. 17 CFR 23.101(b).

²³ 17 CFR 23.106(a)(5).

²⁴ 17 CFR 23.106(a)(4)(i).

²⁵ Notices must be filed in electronic form to the following email address: MPDFinancialRequirements@cftc.gov.

subject to the jurisdiction of the applicable foreign regulatory authority (or authorities), and can meet the conditions in the Comparability Order.²⁶

Each non-U.S. nonbank SD and each non-U.S. nonbank MSP that receives confirmation from the Commission that it may comply with a foreign jurisdiction's capital adequacy and financial reporting requirements will be deemed by the Commission to be in compliance with the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁷ A non-U.S. nonbank SD or non-U.S. nonbank MSP that receives confirmation of substituted compliance remains subject, however, to the Commission's examination and enforcement authority.²⁸ Accordingly, if a nonbank SD or nonbank MSP fails to comply with the foreign jurisdiction's capital adequacy and/or financial reporting requirements, the Commission may initiate an action for a violation of the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁹ In addition, a finding of a violation by a foreign jurisdiction's regulatory authority is not a prerequisite for the exercise of such examination and enforcement authority by the Commission.

C. Application for a Comparability Determination for Nonbank Swap Dealers Domiciled in the United Kingdom and Subject to Regulation by the Prudential Regulation Authority

On May 4, 2021, the Institute of International Bankers ("IIB"), International Swaps and Derivatives Association ("ISDA"), and Securities Industry and Financial Markets Association ("SIFMA") (together, the "Applicants") submitted an application (the "UK Application") requesting that the Commission conduct a Comparability Determination and issue a Comparability Order finding that compliance with certain designated capital and financial reporting requirements of the United Kingdom satisfy certain Commission capital rules and financial reporting rules for nonbank SDs.³⁰ Specifically, the

²⁶ 17 CFR 23.106(a)(4)(ii) and 17 CFR 140.91(a)(11).

²⁷ 17 CFR 23.106(a)(4)(ii). Confirmation will be issued by MPD under authority delegated by the Commission. Commission Regulation 140.91(a)(11). 17 CFR 140.91(a)(11).

²⁸ 17 CFR 23.106(a)(4)(ii).

²⁹ *Id.*

³⁰ Letter dated May 4, 2021 from Stephanie Webster, General Counsel, IIB, Steven Kennedy, Global Head of Public Policy, ISDA, and Kyle Brandon, Managing Director, Head of Derivatives Policy, SIFMA. The UK Application is available on

Applicants requested that the Commission determine that registered nonbank SDs³¹ organized and domiciled within the UK, licensed as investment firms, and designated for prudential supervision by the UK Prudential Regulation Authority ("PRA-designated UK nonbank SDs"), may satisfy corresponding CFTC Capital Rules and CFTC Financial Reporting Rules applicable to a nonbank SD under sections 4s(e) and (f) of the CEA and Commission Regulations 23.101 and 23.105.³²

To be designated for prudential supervision by the UK Prudential Regulation Authority ("PRA"), a UK-domiciled investment firm must be authorized, or have requested authorization, to deal in investments as principal.³³ For an investment firm that is authorized, or has requested authorization, to deal in investments as principal, the PRA may designate the firm for prudential supervision if the PRA determines that the dealing activities of the firm should be a PRA-regulated activity. The PRA considers the following in determining whether an investment firm should be subject to PRA supervision: (i) the assets of the investment firm; and (ii) where the investment firm is a member of a group, (a) the assets of other firms within the group that are authorized, or have sought authorization, to deal in investments as principal, (b) whether any other member of the group is subject to prudential supervision by the PRA, and (c) whether the investment firm's activities have, or might have, a material impact on the ability of the PRA to advance any of its objectives in relation to a PRA-authorized person in its group.³⁴ The PRA also must consult

the Commission's website at: <https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm>.

³¹ As discussed in Section I.A. immediately below, the Commission has the authority to impose capital requirements on registered SDs that are not subject to regulation by a U.S. prudential regulator (*i.e.*, nonbank SDs).

³² The Applicants also requested that the Commission determine that nonbank SDs licensed as investment firms and prudentially regulated by the UK Financial Conduct Authority ("FCA") ("FCA-regulated UK nonbank SDs") may satisfy certain capital and financial reporting requirements under the CEA by being subject to, and complying with, comparable capital and financial reporting requirements under UK laws and regulations. Due to the differences between the capital and financial reporting regimes applicable to PRA-designated UK nonbank SD and FCA-regulated UK nonbank SDs, the Commission anticipates assessing the comparability of the rules applicable to FCA-regulated UK nonbank SDs through a separate comparability determination.

³³ Article 3(1) and (2) of *The Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013*.

³⁴ *Id.*, Article 3(4).

with the FCA before designating a person for prudential supervision.³⁵

The PRA also has issued a Statement of Policy providing further detail regarding the factors that are considered in assessing an investment firm for prudential supervision.³⁶ The factors include: (i) whether the firm's balance sheet exceeds an average of GBP 15 billion total gross assets over four quarters; (ii) where the investment firm is part of a group, whether the sum of the balance sheets of all firms within the group that are authorized, or have requested authorization, to deal in investments as principals exceeds an average of GBP 15 billion over four quarters; and/or (iii) where the firm is part of a group subject to PRA supervision, whether the investment firm's revenues, balance sheet and risk taking is significant relative to the group's revenues, balance sheet, and risk-taking.³⁷ There are currently six PRA-designated UK nonbank SDs registered with the Commission: Citigroup Global Markets Limited, Goldman Sachs International, Merrill Lynch International, Morgan Stanley & Co. International Plc, MUFG Securities EMEA Plc, and Nomura International Plc.

The Applicants represented that the capital and financial reporting framework applicable to PRA-designated UK nonbank SDs is primarily based on the framework established by the European Union's ("EU") Capital Requirements Regulation³⁸ and Capital Requirements Directive,³⁹ which set forth capital and financial reporting requirements applicable to "credit institutions"⁴⁰ and

"investment firms."⁴¹ CRR, as a regulation, is directly applicable in all member states of the EU ("EU Member States") and was, therefore, binding law in the UK during the UK's membership in the EU.⁴² CRD, as a directive, was required to be transposed into EU Member States' national law, including UK law.⁴³ With regard to PRA-designated UK nonbank SDs, the UK implemented CRD primarily through a series of regulations, including the Capital Requirements Regulations 2013⁴⁴ and the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014,⁴⁵ and the rules of the PRA.⁴⁶

Following the UK's withdrawal from EU membership ("Brexit"), EU laws that were in effect and applicable as of December 31, 2020, were retained in UK law subject to certain non-substantive amendments seeking to reflect the UK's new position outside of the EU.⁴⁷ As such, directly applicable EU law, such as CRR, was converted into domestic UK law and UK legislation implementing EU directives, such as

CRD, was preserved. The UK subsequently adopted additional changes, generally consistent with amendments introduced by the EU to CRR, CRD and other relevant EU provisions,⁴⁸ and incorporated certain CRR provisions in the PRA Rulebook.⁴⁹ The CRR provisions as applicable in the UK are referred hereafter as "UK CRR."⁵⁰ The UK capital and financial reporting framework also comprises UK-specific requirements in respect of certain matters. Requirements applicable to PRA-designated UK nonbank SDs are included in the PRA Rulebook. In addition, Commission Delegated Regulation (EU) 2015/61,⁵¹ which supplements UK CRR with regard to liquidity coverage requirement for credit institutions, applies to PRA-designated UK nonbank SDs and imposes separate liquidity requirements to these firms.⁵²

The Applicants also represented that in addition to UK CRR and the PRA Rulebook, the Banking Act 2009 and its related secondary legislation, through which the UK transposed the Bank Recovery and Resolution Directive ("BRRD"), include relevant UK capital requirements.⁵³ Specifically, pursuant to the Banking Act 2009 and its secondary legislation, the Bank of

⁴¹ The term "investment firm" is defined as an entity authorized under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("Markets in Financial Instruments Directive" or "MiFID"), and whose regular business is the provision of one or more investment services to third parties and/or the performance of one or more investment-related activities on a professional basis, which includes dealing in derivatives for its own account. CRR, Article 4(1)(2) cross-referencing Article 4(1)(1) of MiFID.

⁴² Consolidated Version of the Treaty on the Functioning of the European Union, OJ (C 326) 171, Oct. 26, 2012 ("TFEU"), Article 288.

⁴³ *Id.*, Article 288 (stating that a directive is binding as to the result to be achieved upon each EU Member State to which the directive is addressed, and further provides, however, that each EU Member State elects the form and method of implementing the directive). In this connection, EU Member States were required to implement and start applying amendments to CRD, introduced by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures ("CRD V") by December 29, 2020. Some CRD V provisions were subject to delayed implementation deadlines of June 28, 2021 and January 1, 2022. CRD V, Article 2.

⁴⁴ Capital Requirements Regulations 2013, Statutory Instrument 2013 No. 3115 ("Capital Requirements Regulations 2013").

⁴⁵ Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, Statutory Instrument 2014 No. 894 ("Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014").

⁴⁶ The PRA's rules ("PRA Rulebook") are available here: <https://www.prarulebook.co.uk/>.

⁴⁷ See, An Act to Repeal the European Communities Act 1972 and make other provisions in connection with the withdrawal of the United Kingdom from the EU (2018 c.16) ("European Union (Withdrawal) Act 2018").

⁴⁸ PRA, Policy Statement 21/21—The UK Leverage Framework, October 2021, available here: <https://www.bankofengland.co.uk/prudential-regulation/publication/2021/june/changes-to-the-uk-leverage-ratio-framework>, and Policy Statement 22/21—Implementation of Basel standards: Final rules, October 2021, available here: <https://www.bankofengland.co.uk/prudential-regulation/publication/2021/october/implementation-of-basel-standards>.

⁴⁹ Pursuant to the Financial Services and Markets Act 2023 ("FSMA 2023"), the UK revoked CRR and replaced it with: (i) PRA rules adopted under Section 144 of the Financial Services and Markets Act 2000 ("FSMA") and (ii) UK regulations, adopted under Section 4 of FSMA 2023, restating CRR provisions.

⁵⁰ The UK CRR is available here: <https://www.legislation.gov.uk/eur/2013/575/contents>. The provisions that were incorporated in the PRA Rulebook are no longer part of UK CRR and appear instead in the PRA Rulebook.

⁵¹ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions ("Liquidity Coverage Delegated Regulation").

⁵² PRA Rulebook, CRR Firms, Liquidity Coverage Requirement—UK Designated Investment Firms Part.

⁵³ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council. UK Application, p. 7.

³⁵ *Id.*, Article 3(6).

³⁶ PRA, Statement of Policy, Designation of Investment Firms for Prudential Supervision by the Prudential Regulation Authority, December 2021, available here: <https://www.bankofengland.co.uk/-/media/boef/files/prudential-regulation/statement-of-policy/2021/designation-of-investment-firms-for-prudential-supervision-by-the-pa-december-2021.pdf?la=en&hash=007EB17EDF2FA84714D372095F9E03627355776F>.

³⁷ *Id.*, at p. 5.

³⁸ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 ("Capital Requirements Regulation" or "CRR").

³⁹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ("Capital Requirements Directive" or "CRD").

⁴⁰ The term "credit institution" is defined as an entity whose business consists of taking deposits and other repayable funds from the public and granting credits. CRR, Article 4(1), as applicable in the UK. For a reference to CRR provisions applicable in the UK, see *infra* note 50.

England, in its role as resolution authority, requires certain investment firms, including PRA-designated UK nonbank SDs, to satisfy a firm-specific minimum requirement for own funds and eligible liabilities (“MREL”).⁵⁴

UK CRR, Capital Requirements Regulations 2013, Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, Liquidity Coverage Delegated Regulation, relevant provisions of Banking Act 2009 and its secondary legislation, and relevant parts of the PRA Rulebook are referred to hereafter as the “UK PRA Capital Rules.”

The Applicants further represented that with respect to supervisory financial reporting, the framework applicable to PRA-designated UK nonbank SDs is also based on the EU requirements. In addition, the framework comprises PRA-specific rules for matters not addressed by the EU-based requirements. Specifically, Commission Implementing Regulation (EU) 680/2014,⁵⁵ which was initially retained in UK law following Brexit, supplemented CRR with implementing technical standards (“CRR Reporting ITS”) specifying, among other things, uniform formats and frequencies for the financial and capital requirements reporting required under CRR.⁵⁶ CRR Reporting ITS included templates for the common reporting (“COREP”) and the financial reporting (“FINREP”) that specify the contents of the EU-based supervisory reporting requirements. As part of the regulatory reforms that followed Brexit and sought to implement Basel standards, the PRA incorporated the entire body of the UK version of COREP and FINREP requirements into the PRA Rulebook to create a single source for reporting requirements for firms.⁵⁷ For PRA-designated UK nonbank SDs that are not subject to the EU-based FINREP requirements, the PRA Rulebook includes PRA-specific requirements.⁵⁸

The Applicants also represented that the Companies Act 2006 contains provisions related to financial reporting,

including a mandate that entities of a certain size be required to prepare annual audited financial statements and a strategic report.⁵⁹ UK CRR, relevant provisions of the PRA Rulebook, and relevant provisions of the Companies Act 2006, are collectively referred to hereafter as the “UK PRA Financial Reporting Rules.”

The Applicants also noted that the U.S. Securities and Exchange Commission (“SEC”) has issued orders permitting an SEC-registered nonbank security-based swap dealer domiciled in the UK (“UK nonbank SBSB”) to satisfy SEC capital⁶¹ and financial reporting requirements via substituted compliance with applicable UK capital and financial reporting.⁶² The UK Order conditioned substituted compliance for capital requirements on a UK nonbank SBSB complying with specified laws and regulations, including relevant parts of UK CRR and the PRA Rulebook, and also maintaining total liquid assets in an amount that exceeds the UK nonbank SBSB’s total liabilities by at least \$100 million and by at least \$20 million after applying certain deductions to the value of the liquid assets to reflect market, credit, and other potential risks to the value of the assets.⁶³

⁵⁹ UK Application, p.7. Companies Act 2006, Part 15 and 16. The Companies Act 2006 is available here: <https://www.legislation.gov.uk/ukpga/2006/46/contents>.

⁶⁰ All six of the PRA-designated UK nonbank SDs currently registered with the Commission are also UK nonbank SBSBs.

⁶¹ Section 15F(e)(1)(B) of the Exchange Act (15 U.S.C. 78o–10) directs the SEC to adopt capital rules for security-based swap dealers (“SBSBs”) that do not have a prudential regulator.

⁶² *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom*, 86 FR 43318 (July 30, 2021) (“Final UK Order”); *Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin*, 86 FR 59797 (Oct. 28, 2021) (“Amended UK Order,” together with the Final UK Order, “UK Order”); and *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7*, 86 FR 59208 (Oct. 26, 2021) (“SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information”).

⁶³ The conditioning of the UK substituted compliance order on UK nonbank SBSBs maintaining liquid assets in an amount that exceeds the UK nonbank SBSB’s total liabilities by at least \$100 million and by at least \$20 million after applying certain deductions to the value of the

D. Proposed Comparability Determination and Proposed Comparability Order for PRA-Designated UK Nonbank Swap Dealers

On February 5, 2024, the Commission published the 2024 Proposal, seeking comment on the Application and the Commission’s proposed Comparability Determination and related Comparability Order.⁶⁴ The 2024 Proposal set forth the Commission’s preliminary Comparability Determination and proposed Comparability Order providing that, based on its review of the UK Application and applicable UK laws and/or rules, the Commission preliminarily found that the UK PRA Capital Rules and the UK PRA Financial Reporting Rules, subject to the conditions set forth in the proposed Comparability Order, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules.⁶⁵ The Commission, however, noted that there were certain differences between the UK PRA Capital Rules and CFTC Capital Rules and certain differences between the UK PRA Financial Reporting Rules and the CFTC Financial Reporting Rules. As such, the Commission proposed certain conditions to the Comparability Order.⁶⁶ The proposed conditions were designed to promote consistency in regulatory outcomes, to reflect the scope of substituted compliance that would be available notwithstanding the differences, and to ensure that the Commission and National Futures Association (“NFA”) receive information to monitor PRA-designated UK nonbank SDs for ongoing compliance with the Comparability

liquid assets reflects that the SEC’s capital rule for nonbank SBSBs is a liquidity-based requirement and that the SEC capital requirements are not based on the Basel standards. 17 CFR 240.18a–1(a)(1) (requiring a SBSB to maintain, in relevant part, net capital of \$20 million or, if approved to use capital models, \$100 million of tentative net capital and \$20 million of net capital).

⁶⁴ 2024 Proposal, 89 FR 8026 (Feb. 5, 2024).

⁶⁵ *Id.* Consistent with the process specified in Section I.B. above for conducting Comparability Determinations, the Commission provided the Applicants with an opportunity to review for factual accuracy and completeness the Commission’s description of relevant UK laws and regulations on which the proposed Comparability Determination and proposed Comparability Order were based. The Commission has relied on the Applicants’ review, and has incorporated feedback and corrections received from the Applicants. As previously noted, a Comparability Determination and Comparability Order based on an inaccurate description of foreign laws and regulations may not be valid.

⁶⁶ See 2024 Proposal at 8058–8061.

⁵⁴ Banking Act 2009, Section 3A (4) and (4B); *Bank Recovery and Resolution (No 2) Order 2014*, Statutory Instrument No. 3348 (“Bank Recovery and Resolution (No 2) Order 2014”), Part 9.

⁵⁵ *Commission Implementing Regulation (EU) 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council*.

⁵⁶ UK Application, p. 24 and Responses to Staff Questions dated October 5, 2023.

⁵⁷ PRA Rulebook, CRR Firms, Reporting (CRR) Part.

⁵⁸ PRA Rulebook, CRR Firms, Regulatory Reporting Part.

Order.⁶⁷ The Commission further stated that, in its preliminary view, the identified differences would not be inconsistent with providing a substituted compliance framework for PRA-designated UK nonbank SDs subject to the conditions specified in the proposed Comparability Order.⁶⁸

The proposed Comparability Order was limited to the comparison of the UK PRA Capital Rules to the CFTC Capital Rules' Bank-Based Capital Approach ("Bank-Based Approach") for computing regulatory capital for nonbank SDs, which is based on certain capital requirements imposed by the Federal Reserve Board for bank holding companies.⁶⁹ As noted by the Commission in the 2024 Proposal, the Applicants have not requested, nor has the Commission performed, a comparison of the UK PRA Capital Rules to the Commission's TNW Approach or NLA Approach.⁷⁰

⁶⁷ NFA is a registered futures association ("RFA") under Section 17 of the CEA (7 U.S.C. 21). Each SD registered with the Commission is required to be an NFA member. 17 CFR 170.16. NFA, as an RFA, is also required by the CEA to adopt rules imposing minimum capital, segregation, and other financial requirements, as applicable, to its members, including SDs, that are at least as stringent as the Commission's minimum capital, segregation, and other financial requirements for such registrants, and to implement a program to audit and enforce such requirements. 7 U.S.C. 21(p). Therefore, the Commission's proposed Comparability Order required PRA-designated UK nonbank SDs to file certain financial reports and notices with NFA so that it may perform oversight of such firms as required under Section 17 of the CEA. The Commission will refer to NFA in this Comparability Determination when referring to the requirements or obligations of an RFA.

⁶⁸ *Id.*

⁶⁹ *Id.* As described in the 2024 Proposal, the CFTC Capital Rules provide nonbank SDs with three alternative capital approaches: (i) the Tangible Net Worth Capital Approach ("TNW Approach"); (ii) the Net Liquid Assets Capital Approach ("NLA Approach"); and (iii) the Bank-Based Approach. See 2024 Proposal at 8031–8033, and 17 CFR 23.101. The Bank-Based Approach is consistent with the Basel Committee on Banking Supervision's ("BCBS") international framework for bank capital requirements ("BCBS framework" or "Basel standards"). The BCBS is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Institutions represented on the BCBS include the Federal Reserve Board, the European Central Bank, Deutsche Bundesbank, Bank of England, Bank of France, Bank of Japan, Banco de Mexico, and Bank of Canada. The BCBS framework is available at https://www.bis.org/basel_framework/index.htm.

⁷⁰ See 2024 Proposal at 8035–8036.

E. General Comments on the UK Application and the Commission's Proposed Finding of Comparability Between the CFTC Capital Rules and CFTC Financial Reporting Rules and the UK PRA Capital Rules and the UK PRA Financial Reporting Rules

The public comment period on the UK Application, the proposed Comparability Determination, and the proposed Comparability Order ended on March 24, 2024. The Commission received comments from the following four interested parties: Michael Ravnitzky ("Ravnitzky"); William J. Harrington ("Harrington"); Better Markets, Inc. ("Better Markets"); and the Applicants.⁷¹

The Applicants filed a comment letter generally expressing support for the proposed Comparability Determination and Comparability Order, agreeing with the Commission's overall analysis and determination of comparability of the CFTC Capital Rules and CFTC Financial Reporting Rules and the UK PRA Capital Rules and UK PRA Financial Reporting Rules.⁷² The Applicants also included several technical comments, further discussed in section II. below, on the proposed conditions requiring PRA-designated UK nonbank SDs to file a notice with the Commission and NFA upon the occurrence of certain events. Finally, the Applicants recommended that the Commission refine the condition defining the scope of the UK PRA Capital Rules to specify that only the MREL-related provisions of the Banking Act 2009 would be considered part of UK PRA Capital Rules.⁷³ In support of their request, the Applicants stated that the reference to the Banking Act 2009 is included only because it imposes MREL on PRA-designated UK nonbank SDs.⁷⁴ The Commission notes that in the process leading to this Comparability Determination, the Commission has considered the Banking Act 2009 more broadly, including as it relates to the powers conferred to the PRA in its role as resolution authority.

⁷¹ Letters from: Michael Ravnitzky ("Ravnitzky Letter"); Dennis M. Kelleher, Co-founder, President and CEO, and Cantrell Dumas, Director of Derivatives Policy, Better Markets (March 24, 2024) ("Better Markets Letter"); and Stephanie Webster, General Counsel, IIB, Steven Kennedy, Global Head of Public Policy, ISDA, and Kyle L. Brandon, Managing Director, Head of Derivatives Policy, SIFMA (March 24, 2024) ("Applicants' Letter"); Letter from William J. Harrington dated March 24, 2024 ("Harrington 03/24/2024 Letter") and supporting material. The comment letters and related documents for the 2024 Proposal are available at: <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7478>.

⁷² Applicants' Letter at p. 2.

⁷³ *Id.* at p. 4.

⁷⁴ *Id.*

With respect to the definition of the UK PRA Capital Rules with which a PRA-designated UK nonbank SD must comply, however, the Commission believes that referring to the Banking Act 2009 only to the extent it imposes MREL on PRA-designated UK nonbank SDs is appropriate. Accordingly, the Commission has adjusted the language in final Condition 4 consistent with the Applicants' recommendation.

Conversely, two commenters disagreed with the CFTC's proposed Comparability Determination and proposed Comparability Order.⁷⁵ Better Markets asserted that the principles-based, holistic approach applied by the Commission, which assesses whether the applicable foreign jurisdiction's capital and financial requirements achieve comparable outcomes to the corresponding Commission requirements, "is insufficiently rigorous, leaving far too much room for inaccurate and unwarranted comparability determinations."⁷⁶ Better Markets further asserted that in an attempt to restore London to its status of a global financial center in the post-Brexit environment, both major political parties in the UK are promising "light touch" regulation and incentivizing regulatory arbitrage.⁷⁷

The Commission does not believe that the principles-based, holistic assessment that it conducted on the comparability of the UK PRA Capital Rules and UK PRA Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules was "insufficiently rigorous," nor does the Commission believe that it left "room for inaccurate and unwarranted comparability determinations." The principles-based, holistic approach employed in the Comparability Determination was performed in accordance with the substituted compliance assessment framework adopted by the Commission for capital and financial reporting requirements for foreign nonbank SDs and set out in Commission Regulation 23.106. Consistent with this assessment framework, the Commission focused on whether the UK PRA Capital Rules and UK PRA Financial Reporting Rules are designed with the objective of ensuring overall safety and soundness of the PRA-designated UK nonbank SDs in a

⁷⁵ Better Markets Letter at p. 3–5; Harrington 03/24/2024 Letter at p. 4 (asserting, as further discussed below, that the Commission should condition the Comparability Determination on a prohibition against PRA-designated UK nonbank SDs' entering into swap contracts with certain specified features).

⁷⁶ Better Markets Letter at p. 5.

⁷⁷ *Id.*

manner that is comparable with the Commission's overall objective of ensuring the safety and soundness of nonbank SDs.

As stated in the 2024 Proposal, due to the detailed and complex nature of the capital frameworks, differences in how jurisdictions approach and implement the requirements are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS framework.⁷⁸ Furthermore, as discussed in section I.B. above, when adopting Commission Regulation 23.106, the Commission stated that "its approach to substituted compliance is a principles-based, holistic approach that focuses on whether the foreign regulations are designed with the objectives of ensuring the overall safety and soundness of the [non-US nonbank SD] in a manner that is comparable with the Commission's overall capital and financial reporting requirements, and is not based on a line-by-line assessment or comparison of a foreign jurisdiction's regulatory requirements with the Commission's requirements."⁷⁹

The approach and standards set forth in Commission Regulation 23.106, with the focus on "comparable outcomes," are also consistent with the Commission's precedents of undertaking a principles-based, holistic assessment of the comparability of foreign regulatory regimes for purposes of substituted compliance for cross-border swap transactions. The Commission first outlined its approach to substituted compliance with respect to swaps requirements in 2013, when it issued an Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations.⁸⁰ In the Guidance, the Commission stated that "[i]n evaluating whether a particular category of foreign regulatory requirement(s) is comparable and comprehensive to the applicable requirement(s) under the CEA and Commission regulations, the Commission will take into consideration all relevant factors, including but not limited to, the comprehensiveness of those requirement(s), the scope and objectives of the relevant regulatory requirement(s), the comprehensiveness of the foreign regulator's supervisory compliance program, as well as the home jurisdiction's authority to support and enforce its oversight of the

registrant."⁸¹ The Commission emphasized that in this context, "comparable does not necessarily mean identical."⁸² Rather, the Commission stated that it would evaluate whether the home jurisdiction's regulatory requirement is comparable to, and as comprehensive as, the corresponding U.S. regulatory requirement(s).⁸³ In conducting comparability determinations based on the policy set forth in the Guidance, the Commission noted that the "outcome-based" approach recognizes that "foreign regulatory systems differ and their approaches vary and may differ from how the Commission chose to address an issue, but that the foreign jurisdiction's regulatory requirements nonetheless achieve the regulatory outcome sought to be achieved by a certain provision of the CEA or Commission regulation."⁸⁴

The Commission further elaborated on the required elements of comparability in 2016, when it issued final rules to address the cross-border application of the Commission's margin requirements for uncleared swap transactions. Specifically, the Commission stated that its substituted compliance approach reflects an outcome-based assessment of the comparability of a foreign jurisdiction's margin requirements with the Commission's corresponding requirements.⁸⁵ The Commission further stated that it would evaluate the objectives and outcomes of the foreign margin requirements in light of foreign regulator(s)' supervisory and enforcement authority.⁸⁶ Consistent with its previously stated position, the Commission recognized that jurisdictions may adopt different approaches to achieving the same outcome and, therefore, the assessment would focus on whether the foreign jurisdiction's margin requirements are comparable to the Commission's in purpose and effect, not whether they are comparable in every aspect or contain identical elements.⁸⁷ The Commission's policy thus reflects an understanding that a line-by-line evaluation of a foreign jurisdiction's regulatory regime is not the optimum approach to

assessing the comparability of complex structures whose individual components may differ based on jurisdiction-specific considerations, but which achieve the objective and outcomes set forth in the Commission's framework.

With respect to the UK Application, the process leading to the Commission's Comparability Determination involved Commission staff reviewing relevant UK laws, rules, and regulations cited in the UK Application. Staff verified the assertions and citations contained in the UK Application regarding the specific UK PRA Capital Rules and UK PRA Financial Reporting Rules to the relevant UK laws, rules, and regulations.⁸⁸

Commission staff also evaluated the comparability of the UK PRA Capital Rules and UK PRA Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules with respect to the following areas: (i) the process of establishing minimum capital requirements for PRA-designated UK nonbank SDs and how such process addresses risk, including market risk and credit risk of the PRA-designated UK nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting a PRA-designated UK nonbank SD's minimum capital requirements; (iii) the financial reports and other financial information submitted by a PRA-designated UK nonbank SD to the PRA, and whether such information provides the PRA with the means necessary to effectively monitor the financial condition of the PRA-designated UK nonbank SD; and (iv) the regulatory notices and other communications between a PRA-designated UK nonbank SD and the PRA that address potential adverse financial or operational issues that may impact the firm.⁸⁹ With respect to the ability of the PRA to supervise and enforce compliance with the UK PRA Capital Rules and UK PRA Financial Reporting Rules, the Commission's assessment included a review of the PRA's surveillance program for monitoring compliance by PRA-designated UK nonbank SDs with the UK PRA Capital Rules and the UK PRA Financial Reporting Rules, and the disciplinary process imposed on firms that fail to comply with such requirements.⁹⁰ In conducting its assessment of the PRA's

⁸¹ Guidance at 45343.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See e.g., *Comparability Determination for the European Union: Certain Entity-Level Requirements*, 78 FR 78923 (December 27, 2013) at 78926.

⁸⁵ *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements*, 81 FR 34817, 34836–34837 (May 31, 2016).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Staff also reviewed various documents relevant to the proposed Comparability Determination and proposed Comparability Order published by the PRA.

⁸⁹ 2024 Proposal at 8036–8058.

⁹⁰ *Id.* at 8057–8058.

⁷⁸ See 2024 Proposal at 8036.

⁷⁹ 85 FR 57462 at 57521.

⁸⁰ *Interpretative Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations*, 78 FR 45292 (July 26, 2013) ("Guidance").

regulatory and supervisory framework, the Commission did not identify elements supporting Better Markets' assertion that the framework is characterized by "light touch" regulation.⁹¹

Contrary to the position articulated by Better Markets regarding the nature of the comparability assessment, the Commission believes that the principles-based, holistic assessment of the UK PRA Capital Rules and UK PRA Financial Reporting Rules against the CFTC Capital Rules and CFTC Financial Reporting Rules, as outlined above and discussed in detail in section II below, was sufficiently rigorous for purposes of determining if the UK PRA regulations are comparable in purpose and effect to the CEA and Commission regulations. Better Markets further asserted that even under a principles-based, holistic approach, the UK PRA capital and financial reporting requirements for PRA-designated UK nonbank SDs do not satisfy the test for an order granting substituted compliance as the PRA's regulatory framework governing capital and financial reporting is not comparable to the corresponding CFTC requirements.⁹² Better Markets cited the Commission's inclusion of conditions in the proposed Comparability Order as demonstrating the Commission's need "to compensate for the acknowledged gaps in the UK PRA framework" and as a "de facto admission that the regulations are not comparable and that the [UK Application] should be denied."⁹³ Better Markets claimed that the Commission proposed 12 filing requirements that must be met as a condition for the comparability determination, and stated that the Commission was not issuing a comparability finding, but was engaging in a "de facto rewriting" of the PRA's

laws and rules in the form of conditions.⁹⁴

Conversely, another commenter, Ravnitzky, noted that the "CFTC need not be limited to finding a binary yes or no answer to the comparability determination" and "has the flexibility to grant conditional substituted compliance."⁹⁵ In this regard, Ravnitzky recommended that the Commission exercise its authority "to make a flexible and nuanced decision, and strive to impose only the necessary conditions for approving the UK PRA rules as substitutes, to minimize the regulatory burden while achieving the necessary risk reduction."⁹⁶

The Commission disagrees that the inclusion of conditions in the Comparability Order precludes a finding of comparability with respect to the UK PRA Capital Rules and UK PRA Financial Reporting Rules. The Commission's comparability assessment process, consistent with the holistic approach, contemplates the potential need for a Comparability Order to contain conditions. Specifically, Commission Regulation 23.106(a)(5) states that the Commission may impose any terms and conditions it deems appropriate in issuing a Comparability Order, including conditions with respect to capital adequacy and financial reporting requirements of non-U.S. nonbank SDs.⁹⁷

The process employed in this Comparability Determination is consistent with the Commission's established approach to conducting comparability assessments. Upon a finding of comparability, the Commission's policy generally is that eligible entities may comply with a substituted compliance regime subject to the conditions the Commission places on its finding, and subject to the Commission's retention of its examination authority and its enforcement authority.⁹⁸ In this regard,

the Commission has stated that certain conditions included in a Comparability Order may be designed to ensure the Commission's direct access to books and records required to be maintained by an SD registered with the Commission.⁹⁹ Other conditions may address areas where the foreign jurisdiction lacks analogous requirements.¹⁰⁰ The inclusion of conditions in a Comparability Order was contemplated as an integral part of the Commission's holistic, principles-based approach to conducting comparability assessments and is not inconsistent with a grant of substituted compliance.

In particular, Commission Regulation 23.106(a)(5) states the Commission's authority to impose conditions in issuing a Comparability Determination in connection with the CFTC Capital Rules and the CFTC Financial Reporting Rules. As further discussed below, the conditions proposed in the 2024 Proposal are clearly of the nature contemplated by Commission Regulation 23.106(a)(5).

The Commission also does not believe that the inclusion of the conditions in the Comparability Order reflects a "rewriting" of the UK laws and regulations as asserted by Better Markets. Consistent with the Commission's policy described above, a majority of the conditions contained in the Comparability Order are designed to ensure that: (i) the PRA-designated UK nonbank SD is eligible for substituted compliance based on the UK laws and regulations that were reviewed by the Commission in performing the comparability assessment, and (ii) the Commission and NFA receive timely financial information and notices to effectively monitor a PRA-designated nonbank SD's compliance with relevant UK capital and financial reporting rules and to assess the ongoing safety and soundness of the PRA-designated UK nonbank SD. Specifically, there are 25 conditions in the final Comparability Order. Six conditions set forth criteria that a PRA-designated UK nonbank SD must meet to be eligible for substituted compliance pursuant to the Comparability Order.¹⁰¹ The six

the European Union: Certain Transaction Level Requirements, 78 FR 78878 (December 27, 2013) at 78880.

⁹⁹ *Comparability Determination for the European Union: Certain Transaction Level Requirements*, 78 FR 78878 (December 27, 2013) at 78880.

¹⁰⁰ Guidance at 45343.

¹⁰¹ The six criteria provide that the PRA-designated UK nonbank SD: (i) is not subject to capital rules of a U.S. prudential regulator (Condition 1); (ii) is organized and domiciled in the UK (Condition 2); (iii) is licensed as an investment firm and designated for prudential supervision by

Continued

⁹¹ For a further discussion of the Commission's assessment of the PRA's supervision and enforcement powers, see Section II.F. below. In addition, in its policy statement discussing the forthcoming implementation of Basel 3.1 standards, the PRA noted that despite some adjustments to the international standards, the PRA considers that its policy and rules proposals align with the international framework. In this regard, the PRA expressed the view that alignment with international standards in turn supports the UK's competitiveness, including relative standing of the UK as a global financial center, by "strengthening key stakeholders' confidence in the UK banking system" and "assuring regulators in other jurisdictions of UK's authorities' commitment to robust standards." See PRA, PS17/23—Implementation of the Basel 3.1 Standards Near-Final Part 1, December 12, 2023, available here: <https://www.bankofengland.co.uk/news/2023/december/pr-a-publishes-first-of-two-policy-statements-for-basel-3-1-standards-implementation>.

⁹² Better Markets Letter at p. 5.

⁹³ *Id.*

⁹⁴ *Id.* at p. 4.

⁹⁵ Ravnitzky Letter at p. 6.

⁹⁶ *Id.*

⁹⁷ 17 CFR 23.106(a)(5), which provides that in issuing a Capital Comparability Determination, the Commission may impose any terms and conditions it deems appropriate, including certain capital adequacy and financial reporting requirements on swap dealers . . . (Emphasis added). Commission Regulation 23.106(a)(3) establishes the Commission's standard of review for performing a Comparability Determination and provides that the Commission may consider all relevant factors, including whether the relevant foreign jurisdiction's capital adequacy and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital adequacy and financial reporting requirements for SDs. 17 CFR 23.106(a)(3)(ii).

⁹⁸ 85 FR 57462 at 57520. See also Guidance at 45342–45344 and *Comparability Determination for*

conditions ensure that only PRA-designated UK nonbank SDs that are within the scope of, and comply with, the UK PRA Capital Rules and UK PRA Financial Reporting Rules that were part of the Commission's comparability assessment may apply for substituted compliance. Ten additional conditions require PRA-designated UK nonbank SDs within the scope of the Comparability Order to provide notice to the Commission and NFA of certain defined events,¹⁰² and a further two conditions require PRA-designated nonbank SDs to file with the Commission and NFA copies of certain unaudited and audited financial reports that the firms provide to the PRA.¹⁰³ In addition, two additional conditions reflect administrative matters necessary to implement the substituted compliance framework.¹⁰⁴ Lastly, five

the PRA (Condition 3); (iv) is subject to the UK CRR, CRD provisions as implemented in the UK, the Liquidity Coverage Delegated Regulation, the provisions of the Banking Act 2009 and its secondary legislation related to the MREL, and the rules of the PRA as reflected in the PRA Rulebook (Condition 4); (v) satisfies at all times applicable UK CRR and PRA Rulebook capital ratios, leverage ratios, and capital conservation buffer ratios, and maintains a liquidity risk management program as required under the PRA Rulebook (Condition 5); and (vi) is subject to and complies with the UK financial reporting requirements that are part of the Commission's comparability assessment (Condition 6).

¹⁰² The ten conditions require a PRA-designated UK nonbank SD to provide notice to the Commission in the event that the firm: (i) is informed by the PRA that the firm has failed to comply with any component of the UK PRA Capital Rules or UK PRA Financial Reporting Rules (Condition 15); (ii) fails to maintain common equity tier 1 capital denominated in GBP in an equivalent amount of at least \$20 million (Condition 16); (iii) breaches its combined capital buffer requirement and is required to file a capital conservation plan with the PRA (Condition 17); (iv) is required by the PRA to maintain additional capital or additional liquidity (Condition 18); (v) fails to meet the required MREL (Condition 19); (vi) experiences a 30 percent or more decrease in its excess regulatory capital (Condition 20); (vii) fails to make or keep current financial books and records (Condition 21); (viii) fails to post or collect margin for uncleared swaps and non-cleared security-based swaps with one or more counterparties in amounts that exceed defined limits (Condition 22); (ix) changes its fiscal year-end date (Condition 23); and (x) is subject to material changes to the UK PRA Capital Rules, UK PRA Financial Reporting Rules, or the supervisory authority of the PRA (Condition 24).

¹⁰³ The two conditions provide that a PRA-designated UK nonbank SD must file with the Commission and NFA: (i) a copy of SEC Form X-17A-5 ("FOCUS Report") that the PRA-designated UK nonbank SD files with the SEC or copies of certain financial reporting templates that the PRA-designated UK nonbank SD is required to submit to the PRA pursuant to PRA Rulebook rules, as applicable (Condition 10), and (ii) copies of its annual audited accounts and strategic report that are required to be prepared and published pursuant to Parts 15 and 16 of Companies Act 2006 (Condition 11).

¹⁰⁴ One of the administrative conditions provides that a PRA-designated UK nonbank SD must

conditions impose obligations on PRA-designated UK nonbank SDs that align with certain of the Commission's requirements for nonbank SDs. The five conditions require a PRA-designated UK nonbank SD to: (i) maintain common equity tier 1 capital denominated in GBP equal to or in excess of the equivalent of \$20 million (Condition 7); (ii) prepare and keep current financial books and records (Condition 9); (iii) file a monthly schedule of the firm's financial positions on Schedule 1 of appendix B to Subpart E of part 23 of the Commission's regulations (Condition 12); (iv) file a monthly report listing the custodians holding margin posted by, and collected by, the PRA-designated UK nonbank SD, the amount of margin held by each custodian, and the aggregate amount of margin required to be posted and collected by the PRA-designated UK nonbank SD (Condition 14); and (v) submit, with each filing of financial information, a statement by an authorized representative that, to the best knowledge and belief of the person making the representation, the information is true and correct (Condition 13).

As the substance of these conditions demonstrates, the primary objective of a majority of the conditions is not to compensate for regulatory gaps in the UK PRA capital and financial reporting framework, but rather to ensure that the Commission and NFA receive information to conduct ongoing monitoring of PRA-designated UK nonbank SDs for compliance with relevant capital and financial reporting requirements and to assess the firm's overall safety and soundness. As discussed above, in issuing the Comparability Order, the Commission is not ceding its supervisory and enforcement authorities. The Comparability Order permits PRA-designated UK nonbank SDs to satisfy the Commission's capital and financial reporting requirements by complying with certain UK laws and/or regulations that have been found comparable to the Commission's laws and/or regulations in purpose and effect. The Commission

provide a notice to the Commission of its intent to comply with the Comparability Order and the UK PRA Capital Rules and UK PRA Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Financial Reporting Rules. The notice must include the PRA-designated UK nonbank SD's representation that the firm is organized and domiciled in the UK, is a licensed investment firm designated for prudential supervision by the PRA, and is subject to and complies with the UK PRA Capital Rules and the UK PRA Financial Reporting Rules (Condition 8). The second administrative condition provides that a PRA-designated UK nonbank SD must file any documents with the Commission and NFA via electronic transmission (Condition 25).

and NFA, however, have a continuing obligation to conduct ongoing oversight, including potential examination, of PRA-designated UK nonbank SDs that operate under a Comparability Order to ensure compliance with the Comparability Order, including its conditions.¹⁰⁵ To that effect, the notice and financial reporting conditions set forth in the Comparability Order provide the Commission and NFA with information necessary to monitor for such compliance and to evaluate the operational condition and ongoing financial condition of PRA-designated UK nonbank SDs. The Commission may also initiate an enforcement action against a PRA-designated UK nonbank SD that fails to comply with the conditions of the Comparability Order.

Furthermore, to the extent that a condition imposes a new regulatory obligation on PRA-designated UK nonbank SDs, the imposition of such condition is also consistent with Commission Regulation 23.106 and the Commission's established policy with regard to comparability determinations. As discussed above, the Commission contemplated that even in circumstances where the Commission finds two regulatory regimes comparable, the Commission may impose requirements on entities relying on substituted compliance where the Commission determines that the home jurisdiction's regime lacks comparable and comprehensive regulation on a specific issue.¹⁰⁶ The Commission's authority to impose such conditions is set out in Commission Regulation 23.106(a)(5), which states that the Commission may impose "any terms and conditions it deems appropriate, including certain capital adequacy and financial reporting requirements [on SDs]." ¹⁰⁷

Better Markets further stated that, if the Commission grants substituted compliance with regard to materially

¹⁰⁵ As the Commission stated in the 2024 Proposal, a non-U.S. nonbank SD that operates under a Comparability Order issued by the Commission remains subject to the Commission's examination and enforcement authority. Specifically, the Commission may initiate an enforcement action against a non-U.S. nonbank SD that fails to comply with its home-country capital adequacy and/or financial reporting requirements cited in a Comparability Order. See 2024 Proposal at 8029. See also 17 CFR 23.106(a)(4)(ii), which provides that the Commission may examine all nonbank SDs, regardless of whether the nonbank SDs rely on substituted compliance, and that the Commission may initiate an enforcement action under the Commission's capital and financial reporting regulations against a non-U.S. nonbank SD that fails to comply with a foreign jurisdiction's capital adequacy and financial reporting requirements.

¹⁰⁶ Guidance at 45343.

¹⁰⁷ 17 CFR 23.106(a)(5).

different regulatory requirements, it must make a well-supported, evidence-based determination that those different requirements nevertheless will, in fact, lead to comparable regulatory outcomes.¹⁰⁸ In this connection, Better Markets stated that if the Commission grants the Comparability Determination and Comparability Order, it must, at a minimum, clearly and specifically set forth the desired regulatory outcome and provide a detailed, evidence-based explanation as to how the jurisdiction's different legal requirements nonetheless lead to that regulatory outcome.¹⁰⁹ Better Markets further asserted that "[a] determination that a foreign jurisdiction's nonbank SDs rules would produce comparable regulatory outcomes is the beginning, not the end, of the CFTC's obligation to ensure that the activities of the foreign nonbank SD entities do not pose risks to the U.S. financial system. As time goes on, regulatory requirements that, in theory, are expected to produce one regulatory outcome may, in practice, produce a different one. And, of course, the regulatory requirements may themselves be changed in a variety of ways. Finally, the effectiveness of an authority's supervision and enforcement program can become weakened for any number of reasons—the CFTC cannot assume that an enforcement program that it believes is presently effective will continue to be effective."¹¹⁰ Better Markets further asserted that to fulfill its obligation to protect the U.S. financial system, the CFTC must ensure, on an ongoing basis, that each grant of substituted compliance remains appropriate over time by requiring, at a minimum, each order of substituted compliance, and each MOU with a foreign regulatory authority, to impose an obligation on the applicant, as appropriate, to: (i) periodically apprise the Commission of the activities and results of its supervision and enforcement programs, to ensure that they remain sufficiently robust to deter and address violations of the law; and (ii) immediately apprise the Commission of any material changes to the regulatory regime, including changes to rules or interpretations of rules.¹¹¹

Although the Commission disagrees that the UK PRA Capital Rules and the UK PRA Financial Reporting Rules, as a whole, are materially different or do not achieve comparable regulatory outcomes, the Commission concurs that

granting substituted compliance should be the result of a well-supported comparability assessment. Consistent with that view, the Commission believes that this final Comparability Determination clearly states the desired regulatory outcomes, articulates the Commission's analysis in sufficient detail, and provides an appropriate explanation of how the foreign jurisdiction's requirements are comparable in purpose and effect with the Commission's requirements, and lead to comparable regulatory outcomes with the Commission's requirements. Specifically, section III of the 2024 Proposal and section II of the final Comparability Determination reflect, among other observations, the Commission's detailed analysis with respect to each of the elements for consideration listed in Commission Regulation 23.106(a)(3).

The Commission also concurs that the availability of substituted compliance is conditioned upon a non-US nonbank SD's ongoing compliance with the terms and conditions of the final Comparability Order, and the Commission's ongoing assessment that the UK PRA Capital Rules and UK PRA Financial Reporting Rules remain comparable in purpose and effect with the CFTC Capital Rules and CFTC Financial Reporting Rules. As noted above, and discussed in more detail in sections II.D. and E. below, PRA-designated UK nonbank SDs are subject to notice and financial reporting requirements under the final Comparability Order that provide Commission and NFA staff with the ability to monitor the PRA-designated UK nonbank SDs' ongoing compliance with the conditions set forth in the final Comparability Order. In addition, the final Comparability Order requires a PRA-designated UK nonbank SD, or an entity acting on its behalf, to inform the Commission of changes to the relevant UK PRA Capital Rules and UK PRA Financial Reporting Rules so that the Commission may assess the continued effectiveness of the Comparability Order in ensuring that the relevant UK laws and regulations have the comparable regulatory objectives of the CEA and Commission regulations of ensuring the safety and soundness of nonbank SDs.¹¹² Commission staff will also

monitor the PRA-designated UK nonbank SDs directly as part of its supervisory program and will discuss with the firms any proposed or pending revisions to specific rules cited in the final Comparability Order. Lastly, in addition to assessing the effectiveness of the Comparability Order as a result of revisions or proposed revisions to the UK laws, regulations, or supervisory regime administered by the PRA, the Commission further notes that future material changes to the CFTC Capital Rules or CFTC Financial Reporting Rules, or the Commission's or NFA's supervisory programs, may necessitate an amendment to the Comparability Determination and Comparability Order to reflect those changes.¹¹³

Another commenter, Harrington, stated that the Commission must condition the Comparability Order on an "outright prohibition against regulated entities providing [swap contracts that include a "flip clause"]".¹¹⁴ Harrington has elsewhere referred to a description of a "flip clause" as a provision in swap contracts with structured debt issuers that reverses or "flips" the priority of payment obligations owed to the swap counterparty on the one hand and the noteholders on the other, following a specified event of default.¹¹⁵ Based on Harrington's description, flip clauses present a risk to the SD in synthetic transactions where payments under a swap contract are secured with the same collateral that would serve to cover payments under the notes issued by a structured debt issuer. In such circumstances, an "event of default" by the SD would cause the SD's priority of

supervisory regime over PRA-designated UK nonbank SDs. The Commission notes that it made certain non-substantive, clarifying changes to the language of final Condition 24 as compared to proposed Condition 24.

¹¹³ 2024 Proposal at 8036 (n. 128).

¹¹⁴ Harrington 03/24/2024 Letter at p. 4.

Harrington also referenced the following two separate submissions to the Commission and noted that these submissions support the Harrington 03/24/2024 Letter: a letter dated October 20, 2022 ("Harrington 10/20/2022 Letter"), submitted in connection with the Commission's *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination From the Financial Services Agency of Japan*, 87 FR 48092, (August 8, 2022) and a letter dated August 28, 2023 ("Harrington 08/28/2023 Letter"), submitted in connection with the Commission's *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union*, 88 FR 41774 (June 27, 2023). Harrington 03/24/2024 Letter at p.7.

¹¹⁵ William J. Harrington, Submission to the U.S. Securities and Exchange Commission Re: File No. S7-08-12 (Nov. 19, 2018) at p.8.

¹⁰⁸ Better Markets at p. 10.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at p. 11.

¹¹² Condition 24 of the final Comparability Order requires a PRA-designated UK nonbank SD, or an entity acting on its behalf, to notify the Commission of any material changes to the information submitted in its application, including, but not limited to, proposed and final material changes to the UK PRA Capital Rules or UK PRA Financial Reporting Rules and proposed and final material changes to the PRA's supervisory authority or

payment from the collateral under a swap to “flip” to a more junior priority position, including for mark-to-market gains on “in the money” swaps.¹¹⁶ Harrington argued that swap contracts with a flip clause incentivize SDs to “self-sabotage by under-sourcing themselves.”¹¹⁷ Harrington recognized, however, that the CFTC margin requirements for uncleared swap transactions address his concerns associated with the inclusion of a flip clause.¹¹⁸ Nonetheless, according to Harrington, risks arise in circumstances when non-U.S. margin rules exempt SDs from margin obligations in connection with swaps with a structured debt issuer.¹¹⁹

The Commission recognizes that given some definitional differences and differences in the activity thresholds with respect to the scope of application of the CFTC margin requirements and non-U.S. margin requirements, some transactions that are subject to the CFTC margin requirements for uncleared swaps may not be subject to margin requirements in another jurisdiction. In connection with this Comparability Determination, however, the Commission notes that both under the CFTC Capital Rules and the UK PRA Capital Rules, uncollateralized exposures from uncleared swap transactions would generate a higher counterparty credit risk amount than the exposures resulting from transactions under which the counterparties have posted collateral.¹²⁰ Accordingly, the Commission does not believe that the respective sets of rules adopt a conflicting approach or lead to a

disparate outcome with respect to the capital treatment of uncollateralized uncleared swap exposures that would warrant a finding of non-comparability of the CFTC Capital Rules and the UK PRA Capital Rules.

Finally, one commenter, Ravnitzky, noted that due to differences in how the respective jurisdictions define the regulatory categories of registrants involved in swap dealing activity (*i.e.*, differences between the term “swap dealer” as defined under the Commission’s regulations and the term “investment firm” as defined under the PRA’s framework), it may be “unclear or inconsistent which entities can use substituted compliance under the [proposed Comparability Order].”¹²¹ The Commission notes, as discussed above, that the Comparability Order will apply with respect to UK-domiciled, PRA-designated investment firms that are registered with the Commission as SDs and not subject to regulation by a U.S. prudential regulator. In this regard, the Commission believes that proposed Conditions 1 through 4, which the Commission adopts without material changes, clearly define the scope of entities that may request to rely on the Comparability Order.

II. Final Capital and Financial Reporting Comparability Determination and Comparability Order

The following section provides the Commission’s comparative analysis of the UK PRA Capital Rules and the UK PRA Financial Reporting Rules with the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules, as described in the 2024 Proposal, further modified to address comments received. As emphasized in the 2024 Proposal, the capital and financial reporting regimes are complex structures comprised of a number of interrelated regulatory components.¹²² Differences in how jurisdictions approach and implement these regimes are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS framework.

The Commission performed the analysis by assessing the comparability of the UK PRA Capital Rules for PRA-designated UK nonbank SDs as set forth in the UK Application and in certain applicable UK laws and regulations with the Commission’s Bank-Based Approach for nonbank SDs. The Commission understands that all PRA-designated UK nonbank SDs addressed by the UK Application, as of the date of

the final Comparability Determination, are subject to a bank-based capital approach under the UK PRA Capital Rules. Accordingly, when the Commission makes its final determination herein about the comparability of the UK PRA Capital Rules with the CFTC Capital Rules, the determination pertains to the comparability of the UK PRA Capital Rules with the Bank-Based Approach under the CFTC Capital Rules. The Commission notes that any material changes to the information submitted in the UK Application, including, but not limited to, proposed and final material changes to the UK PRA Capital Rules or UK PRA Financial Reporting Rules, as well as any proposed and final material changes to the PRA’s supervisory authority or supervisory regime over PRA-designated UK nonbank SDs, will require notification to the Commission and NFA pursuant to Condition 24 of the final Comparability Order.¹²³ Therefore, if there are subsequent material changes to the UK PRA Capital Rules, UK PRA Financial Reporting Rules, or PRA’s supervisory authority or regime, the Commission will review and assess the impact of such changes on the final Comparability Determination and Comparability Order as they are then in effect, and may amend or supplement the Comparability Order as appropriate.¹²⁴

¹²³ Condition 24 of the final Comparability Order. The Commission notes that it made certain non-substantive, clarifying changes to the language of final Condition 24 as compared to proposed Condition 24.

¹²⁴ See 2024 Proposal at 8036. As stated in the 2024 Proposal, the Commission may also amend or supplement the final Comparability Order to address any material changes to the CFTC Capital Rules and CFTC Financial Reporting Rules, including rule amendments to capital rules of the Federal Reserve Board that are incorporated into the CFTC Capital Rules’ Bank-Based Approach under Commission Regulation 23.101(a)(1)(i), that are adopted after the final Comparability Order is issued. See *id.*, (n. 128). As noted in the 2024 Proposal, the Commission is aware that the PRA is considering changes to the UK PRA Capital Rules to implement Basel 3.1 standards. See PRA, PS17/23—Implementation of the Basel 3.1 Standards Near-Final Part 1, December 12, 2023, available here: <https://www.bankofengland.co.uk/news/2023/december/pras-publishes-first-of-two-policy-statements-for-basel-3-1-standards-implementation>. If the PRA proceeds with the implementation of the Basel 3.1 standards as proposed, the regulatory changes would be applicable after July 1, 2025 with a 4.5-year transitional period ending on January 1, 2030. The Commission will monitor progress on the PRA’s proposed regulatory changes and may amend or supplement the Comparability Order. As noted, the Commission requires notification of any material changes to the UK PRA Capital Rules, including any Basel 3.1 implementing provisions.

¹¹⁶ For additional information on the legal mechanics of a flip clause, see *Lehman Brothers Special Financing Inc v. Bank of America N.A.*, No. 18–1079 (2nd Cir. 2020).

¹¹⁷ Harrington 03/24/2024 Letter at p. 8.

¹¹⁸ Harrington 03/24/2024 Letter at p. 21 (noting that “[the CFTC margin requirements] render the flip-clause-contract commercially impracticable in the U.S.” and that “U.S. swap margin rules, including the CFTC swap margin rule, have greatly benefited U.S. persons by subduing financial sector credit exposures that might otherwise draw bailouts or other U.S. government support”).

¹¹⁹ Harrington 03/24/2024 Letter at p. 25 (arguing that “U.K. and other non-U.S. swap margin and capital rules perpetuate the flip-clause-swap-contract by allowing [asset-backed securities] issuers, other structured debt issuers, banks, and swap dealers to under-resource their [respective] contract exposures via both exemptions from margin posting and see-no-evil capital rules that treat the contract as ‘plain vanilla’”).

¹²⁰ 12 CFR 217.34 and 12 CFR 217.132 (indicating that nonbank SDs may recognize the risk-mitigating effects of financial collateral for collateralized derivatives contracts) and PRA Rulebook, CRR Firms, Counterparty Credit Risk Part, Article 276 and UK CRR, Article 285 (setting forth rules for the recognition and treatment of collateral in calculating the PRA-designated UK nonbank SD’s counterparty credit risk exposure).

¹²¹ Ravnitzky Letter at p. 4.

¹²² See 2024 Proposal at 8036.

A. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules and UK PRA Capital Rules and UK PRA Financial Reporting Rules

1. Preliminary Determination

As reflected in the 2024 Proposal and discussed above, the Commission preliminarily determined that the overall objectives of the UK PRA Capital Rules and the CFTC Capital Rules are comparable in that both sets of rules are intended to ensure the safety and soundness of nonbank SDs by establishing regulatory regimes that require nonbank SDs to maintain a sufficient amount of qualifying regulatory capital to absorb losses, including losses from swaps and other trading activities, and to absorb decreases in the value of firm assets and increases in the value of firm liabilities without the nonbank SDs becoming insolvent.¹²⁵ The Commission further noted that the UK PRA Capital Rules and CFTC Capital Rules are based on, and consistent with, the BCBS framework, which was designed to ensure that banking entities hold sufficient levels of capital to absorb losses and decreases in the value of firm assets and increases in the value of firm liabilities without the banks becoming insolvent.¹²⁶

The Commission also preliminarily found that the UK PRA Capital Rules are comparable in purpose and effect to the CFTC Capital Rules given that both regulatory approaches compute the minimum capital requirements based on the level of a nonbank SD's on-balance sheet and off-balance sheet exposures, with the objective and purpose of ensuring that the nonbank SD's capital is adequate to absorb losses or decreases in the value of firm assets or increases in the value of firm liabilities resulting from such exposures. The Commission observed that the UK PRA Capital Rules and CFTC Capital Rules provide for a comparable approach to the calculation of market risk and credit risk exposures using standardized or internal model-based approaches.¹²⁷ In addition, as discussed in the 2024 Proposal, the UK PRA Capital Rules' and CFTC Capital Rules' requirements for identifying and measuring on-balance sheet and off-balance sheet exposures under standardized or internal model-based

approaches are also consistent with the requirements set forth under the BCBS framework for identifying and measuring on-balance sheet and off-balance sheet exposures.¹²⁸

Finally, the Commission preliminarily noted that the UK PRA Capital Rules and CFTC Capital Rules further achieve comparable outcomes and are comparable in purpose and effect in that both sets of rules limit the types of capital instruments that qualify as regulatory capital to cover the on-balance sheet and off-balance sheet risk exposures to high quality equity capital and qualifying subordinated debt instruments that meet conditions designed to ensure that the holders of the debt have effectively subordinated their claims to other creditors of the nonbank SD.¹²⁹ As discussed in the 2024 Proposal and in section II.B. below, both the UK PRA Capital Rules and the CFTC Capital Rules define high quality capital by the degree to which the capital represents permanent capital that is contributed, or readily available to a nonbank SD, on an unrestricted basis to absorb unexpected losses, including losses from swaps trading and other activities, without the nonbank SD becoming insolvent.¹³⁰

The Commission further stated that it preliminarily found the UK PRA Financial Reporting Rules to be comparable in purpose and effect to the CFTC Financial Reporting Rules as both the PRA and CFTC require nonbank SDs to file periodic financial reports, including unaudited financial reports and an annual audited financial report, detailing their financial operations and demonstrating their compliance with minimum capital requirements.¹³¹ As discussed in the 2024 Proposal, in addition to providing the CFTC and the PRA with information necessary to comprehensively assess the financial condition of a nonbank SD on an ongoing basis, the financial reports further provide the CFTC and the PRA with information regarding potential changes in a nonbank SD's risk profile by disclosing changes in account balances reported over a period of time.¹³² Such changes in account balances may indicate, among other things, that the nonbank SD has entered into new lines of business, has increased its activity in an existing line of business relative to other activities, or

has terminated a previous line of business.¹³³

In assessing the comparability between the CFTC Financial Reporting Rules and the UK PRA Financial Reporting Rules, the Commission noted that the prompt and effective monitoring of the financial condition of nonbank SDs through the receipt and review of periodic financial reports supports the Commission and the PRA in meeting their respective objectives of ensuring the safety and soundness of nonbank SDs. In this regard, the Commission stated that the early identification of potential financial issues provides the Commission and the PRA with an opportunity to address such issues with the nonbank SD before they develop to a state where the financial condition of the firm is impaired such that it may no longer hold a sufficient amount of qualifying regulatory capital to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, or cover losses from its business activities, including the firm's swap dealing activities and obligations to swap counterparties.¹³⁴

2. Comment Analysis and Final Determination

In response to the Commission's request for comment, Better Markets identified certain differences between the CFTC Capital Rules and Financial Reporting Rules and the UK PRA Capital Rules and Financial Reporting Rules and stated that the differences mandated denial of the request for a comparability determination.¹³⁵ Better Markets further stated that the nature and number of conditions that the Commission deemed necessary to impose are inconsistent with a finding of comparability.¹³⁶ In this connection, Better Markets also noted that the imposition of conditions will exacerbate complexity as the Commission will have to monitor compliance with the conditions, including reviewing the financial reports of the PRA-designated UK nonbank SDs and tracking developments in the UK PRA regulatory regime more generally.¹³⁷ Finally, Better Markets asserted that the proposed Comparability Order failed to provide sufficient analysis as to exactly how and why the Commission concluded that the UK and U.S. frameworks would produce "comparable outcomes."¹³⁸

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Better Markets Letter at p. 15.

¹³⁶ *Id.* at p. 11.

¹³⁷ *Id.* at p. 16.

¹³⁸ *Id.* at p. 11.

¹²⁵ See 2024 Proposal at 8037.

¹²⁶ The BCBS's mandate is to strengthen the regulation, supervision, and practices of banks with the purpose of enhancing financial stability. See *Basel Committee Charter* available on the Bank for International Settlement website: www.bis.org/bcbs/charter.htm. See 2024 Proposal at 8037.

¹²⁷ 2024 Proposal at 8039–8047.

¹²⁸ *Id.*

¹²⁹ 2024 Proposal at 8039.

¹³⁰ *Id.*

¹³¹ *Id.* at 8037.

¹³² *Id.*

As described herein and in the 2024 Proposal, Commission staff has engaged in a detailed, comprehensive study and evaluation of the UK PRA capital and financial reporting framework and has confirmed that its understanding of the elements and application of the framework is accurate. The Commission has also concluded, based on its evaluation, that the PRA has a comprehensive oversight program for monitoring PRA-designated UK nonbank SDs' compliance with relevant UK PRA Capital Rules.

Furthermore, as discussed in section I.E. above, the conditions set forth in the Comparability Order are generally intended to ensure that: (i) only PRA-designated UK nonbank SDs that are subject to the laws and regulations assessed under the Comparability Determination are eligible for substituted compliance; (ii) the PRA-designated UK nonbank SDs are subject to supervision by the PRA; and (iii) the PRA-designated UK nonbank SDs provide information to the Commission and NFA that is relevant to the ongoing supervision of their operations and financial condition. Considering this thorough analysis, and the ongoing requirement for PRA-designated UK nonbank SDs to provide information to the Commission and NFA demonstrating compliance with the Comparability Order, the Commission is confident that it is capable of effectively conducting, together with NFA, oversight of the PRA-designated UK nonbank SDs consistent with the conduct of oversight of U.S.-domiciled nonbank SDs. In light of the Commission's ultimate conclusion that the UK PRA capital and financial reporting requirements are comparable based on the standards articulated in Commission Regulation 23.106(a)(3), the Commission believes that a failure to issue a Comparability Determination and Comparability Order would in fact "exacerbate complexity" as it would impose duplicative requirements that would result in increased costs for registrants and market participants without a commensurate benefit from an oversight perspective.

As discussed in sections I.B. and E. above, and detailed herein, the Commission finds that the CFTC Capital Rules and Financial Reporting Rules and the UK PRA Capital Rules and Financial Reporting Rules are comparable in purpose and effect, and have overall comparable objectives, notwithstanding the identified differences. In this regard, the Commission notes that, as described above, instead of conducting a line-by-line assessment or comparison of the

UK PRA Capital and Financial Reporting Rules and the CFTC Capital and Financial Reporting Rules, it has applied in the assessment set forth in the determination and order, a principles-based, holistic approach in assessing the comparability of both regimes, consistent with the standard of review it adopted in Commission Regulation 23.106(a)(3). Based on that principles-based, holistic assessment, the individual elements of which are described in more detail in sections II.B. through II.F. below, the Commission has determined that both sets of rules are designed to ensure the safety and soundness of nonbank SDs and achieve comparable outcomes. As such, the Commission adopts the Comparability Determination and Comparability Order as proposed with respect to the analysis of the regulatory objectives of the CFTC Capital Rules and Financial Reporting Rules and the UK PRA Capital and Financial Reporting Rules.

B. Nonbank Swap Dealer Qualifying Capital

1. Preliminary Determination

As discussed in the 2024 Proposal, the Commission preliminarily determined that the UK PRA Capital Rules are comparable in purpose and effect to the CFTC Capital Rules with regard to the types and characteristics of a nonbank SD's equity that qualifies as regulatory capital in meeting its minimum requirements.¹³⁹ The Commission explained that the UK PRA Capital Rules and the CFTC Capital Rules for nonbank SDs both require a nonbank SD to maintain a quantity of high-quality and permanent capital that, based on the firm's activities and on-balance sheet and off-balance sheet exposures, is sufficient to absorb losses and decreases in the value of firm assets and increases in the value of firm liabilities without resulting in the firm becoming insolvent.¹⁴⁰ The Commission observed that the UK PRA Capital Rules and the CFTC Capital Rules permit nonbank SDs to recognize comparable forms of equity capital and qualifying subordinated debt instruments toward meeting minimum capital requirements, with both the UK PRA Capital Rules and the CFTC Capital Rules emphasizing high quality capital instruments.¹⁴¹

In support of its preliminary Comparability Determination, the Commission noted that the CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to

maintain regulatory capital in the form of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in amounts that meet certain stated minimum requirements set forth in Commission Regulation 23.101.¹⁴² Common equity tier 1 capital is generally composed of an entity's common stock instruments, and any related surpluses, retained earnings, and accumulated other comprehensive income, and is a more conservative or permanent form of capital that is last in line to receive distributions in the event of the entity's insolvency.¹⁴³ Additional tier 1 capital is generally composed of equity instruments such as preferred stock and certain hybrid securities that may be converted to common stock if triggering events occur and may have a preference in distributions over common equity tier 1 capital in the event of an insolvency.¹⁴⁴ Total tier 1 capital is composed of common equity tier 1 capital and further includes additional tier 1 capital. Tier 2 capital includes certain types of instruments that include both debt and equity characteristics such as qualifying subordinated debt.¹⁴⁵ Subordinated debt must meet certain conditions to qualify as tier 2 capital under the CFTC Capital Rules.¹⁴⁶

The preliminary Comparability Determination also noted that the UK PRA Capital Rules require a PRA-designated nonbank SD to maintain an amount of regulatory capital (*i.e.*, equity capital and qualifying subordinated debt) equal to or greater than 8 percent of the PRA-designated UK nonbank SD's total risk exposure, which is calculated as the sum of the firm's: (i) capital charges for market risk; (ii) risk-weighted exposure amounts for credit risk; (iii) capital charges for settlement risk; (iv) credit valuation adjustment ("CVA") risk of over-the-counter ("OTC") derivatives instruments; and (v) capital charges for operational risk. The UK PRA Capital Rules limit the composition of regulatory capital to

¹⁴² 17 CFR 23.101(a)(1)(i) and 2024 Proposal at 8037–8038. The terms "common equity tier 1 capital," "additional tier 1 capital," and "tier 2 capital" are defined in the bank holding company regulations of the Federal Reserve Board. 12 CFR 217.20.

¹⁴³ 12 CFR 217.20(b).

¹⁴⁴ 12 CFR 217.20(c).

¹⁴⁵ 12 CFR 217.20(d).

¹⁴⁶ Subordinated debt must meet requirements set forth in SEC Rule 18a–1d. Specifically, subordinated debt instruments must have a term of at least one year (with the exception of approved revolving subordinated debt agreements which may have a maturity term that is less than one year), and contain terms that effectively subordinate the rights of lenders to receive any payments, including accrued interest, to other creditors of the firm. 17 CFR 23.101(a)(1)(i)(B) and 17 CFR 240.18a–1d.

¹³⁹ See 2024 Proposal at 8039.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in a manner consistent with the BCBS framework. Specifically, the UK PRA Capital Rules provide that a PRA-designated UK nonbank SD's regulatory capital may be composed of: (i) common equity tier 1 capital instruments, which generally include the PRA-designated UK nonbank SD's common equity (stock), retained earnings, and accumulated other comprehensive income; (ii) additional tier 1 capital instruments, which includes other forms of capital instruments and certain long-term convertible debt instruments; and (iii) tier 2 capital instruments, which include other reserves, hybrid capital instruments, and certain qualifying subordinated term debt.¹⁴⁷ Capital instruments that qualify as common equity tier 1 capital under the UK PRA Capital Rules include instruments that: (i) are issued directly by the PRA-designated UK nonbank SD; (ii) are paid in full and not funded directly or indirectly by the PRA-designated UK nonbank SD; and (iii) are perpetual.¹⁴⁸ In addition, the principal amount of the common equity tier 1 capital instruments may not be reduced or repaid, except in the liquidation of the PRA-designated UK nonbank SD.¹⁴⁹ Furthermore, to qualify as additional tier 1 capital, the capital instruments must meet certain conditions including: (i) the instruments are issued directly by the PRA-designated UK nonbank SD and paid in full; (ii) the instruments are not owned by the PRA-designated UK nonbank SD or its subsidiaries; (iii) the purchase of the instruments is not funded directly or indirectly by the PRA-designated UK nonbank SD; (iv) the instruments rank below tier 2 instruments in the event of the insolvency of the PRA-designated UK nonbank SD; (v) the instruments are not secured or guaranteed by the PRA-designated UK nonbank SD or an affiliate; (vi) the instruments are perpetual and do not include an incentive for the PRA-designated UK nonbank SD to redeem them; and (vii) distributions under the instruments are pursuant to defined terms and may be cancelled under the full discretion of the PRA-designated UK nonbank SD.¹⁵⁰ Lastly, subordinated debt instruments must meet certain conditions to qualify as tier 2 regulatory capital under the UK PRA Capital Rules, including that the: (i) loans are not granted by the PRA-designated UK nonbank SD or its

subsidiaries; (ii) claims on the principal amount of the subordinated loans under the provisions governing the subordinated loan agreement rank below any claim from eligible liabilities instruments (*i.e.*, certain non-capital instruments), meaning that they are effectively subordinated to claims of all non-subordinated creditors of the PRA-designated UK nonbank SD; (iii) subordinated loans are not secured, or subject to a guarantee that enhances the seniority of the claim, by the PRA-designated UK nonbank SD, its subsidiaries, or affiliates; (iv) loans have an original maturity of at least five years; and (v) provisions governing the loans do not include any incentive for the principal amount to be repaid by the PRA-designated UK nonbank SD prior to the loans' maturity.¹⁵¹

Based on its comparative assessment, the Commission preliminarily found that the types and characteristics of the equity instruments that qualify as common equity tier 1 capital and additional tier 1 capital under the UK PRA Capital Rules are comparable to the types and characteristics of equity instruments comprising common equity tier 1 capital and additional tier 1 capital under the CFTC Capital Rules.¹⁵² Specifically, the Commission noted that the UK PRA Capital Rules' common equity tier 1 capital and additional tier 1 capital and the CFTC Capital Rules' common equity tier 1 capital and additional tier 1 capital are comparable in that these forms of equity capital have similar characteristics (*e.g.*, the equity must be in the form of high-quality, committed, and permanent capital) and represent contributed equity capital that generally has no priority to the distribution of firm assets or income with respect to other shareholders or creditors of the firm, which allows a nonbank SD to use this equity to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, and cover losses from business activities, including the firm's swap dealing activities.¹⁵³

The Commission also found subordinated debt under the UK PRA Capital Rules comparable to tier 2 capital under the CFTC Capital Rules.¹⁵⁴ Specifically, the Commission noted that the qualifying conditions imposed on subordinated debt instruments are comparable under the UK PRA Capital Rules and the CFTC Capital Rules in that they are designed to ensure that the debt has qualities supporting its

recognition by a nonbank SD as equity for capital purposes, including by effectively subordinating the debt lenders' claims for repayment on the debt to other creditors of the nonbank SD and by limiting or restricting repayment of the subordinated loans if such repayments result in the nonbank SD's equity falling below certain defined thresholds.¹⁵⁵ The Commission preliminarily concluded that these terms and conditions provided assurances that the subordinated debt is appropriate to be recognized as regulatory capital available to a nonbank SD to meet its obligations and to absorb business losses and decreases in the value of firm assets and increases in the value of firm liabilities.¹⁵⁶

2. Comment Analysis and Final Determination

The Commission did not receive comments regarding its preliminary determination that the UK PRA Capital Rules are comparable in purpose and effect to the CFTC Capital Rules with regard to the types and characteristics of a nonbank SD's equity and subordinated debt that qualifies as regulatory capital in meeting its minimum requirements. In conclusion, the Commission finds that the UK PRA Capital Rules and the CFTC Capital Rules are comparable in purpose and effect, and achieve comparable regulatory outcomes, with respect to the types of capital instruments that qualify as regulatory capital. Both the UK PRA Capital Rules and the CFTC Capital Rules limit regulatory capital to permanent and conservative forms of capital, including common equity, capital surpluses, retained earnings, and subordinate debt where debt holders effectively subordinate their claims to repayment to all other creditors of the nonbank SD in the event of the firm's insolvency. Limiting regulatory capital to the above categories of equity and debt instruments promotes the safety and soundness of the nonbank SD by helping to ensure that the regulatory capital is not withdrawn or converted to other equity instruments that may have rights or priority with respect to payments, such as dividends or distributions in insolvency, over other creditors, including swap counterparties. The Commission, therefore, is adopting the Comparability Order as proposed with respect to the types and characteristics of equity and subordinated debt that qualifies as regulatory capital to meet minimum

¹⁴⁷ 2024 Proposal at 8038.

¹⁴⁸ *Id.* and UK CRR, Articles 26 and 28.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* and UK CRR, Articles 51–52.

¹⁵¹ *Id.* and UK CRR, Article 63.

¹⁵² *See* 2024 Proposal at 8039.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

capital requirements under the UK PRA Capital Rules.

C. Nonbank Swap Dealer Minimum Capital Requirement

1. Introduction to Nonbank Swap Dealer Minimum Capital Requirements

As reflected in the 2024 Proposal, the CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital that satisfies each of the following criteria: (i) an amount of common equity tier 1 capital of at least \$20 million; (ii) an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, provided that common equity tier 1 capital comprises at least 6.5 percent of the 8 percent; (iii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or in excess of 8 percent of the nonbank SD's uncleared swap margin amount;¹⁵⁷ and (iv) the amount of capital required by NFA.¹⁵⁸

In comparison, the UK PRA Capital Rules, consistent with the BCBS framework, require each PRA-designated UK nonbank SD to maintain sufficient levels of capital to satisfy the following, expressed as a percentage of the PRA-designated UK nonbank SD's "total risk exposure amount" (*i.e.*, the sum of the PRA-designated UK nonbank SD's risk-weighted assets and exposures): (i) a common equity tier 1 capital ratio of 4.5 percent; (ii) a tier 1 capital ratio of 6 percent; and (iii) a total capital ratio of 8 percent. Furthermore, PRA-designated UK nonbank SDs must

maintain a capital conservation buffer composed of common equity tier 1 capital in an amount equal to 2.5 percent of the firm's total risk exposure. The common equity tier 1 capital used to meet the capital conservation buffer must be separate and in addition to the 4.5 percent of common equity tier 1 capital required to meet its core 8 percent capital requirement.¹⁵⁹ As explained in the 2024 Proposal, the "total risk exposure amount" is calculated as the sum of the PRA-designated UK nonbank SD's: (i) capital requirements for market risk; (ii) risk-weighted exposure amounts for credit risk; (iii) capital requirements for CVA risk of OTC derivatives; and (iv) capital requirements for operational risk.¹⁶⁰ Capital charges for market risk and credit risk are computed based on a PRA-designated UK nonbank SD's on-balance sheet and off-balance sheet exposures, weighted according to risk.¹⁶¹

2. Preliminary Determination and Comment Analysis

While noting certain differences in the minimum capital requirements and calculation of regulatory capital between the UK PRA Capital Rules and the CFTC Capital Rules, the Commission preliminarily found that the UK PRA Capital Rules and CFTC Capital Rules achieve, subject to the conditions in the proposed Comparability Determination and proposed Comparability Order, comparable outcomes by requiring a nonbank SD to maintain a minimum level of qualifying regulatory capital and subordinated debt to absorb losses from the firm's business activities, including its swap dealing activities, and decreases in the value of the firm's assets and increases in the firm's liabilities without the nonbank SD becoming insolvent.¹⁶² As further discussed below, the Commission's preliminary finding of comparability was based on a principles-based, holistic comparative analysis of the three minimum capital requirement thresholds of the CFTC Capital Rules' Bank-Based Approach referenced above and the respective elements of the UK PRA Capital Rules' requirements.

a. Fixed Amount Minimum Capital Requirement

As noted above, prong (i) of the CFTC Capital Rules requires each nonbank SD electing the Bank-Based Approach to

maintain a minimum of \$20 million of common equity tier 1 capital. The CFTC's \$20 million fixed-dollar minimum capital requirement is intended to ensure that each nonbank SD maintains a level of regulatory capital, without regard to the level of the firm's dealing and other activities, sufficient to meet its obligations to swap market participants given the firm's status as a CFTC-registered nonbank SD and to help ensure the safety and soundness of the nonbank SD.¹⁶³ In comparison, the UK PRA Capital Rules also contain a requirement that a PRA-designated UK nonbank SD maintain a fixed amount of minimum initial capital of GBP 750,000.¹⁶⁴

The Commission, in the 2024 Proposal, recognized that the \$20 million fixed-dollar minimum capital required under the CFTC Capital Rules is substantially higher than the GBP 750,000 minimum base capital required under the UK PRA Capital Rules. Therefore, the Commission preliminarily proposed a condition that each PRA-designated UK nonbank SD would be required to maintain, at all times, a minimum amount of common equity tier 1 capital, as defined in Article 26 of UK CRR, denominated in GBP equal to or in excess of the equivalent of \$20 million.¹⁶⁵

One commenter, Better Markets, argued that the establishment in the UK PRA Capital Rules of a base level requirement that is substantially lower than the CFTC Capital Rules' fixed amount minimum requirement "demonstrates a fatal lack of comparability."¹⁶⁶ Better Markets further stated that to compensate for this gap, the Commission proposed a condition requiring PRA-designated UK nonbank SDs to maintain a minimum amount of common equity tier 1 capital denominated in GBP equal to or in excess of the equivalent of \$20 million.¹⁶⁷

As noted above, the Commission recognized the material difference in the requirement under the UK PRA Capital Rules and the CFTC Capital Rules with respect to the \$20 million minimum dollar amount of regulatory capital a nonbank SD is required to maintain. The Commission's proposed condition, however, effectively addresses this difference by providing that a PRA-

¹⁵⁷ 17 CFR 23.101(a)(1)(i). *See also* 2024 Proposal at 8039. The term "uncleared swap margin" is defined in Commission Regulation 23.100 to generally mean the amount of initial margin that a nonbank SD would be required to collect from each counterparty for each outstanding swap position of the nonbank SD. 17 CFR 23.100. A nonbank SD must include all swap positions in the calculation of the uncleared swap margin amount, including swaps that are exempt or excluded from the scope of the Commission's uncleared swap margin regulations. A nonbank SD must compute the uncleared swap margin amount in accordance with the Commission's margin rules for uncleared swaps. 17 CFR 23.154.

¹⁵⁸ 17 CFR 23.101(a)(1)(i)(D). *See also* 2024 Proposal at 8039. Commission Regulation 23.101(a)(1)(i)(D) sets forth one of the minimum thresholds that a nonbank SD must meet as the "the amount of capital required by a registered futures association." As previously noted, NFA is currently the only entity that is registered with the Commission as a futures association. NFA has adopted the Commission's capital requirements as its own requirements, and has not adopted any additional or stricter minimum capital requirements. *See* NFA rulebook, Financial Requirements Section 18 Swap Dealer and Major Swap Participant Financial Requirements, available at nfa.futures.org.

¹⁵⁹ *See* 2024 Proposal at 8041–8042.

¹⁶⁰ *Id.* at 8042.

¹⁶¹ *Id.*

¹⁶² *Id.* at 8045.

¹⁶³ 85 FR 57462 at 57492.

¹⁶⁴ 2024 Proposal at 8045.

¹⁶⁵ *Id.* The Commission also noted that the six current PRA-designated UK nonbank SDs maintain common equity tier 1 capital in amounts in excess of the equivalent of \$20 million based on financial filings made with the Commission. *Id.* (note 255).

¹⁶⁶ Better Markets Letter at p. 13.

¹⁶⁷ *Id.*

designated UK nonbank SD may not avail itself of substituted compliance unless it maintains a minimum amount of common equity tier 1 capital denominated in GBP equal to or excess of the equivalent of \$20 million. Furthermore, the imposition of conditions in a Comparability Order, as discussed in section I.E. above, is authorized by Commission Regulation 23.106(a)(5), which provides that the Commission may issue terms and conditions as it deems appropriate. In addition, as further noted in section I.E. above, the Guidance also provides that the Commission may impose conditions as part of the substituted compliance process to address a lack of comparable and comprehensive regulation in a home jurisdiction.¹⁶⁸ In this connection, the Commission concludes that requiring PRA-designated UK nonbank SDs to maintain an amount of regulatory capital in the form of common equity tier 1 items, as defined in Article 26 of UK CRR, equal to or in excess of the equivalent of \$20 million will impose an equally stringent standard to the analogue requirement under the CFTC Capital Rules and will appropriately address the substantially lower minimum fixed amount capital requirement under the UK PRA Capital Rules.

In conclusion, the Commission finds that the UK PRA Capital Rules and the CFTC Capital Rules, with the imposition of the condition for PRA-designated UK nonbank SDs to maintain a minimum level of common equity tier 1 capital in an amount equivalent to at least \$20 million, are comparable in purpose and effect and achieve comparable outcomes with respect to capital requirements based on a minimum dollar amount. The requirement for a nonbank SD with limited swap dealing or other business activities to maintain a minimum level of regulatory capital equivalent to \$20 million helps to ensure the firm's safety and soundness by allowing it to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to swap counterparties, other creditors, and market participants, without the firm becoming insolvent.

b. Minimum Capital Requirement Based on Risk-Weighted Assets

Prong (ii) of the CFTC Capital Rules' minimum capital requirements described above requires each nonbank SD electing the Bank-Based Approach to maintain an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or greater than 8 percent of the nonbank

SD's total risk-weighted assets, with common equity tier 1 capital comprising at least 6.5 percent of the 8 percent.¹⁶⁹ Risk-weighted assets are a nonbank SD's on-balance sheet and off-balance sheet market risk and credit risk exposures, including exposures associated with proprietary swap, security-based swap, equity, and futures positions, weighted according to risk. The requirements and capital ratios set forth in prong (ii) are based on the Federal Reserve Board's capital requirements for bank holding companies and are consistent with the BCBS framework. The requirement for each nonbank SD to maintain regulatory capital in an amount that equals or exceeds 8 percent of the firm's total risk-weighted assets is intended to help ensure that the nonbank SD's level of capital is sufficient to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover unexpected losses resulting from the firm's business activities, including losses resulting from uncollateralized defaults from swap counterparties, without the nonbank SD becoming insolvent.¹⁷⁰

The UK PRA Capital Rules contain capital requirements for PRA-designated UK nonbank SDs that the Commission preliminarily found comparable to the requirements in prong (ii) of the CFTC Capital Requirements.¹⁷¹ Specifically, the UK PRA Capital Rules require a PRA-designated UK nonbank SD to maintain: (i) common equity tier 1 capital equal to at least 4.5 percent of the PRA-designated UK nonbank SD's total risk exposure amount; (ii) total tier 1 capital (*i.e.*, common equity tier 1 capital plus additional tier 1 capital) equal to at least 6 percent of the PRA-designated UK nonbank SD's total risk exposure amount; and (iii) total capital (*i.e.*, an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) equal to at least 8 percent of the PRA-designated UK nonbank SD's total risk exposure amount. The UK PRA Capital Rules further require each PRA-designated UK nonbank SD to maintain an additional capital conservation buffer equal to 2.5 percent of the PRA-designated UK nonbank SD's total risk exposure amount, which must be met with common equity tier 1 capital. Thus, a PRA-designated UK nonbank SD is effectively required to maintain total qualifying regulatory capital in an amount equal to or in excess of 10.5 percent of the market risk, credit risk, CVA risk, settlement risk, and

operational risk of the firm (*i.e.*, total capital requirement of 8 percent of risk-weighted assets and an additional 2.5 percent of risk-weighted assets as a capital conservation buffer), which is a higher capital ratio than the 8 percent required of nonbank SDs under prong (ii) of the CFTC Capital Rules.¹⁷²

The Commission also preliminarily found that the UK PRA Capital Rules and the CFTC Capital Rules are comparable with respect to the approaches used in the calculation of risk-weighted asset amounts for market risk and credit risk in determining the nonbank SD's risk-weighted assets.¹⁷³ In that regard, the Commission noted that both regimes require a nonbank SD to use standardized approaches to compute market risk and credit risk amounts, unless the firm is approved to use internal models.¹⁷⁴

As the Commission observed, the standardized approaches to calculating risk-weighted asset amounts for market risk and credit risk under both sets of rules follow the same structure that is now the common global standard: (i) allocating assets to categories according to risk and assigning each a risk weight; (ii) allocating counterparties according to risk assessments and assigning each a risk factor; (iii) calculating gross exposures based on valuation of assets; (iv) calculating a net exposure allowing offsets following well defined procedures and subject to clear limitations; (v) adjusting the net exposure by the market risk weights; and finally, (vi) for credit risk exposures, multiplying the sum of net exposures to each counterparty by their corresponding risk factor.¹⁷⁵

More specifically, with respect to the calculation of standardized risk-weighted asset amounts for market risk, the Commission explained that the CFTC Capital Rules incorporate by reference the standardized market risk charges set forth in Commission Regulation 1.17 for FCMs and SEC Rule 18a-1 for nonbank security-based swap dealers ("SBSDs").¹⁷⁶ The standardized market risk charges under Commission Regulation 1.17 and SEC Rule 18a-1 are calculated as a standardized or table-based percentage of the market value or notional value of the nonbank SD's marketable securities and derivatives positions, with the percentages applied

¹⁷² *Id.* and UK CRR Articles 26, 28, 50–52, 61–63 and 92, and PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 2 Capital Conservation Buffer.

¹⁷³ See 2024 Proposal at 8046.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 8040 and paragraph (3) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

¹⁶⁹ 17 CFR 23.101(a)(1)(i)(B).

¹⁷⁰ See generally 85 FR 57462 at 57530.

¹⁷¹ See 2024 Proposal at 8046.

¹⁶⁸ Guidance at 45343.

to the market value or notional value increasing as the expected or anticipated risk of the positions increases.¹⁷⁷ For example, CFTC Capital Rules require nonbank SDs to calculate standardized market risk-weighted asset amounts for uncleared swaps based on notional values of the swap positions multiplied by percentages set forth in the applicable rules.¹⁷⁸ In addition, market risk-weighted asset amounts for readily marketable equity securities are calculated by multiplying the fair market value of the securities by 15 percent.¹⁷⁹

Under the CFTC Capital Rules, the resulting total market risk-weighted asset amount is multiplied by a factor of 12.5 to cancel the effect of the 8 percent multiplication factor applied to all of the nonbank SD's risk-weighted assets under prong (ii) of the rules' minimum capital requirements described above. As a result, a nonbank SD is effectively required to hold qualifying regulatory capital equal to or greater than 100 percent of the amount of its market risk exposure amount.¹⁸⁰

Comparable to the CFTC Capital Rules, the UK PRA Capital Rules require a PRA-designated UK nonbank SD to calculate its standardized risk-weighted asset amounts for market risk by multiplying the notional or carrying amount of net positions by risk-weighting factors, which are based on the underlying market risk of each asset or exposure and increase as the expected risk of the positions increases.¹⁸¹ The Commission further explained that a PRA-designated UK nonbank SD is required to calculate

market risk requirements for debt instruments and equity instruments separately, by computing each category as the sum of specific risk and general risk of the positions.¹⁸² As further discussed in the 2024 Proposal, the UK PRA Capital Rules also require PRA-designated UK nonbank SDs to include in their risk-weighted assets market risk exposures to certain foreign currency and gold positions. Specifically, a PRA-designated UK nonbank SD with net positions in foreign exchange and gold that exceed 2 percent of the firm's total capital must calculate capital requirements for foreign exchange risk.¹⁸³ The capital requirement for foreign exchange risk under the standardized approach is 8 percent of the PRA-designated UK nonbank SD's net positions in foreign exchange and gold.¹⁸⁴ The UK PRA Capital Rules further require PRA-designated UK nonbank SDs to include exposures to commodity positions in calculating the firm's risk-weighted assets. The standardized calculation of commodity risk exposures may follow one of three approaches depending on type of position or exposure. The first is the sum of a flat percentage rate for net positions, with netting allowed among tightly defined sets, plus another flat percentage rate for the gross position.¹⁸⁵ The other two standardized approaches are based on maturity-ladders, where unmatched portions of each maturity band (*i.e.*, portions that do not net out to zero) are charged at a step-up rate in comparison to the base charges for matched portions.¹⁸⁶

With respect to standardized risk-weighted asset amounts for credit risk, the Commission explained that under the CFTC Capital Rules, a nonbank SD must compute its on-balance sheet and off-balance sheet exposures in accordance with the standardized risk-weighting requirements adopted by the Federal Reserve Board and set forth in Subpart D of 12 CFR 217 as if the SD itself were a bank holding company subject to Subpart D.¹⁸⁷ Standardized risk-weighted asset amounts for credit risk are computed by multiplying the amount of the exposure by defined

counterparty credit risk factors that range from 0 percent to 150 percent.¹⁸⁸ A nonbank SD with off-balance sheet exposures is required to calculate a risk-weighted amount for credit risk by multiplying each exposure by a credit conversion factor that ranges from 0 percent to 100 percent, depending on the type of exposure.¹⁸⁹

In comparison, the Commission noted that the UK PRA Capital Rules require a PRA-designated UK nonbank SD to calculate its standardized risk-weighted asset amounts for credit risk in a manner aligned with the Commission's Bank-Based Approach and the BCBS framework by taking the carrying value or notional value of each of the PRA-designated UK nonbank SD's on-balance sheet and off-balance sheet exposures, making certain additional credit risk adjustments, and then applying specific risk weights based on the type of counterparty and the asset's credit quality.¹⁹⁰ For instance, exposures to the ECB, the UK government, and the Bank of England, carry a zero percent risk weight; exposures to other central governments and central banks may carry risk weights between 0 and 150, depending on the credit rating available for the central government or central bank; and exposures to banks, PRA-designated investment firms, or other businesses may carry risk weights between 20 percent and 150 percent depending on the credit ratings available for the entity or, for exposures to banks and investment firms, for the central government of the jurisdiction in which the entity is incorporated.¹⁹¹ If no credit rating is available, the PRA-designated UK nonbank SD must generally apply a 100 percent risk weight, meaning the total accounting value of the exposure is used.¹⁹²

With respect to counterparty credit risk for derivatives positions, the Commission explained that under the CFTC Capital Rules, a nonbank SD may compute standardized credit risk

¹⁷⁷ See 2024 Proposal at 8040, 17 CFR 1.17(c)(5), and 17 CFR 240.18a–1(c)(1).

¹⁷⁸ 17 CFR 1.17(c)(5)(iii).

¹⁷⁹ 17 CFR 1.17(c)(5)(v), referencing SEC Rule 15c3–1(c)(2)(vi) (17 CFR 240.15c3–1(c)(2)(vi)).

¹⁸⁰ 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*). As noted, a nonbank SD is required to maintain qualifying capital (*i.e.*, an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) in an amount that equals or exceeds 8 percent of its risk-weighted assets. The regulations, however, require the nonbank SD to effectively maintain qualifying capital equal to or in excess of 100 percent of its market risk-weighted assets by requiring the nonbank SD to multiply its market-risk weighted assets by a factor of 12.5. For example, the market risk exposure amount for marketable equity securities with a current fair market value of \$250,000 is \$37,500 (market value of \$250,000 × .15 standardized market risk factor). The nonbank SD is required to maintain regulatory capital equal to or in excess of full market risk exposure amount of \$37,500 (risk exposure amount of \$37,500 × 8 percent regulatory capital requirement equals \$3,000; the regulatory capital requirement is then multiplied by a factor of 12.5, which effectively requires the nonbank SD to hold regulatory capital in an amount equal to at least 100 percent of the market risk exposure amount (\$3,000 × 12.5 factor equals \$37,500)).

¹⁸¹ See 2024 Proposal at 8042.

¹⁸² *Id.* and UK CRR, Article 326. As indicated in Article 326 of UK CRR, securitizations are treated as debt instruments for market risk requirements.

¹⁸³ 2024 Proposal at 8042 and UK CRR, Article 351.

¹⁸⁴ *Id.*

¹⁸⁵ 2024 Proposal at 8042 and UK CRR, Article 360.

¹⁸⁶ 2024 Proposal at 8042 and UK CRR, Article 359–361.

¹⁸⁷ 23.101(a)(1)(i)(B) and paragraph (1) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100. See also 2024 Proposal at 8040.

¹⁸⁸ 12 CFR 217.32. Lower credit risk factors are assigned to entities with lower credit risk and higher credit risk factors are assigned to entities with higher credit risk. For example, a credit risk factor of 0 percent is applied to exposures to the U.S. government, the Federal Reserve Bank, and U.S. government agencies (12 CFR 217.32(a)(1)), and a credit risk factor of 100 percent is assigned to an exposure to foreign sovereigns that are not members of the Organization of Economic Cooperation and Development (12 CFR 217.32(a)(2)). See also discussion in 2024 Proposal at 8040.

¹⁸⁹ 12 CFR 217.33. See also discussion in 2024 Proposal at 8040.

¹⁹⁰ 2024 Proposal at 8043 and UK CRR, Articles 111 and 113(1).

¹⁹¹ 2024 Proposal at 8043 and UK CRR, Articles 114–122.

¹⁹² 2024 Proposal at 8043 and UK CRR, Articles 121(2) and 122(2).

exposures, using either the current exposure method (“CEM”) or the standardized approach for measuring counterparty credit risk (“SA-CCR”).¹⁹³ Both CEM and SA-CCR are non-model, rules-based approaches to calculating counterparty credit risk exposures for derivatives positions. Credit risk exposure under CEM is the sum of: (i) the current exposure (*i.e.*, the positive mark-to-market) of the derivatives contract; and (ii) the potential future exposure, which is calculated as the product of the notional principal amount of the derivatives contract multiplied by a standard credit risk conversion factor set forth in the rules of the Federal Reserve Board.¹⁹⁴ Credit risk exposure under SA-CCR is defined as the exposure at default amount of a derivatives contract, which is computed by multiplying a factor of 1.4 by the sum of: (i) the replacement costs of the contract (*i.e.*, the positive mark-to-market); and (ii) the potential future exposure of the contract.¹⁹⁵ In comparison, the UK PRA Capital Rules require a PRA-designated UK nonbank SD that is not approved to use credit risk models to calculate its exposure using the SA-CCR.¹⁹⁶ The exposure amount under the SA-CCR is computed, under both the UK PRA Capital Rules and the Commission’s Bank-Based Approach, as the sum of the replacement cost of the contract and the potential future exposure of the contract, multiplied by a factor of 1.4.¹⁹⁷

¹⁹³ 17 CFR 217.34 and 17 CFR 23.100 (defining the term *BHC risk-weighted assets* and providing that a nonbank SD that does not have model approval may use either CEM or SA-CCR to compute its exposures for OTC derivative contracts without regard to the status of its affiliate with respect to the use of a calculation approach under the Federal Reserve Board’s capital rules). *See also* discussion in 2024 Proposal at 8040.

¹⁹⁴ 12 CFR 217.34.

¹⁹⁵ 12 CFR 217.132(c).

¹⁹⁶ 2024 Proposal at 8043, UK CRR, Articles 92(3)(f), and PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR). As noted in the 2024 Proposal, PRA-designated UK nonbank SDs with smaller-sized derivatives business may also use a “simplified standardized approach to counterparty credit risk” or an “original exposure method” as simpler methods for calculating exposure values. PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR), Articles 281–282. To use either of these alternative methods, an entity’s on-and off-balance sheet derivatives business must be equal to or less than 10 percent of the entity’s total assets and GBP 260 million or 5 percent of the entity’s total assets and GBP 88 million, respectively. PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR), Article 273a.

¹⁹⁷ PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six

UK PRA Capital Rules also require a PRA-designated UK nonbank SD to include its exposures to settlement risk in its calculation of its risk-weighted assets.¹⁹⁸ Consistent with the BCBS framework, the risk-weighted asset amount for settlement risk for transactions settled on a delivery-versus-payment basis is computed by multiplying the price difference to which a PRA-designated UK nonbank SD is exposed as a result of an unsettled transaction by a percentage factor that varies from 8 percent to 100 percent based on the number of working days after the settlement due date during which the transaction remains unsettled.¹⁹⁹ The CFTC’s Bank-Based Approach provides for a similar calculation methodology for risk-weighted asset amounts for unsettled transactions involving securities, foreign exchange instruments, and commodities.²⁰⁰

Consistent with the BCBS framework, a PRA-designated UK nonbank SD is also required to calculate a CVA risk-weighted asset amount for OTC derivative instruments to reflect the current market value of the credit risk of the counterparty to the PRA-designated UK nonbank SD.²⁰¹ Risk-weighted asset amounts for CVA risk can be calculated following similar methodologies as those described in Subpart E of the Federal Reserve Board’s part 217 regulations.²⁰²

As discussed in the 2024 Proposal, both the CFTC Capital Rules and the UK PRA Capital Rules also provide that, if approved by NFA or the PRA, respectively, nonbank SDs may also use

CRR), Article 274 and 12 CFR 217.132(c). *See also* discussion in 2024 Proposal at 8043.

¹⁹⁸ 2024 Proposal at 8043 and UK CRR, Article 378 (indicating that if transactions in which debt instruments, equities, foreign currencies and commodities excluding repurchase transactions and securities or commodities lending and securities or commodities borrowing are unsettled after their delivery due dates, a PRA-designated UK nonbank SD must calculate the price difference to which it is exposed).

¹⁹⁹ *Id.* The price difference to which a PRA-designated UK nonbank SD is exposed is the difference between the agreed settlement price for an instrument (*i.e.*, a debt instrument, equity, foreign currency or commodity) and the instrument’s current market value, where the difference could involve a loss for the firm. UK CRR, Article 378.

²⁰⁰ 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*), 12 CFR 217.38 and 12 CFR 217.136.

²⁰¹ 2024 Proposal at 8043 and UK CRR, Articles 381 and 382(1).

²⁰² UK CRR, Articles 383–384 and 12 CFR 217.132(e)(5) and (6). Under the CFTC’s Bank-Based Approach, nonbank SDs calculating their credit risk-weighted assets using the regulations in Subpart D of the Federal Reserve Board’s Part 217 regulations do not calculate CVA of OTC derivatives instruments.

internal models to calculate market and/or credit risk exposures.²⁰³ The Commission noted that the internal market and credit risk models under the UK PRA Capital Rules and the CFTC Capital Rules are based on the BCBS framework and preliminarily found that such models must meet comparable quantitative and qualitative requirements covering the same risks, though with slightly different categorization, and including comparable model risk management requirements.²⁰⁴ In this regard, the Commission observed that both rule sets address the same types of risk, with similar allowed methodologies and under similar controls.²⁰⁵ The Commission also preliminarily determined that the UK PRA Capital Rules and the CFTC Capital Rules are comparable with respect to the requirement that nonbank SDs account for operational risk in computing their minimum capital requirements.²⁰⁶ In this connection, the Commission noted that the UK PRA Capital Rules require a PRA-designated UK nonbank SD to calculate an operational risk exposure as a component of the firm’s total risk exposure amount.²⁰⁷ PRA-designated UK nonbank SDs may use either a standardized approach or, if the PRA-designated UK nonbank has obtained regulatory permission, an internal approach based on the firm’s own measurement systems, to calculate their risk-weighted asset amounts for

²⁰³ *See* 2024 Proposal at 8040–8041 and 8043, respectively, for discussions of NFA and PRA model approvals. In discussing approval requirements for credit risk models as part of the general overview of the UK PRA Capital Rules, the Commission referred generally to counterparty credit risk exposures for “OTC derivatives transactions.” *See* 2024 Proposal at 8034–8035 (n. 115). For clarity, the Commission notes that the Internal Model Methodology for counterparty credit risk set out in UK CRR, Articles 283–294, can be used for the derivatives listed in Annex II of UK CRR, securities financing transactions, and long settlement transactions. PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Article 273.

²⁰⁴ *See* 2024 Proposal at 8046. For a discussion of the qualitative and quantitative requirements that models must meet under the CFTC Capital Rules and the UK PRA Capital Rules, *see* 2024 Proposal at 8040–8041 and 8043–8044, respectively. In discussing model approval conditions, the Commission noted that PRA-designated UK nonbank SDs were not permitted to use internal models to calculate counterparty credit risk amounts for large exposures. *See* 2024 Proposal at 8043 and 8044 (n. 217 and n. 237). The Commission notes that this statement is not correct with regard to securities financing transactions. PRA-designated UK nonbank SDs are allowed to use internal models to calculate exposure values for securities financing transactions. PRA Rulebook, CRR Firms, Large Exposures (CRR) Part, Chapter 4 Large Exposures (Part Four CRR), Article 390.

²⁰⁵ *See* 2024 Proposal at 8046.

²⁰⁶ *Id.*

²⁰⁷ *Id.* and UK CRR, Article 92(3).

operational risk. The CFTC Capital Rules address operational risk both as a stand-alone, separate minimum capital requirement that a nonbank SD is required to meet under prong (iii) of the Bank-Based Approach and as a component of the calculation of risk-weighted assets for nonbank SDs that use Subpart E of the Federal Reserve Board's part 217 regulations to calculate their credit risk-weighted assets via internal models.²⁰⁸

Only one commenter specifically addressed the Commission's comparative analysis of the minimum capital requirement based on risk-weighted assets. The commenter, Ravnitzky, stated that the UK PRA Capital Rules and the CFTC Capital Rules differ in several areas, including in their approaches to calculating risk-weighted amounts for market risk and credit risk.²⁰⁹ Ravnitzky asserted that unlike the UK PRA Capital Rules, which use a standardized approach, the CFTC Capital Rules use a model-based approach to calculating risk-weighted amounts.²¹⁰ The Commission notes that this description of the respective rule sets is not accurate. As discussed above, the currently applicable UK PRA Capital Rules and CFTC Capital Rules both incorporate standardized and model-based approaches to calculating market risk and credit risk amounts.²¹¹

In conclusion, the Commission finds that the UK PRA Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the computation of minimum capital requirements based on a nonbank SD's risk-weighted assets. In this regard, the Commission finds that the UK PRA Capital Rules and the CFTC Capital Rules have a comparable approach to the computation of market risk exposure amounts and credit risk exposure amounts for on-balance sheet and off-balance sheet exposures, which are intended to ensure that a nonbank SD maintains a sufficient level of regulatory capital to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to

counterparties and creditors, without the firm becoming insolvent.

c. Minimum Capital Requirement Based on the Uncleared Swap Margin Amount

As noted above, prong (iii) of the CFTC Capital Rules' Bank-Based Approach requires a nonbank SD to maintain regulatory capital in an amount equal to or greater than 8 percent of the firm's total uncleared swap margin amount associated with its uncleared swap transactions to address potential operational, legal, and liquidity risks.²¹²

The UK PRA Capital Rules differ from the CFTC Capital Rules in that they do not impose a capital requirement on PRA-designated UK nonbank SDs based on a percentage of the margin for uncleared swap transactions.²¹³ In the 2024 Proposal, the Commission described, however, how certain UK PRA capital and liquidity requirements may compensate for the lack of direct analogue to the 8 percent uncleared swap margin amount requirement.²¹⁴ Specifically, the Commission noted that under the UK PRA Capital Rules the total risk exposure amount is computed as the sum of the PRA-designated UK nonbank SD's risk-weighted asset amounts for market risk, credit risk, settlement risk, CVA risk of OTC derivatives instruments, and operational risk.²¹⁵ Notably, the UK PRA Capital Rules require that PRA-designated UK nonbank SDs, including firms that do not use internal models, calculate capital charges for operational risk as a separate component of the total risk exposure amount. The UK PRA Capital Rules also impose separate liquidity requirements designed to ensure that the PRA-designated UK nonbank SDs can meet both short- and long-term obligations, in addition to the general requirement to maintain processes and systems for the identification of liquidity risk.²¹⁶ In comparison, the

Commission requires nonbank SDs to maintain a risk management program covering liquidity risk, among other risk categories, but does not have a distinct liquidity requirement.²¹⁷

Addressing the Commission's request for comment on the comparability between the CFTC's capital requirement based on a percentage of the margin for uncleared swap transactions and the UK PRA Capital Rules' requirements with respect to operational risk and liquidity risk, one commenter, Better Markets, asserted that the requirement for PRA-designated UK nonbank SDs to hold qualifying regulatory capital to cover operational risk is not comparable to the CFTC's requirement for nonbank SDs to hold qualifying capital in an amount equal to at least 8 percent of the nonbank SD's uncleared swap margin amount.²¹⁸ Better Markets further asserted that the proposed Comparability Determination fell short in furnishing an adequate analysis substantiating that the incorporation of an operational risk charge and the existence of separate liquidity requirements would genuinely yield an equivalent result.²¹⁹ Furthermore, Better Markets argued that the Commission should have undertaken "an examination to ascertain whether the PRA-designated UK nonbank SD's operational risk charge and liquidity requirements would adequately cover [its] cumulative amounts of uncleared swaps margin."²²⁰

The Applicants offered a contrasting view in their comment letter, stating that, although the UK PRA Capital Rules do not "have a direct analogue to the 8 percent uncleared swap margin requirement" under the CFTC Capital

PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 412–413. In addition, PRA-designated UK nonbank SDs are required to maintain robust strategies, policies, processes, and systems for the identification of liquidity risk over an appropriate set of time horizons, including intra-day. PRA Rulebook, CRR Firms, Internal Liquidity Adequacy Assessment Part.

²¹⁷ See 2024 Proposal at 8047. Specifically, Commission Regulation 23.600(b) requires each SD to establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks related to swaps, and any products used to hedge swaps, including futures, options, swaps, security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives. The elements of the SD's risk management program are required to include the identification of risks and risk tolerance limits with respect to applicable risks, including operational, liquidity, and legal risk, together with a description of the risk tolerance limits set by the SD and the underlying methodology in written policies and procedures. 17 CFR 23.600.

²¹⁸ Better Markets Letter at p. 13.

²¹⁹ *Id.*

²²⁰ *Id.*

²⁰⁸ *Id.* and 17 CFR 23.101(a)(1)(i) and 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*).

²⁰⁹ Ravnitzky Letter at pp. 3–4.

²¹⁰ *Id.*

²¹¹ As noted in the 2024 Proposal, the Commission is aware that the PRA is considering changes to the UK PRA Capital Rules to implement Basel 3.1 standards. If the PRA proceeds with the implementation of the Basel 3.1 standards as proposed, the regulatory changes would be applicable after July 1, 2025 with a 4.5-year transitional period ending on January 1, 2030. The Commission will monitor progress on the PRA's proposed regulatory changes and may amend or supplement the Comparability Order, as appropriate. 2024 Proposal at 8036 (n. 128).

²¹² More specifically, in establishing the requirement that a nonbank SD must maintain a level of regulatory capital in excess of 8 percent of the uncleared swap margin amount associated with the firm's swap transactions, the Commission stated that the intent of the uncleared swap margin amount was to establish a method of developing a minimum amount of capital for a nonbank SD to meet all of its obligations as an SD to market participants, and to cover potential operational risk, legal risk and liquidity risk, and not just the risks of its trading portfolio. 85 FR 57462 at 57485.

²¹³ See 2024 Proposal at 8046–8047.

²¹⁴ *Id.*

²¹⁵ *Id.* at 8047 and UK CRR, Article 92(3).

²¹⁶ *Id.* More specifically, the UK PRA Capital Rules impose separate liquidity buffers and "stable funding" requirements designed to ensure that PRA-designated UK nonbank SDs can cover both long-term obligations and short-term payment obligations under stressed conditions for 30 days.

Rules, they have “various other measures that achieve the same regulatory objective of ensuring that an SD maintains an amount of capital that is sufficient to cover the full range of risks a PRA-designated UK nonbank SD may face.”²²¹ In support of the statement, the Applicants discussed, among other measures, the various categories of risk charges that a PRA-designated UK nonbank SD is required to include in its total risk exposure amount, as well as the capital conservation buffer, leverage ratio floor, and liquidity requirements that the UK PRA Capital Rules impose on PRA-designated UK nonbank SDs.²²²

The Commission finds that the additional categories of risk-weighted asset amounts that PRA-designated UK nonbank SDs are required to include in the total risk-weighted assets amount, as well as the various regulatory measures seeking to ensure that PRA-designated UK nonbank SDs hold sufficient capital to cover the full range of risks that they may face, support the comparability of the UK PRA Capital Rules and the CFTC Capital Rules even in the absence of a separate capital requirement in the UK PRA Capital Rules requiring PRA-designated UK nonbank SDs to have qualified capital equal to or greater than 8 percent of the amount of uncleared swap margin. The Commission notes that the minimum capital requirement based on a percentage of the nonbank SD’s uncleared swap margin amount was conceived as a proxy, not an exact measure, for inherent risk in the SD’s positions and operations, including operational risk, legal risk, and liquidity risk.²²³ As the Commission noted in adopting the CFTC Capital Rules, although the amount of capital required of a nonbank SD under the uncleared swap margin calculation is directly related to the volume, size, complexity, and risk of the covered SD’s positions, the minimum capital requirement is intended to cover a multitude of

potential risks faced by the SD.²²⁴ The Commission understands that other jurisdictions may adopt alternative measures to cover the same risks. As such, a strict comparison between the amounts that a PRA-designated UK nonbank SD holds to account for operational risk and liquidity risk pursuant to the UK PRA Capital Rules and the amount of uncleared swap margin that a PRA-designated UK nonbank SD would have been required to hold pursuant to the CFTC Capital Rules is not warranted. As discussed in section I.E. above, the Commission’s analysis in ascertaining the comparability of a foreign jurisdiction’s capital rules to the CFTC Capital Rules is focused on determining whether the foreign jurisdiction’s rules have comparable regulatory objectives and achieve comparable outcomes. Following this standard of review, the Commission finds that the various measures that the UK PRA Capital Rules have established to help ensure that PRA-designated UK nonbank SDs hold sufficient capital to cover the full range of risks that they face have comparable objectives and achieve comparable outcomes.

In conclusion, the Commission finds that the UK PRA Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the requirement that a nonbank SD’s minimum level of regulatory capital reflects potential operational risk exposures in addition to market risk and credit risk exposures. The Commission emphasizes that the intent of the minimum capital requirement based on a percentage of the nonbank SD’s uncleared swap margin is to establish a minimum capital requirement that would help ensure that the nonbank SD meets its obligations as an SD to market participants, and to cover potential operational risk, legal risk, and liquidity risk in addition to the risks associated with its trading portfolio.²²⁵ The UK PRA Capital Rules address comparable risks albeit not through a requirement based on a UK nonbank SD’s uncleared swap margin amount. In this regard, UK nonbank SDs are required to maintain a minimum level of regulatory capital based on an aggregate of the firm’s total risk-weighted asset amounts for market risk, credit risk, and operational risk. Accordingly, the Commission has determined that, notwithstanding the differences in approaches, the UK PRA Capital Rules and CFTC Capital Rules are comparable in purpose and effect in

requiring nonbank SDs to maintain a minimum level of regulatory capital that addresses potential market risk, credit risk, and operational risk to help ensure the safety and soundness of the firm, and to ensure that the firm has sufficient capital to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to counterparties and creditors, without the firm becoming insolvent.

3. Final Determination

Based on its analysis of comments and its holistic assessment of the respective requirements discussed in sections II.C.2.a., b., and c. above, the Commission adopts the Comparability Determination and Comparability Order as proposed with respect to the minimum capital requirements and calculation of regulatory capital, subject to the condition that PRA-designated UK nonbank SDs must maintain a minimum level of regulatory capital in the form of common equity tier 1 capital that equals or exceeds the equivalent of \$20 million U.S. dollars.

D. Nonbank Swap Dealer Financial Reporting Requirements

1. Proposed Determination

The Commission detailed the requirements of the CFTC Financial Reporting Rules in the 2024 Proposal.²²⁶ Specifically, the 2024 Proposal noted that the CFTC Financial Reporting Rules require nonbank SDs to file with the Commission and NFA periodic unaudited and annual audited financial reports.²²⁷ The unaudited financial reports must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement demonstrating compliance with, and calculation of, the applicable regulatory minimum capital requirement; (iv) a statement of changes in ownership equity; (v) a statement of changes in liabilities subordinated to claims of general creditors; and (vi) such further material information necessary to make the required statements not misleading.²²⁸ The annual audited financial reports must include the same financial statements that are required to be included in the unaudited financial reports, and must further include: (i) a statement of cash flows; (ii) appropriate footnote disclosures; and (iii) a reconciliation of any material differences between the financial statements contained in the annual audited financial reports and the financial statements contained in the

²²¹ Applicants’ Letter at p. 3.

²²² *Id.* at pp. 2–3. As discussed in the 2024 Proposal, the UK PRA Capital Rules impose a 3.35 percent leverage ratio floor on PRA-designated UK nonbank SDs that hold significant amounts of non-UK assets, as an additional element of the capital requirements. Specifically, a PRA-designated UK nonbank SD that has non-UK assets equal to or greater than GBP 10 billion is required to maintain tier 1 capital (*i.e.*, an aggregate of common equity tier 1 capital and additional tier 1 capital) equal to or in excess of 3.35 percent of the firm’s on-balance sheet and off-balance sheet exposures, including exposures on uncleared swaps but excluding certain exposures to central banks, without regard to any risk-weighting. See 2024 Proposal at 8034 and PRA Rulebook, CRR Firms, Leverage Ratio (CRR) Part, Chapter 3 Leverage Ratio (Part Seven CRR), Article 429 *et seq.*

²²³ 85 FR 57462 at 57497.

²²⁴ 85 FR 57462 at 57485 and 57497.

²²⁵ See 2024 Proposal at 8040 (referencing 85 FR 57462).

²²⁶ 2024 Proposal at 8047–8048.

²²⁷ *Id.* and 17 CFR 23.105(d) and (e).

²²⁸ *Id.* and 17 CFR 23.105(d)(2).

unaudited financial reports prepared as of the nonbank SD's year-end date.²²⁹ In addition, a nonbank SD must attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct.²³⁰ The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.²³¹

The CFTC Financial Reporting Rules also require a nonbank SD to file the following financial information with the Commission and NFA on a monthly basis: (i) a schedule listing the nonbank SD's financial positions reported at fair market value;²³² (ii) schedules showing the nonbank SD's counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries;²³³ and (iii) for nonbank SDs approved to use internal capital models, certain model metrics, such as aggregate value-at-risk ("VaR"), a graph reflecting the daily intra-month VaR for each business line, and counterparty credit risk information.²³⁴

The CFTC Financial Reporting Rules further require a nonbank SD to provide the Commission and NFA with information regarding the custodianship of margin for uncleared swap transactions ("Margin Report").²³⁵ The Margin Report must contain: (i) the name and address of each custodian holding initial margin or variation margin on behalf of the nonbank SD or its swap counterparties; (ii) the amount of initial and variation margin required by the uncleared margin rules held by each custodian on behalf of the nonbank SD and on behalf its swap

counterparties; and (iii) the aggregate amount of initial margin that the nonbank SD is required to collect from, or post with, swap counterparties for uncleared swap transactions subject to the uncleared margin rules.²³⁶

A nonbank SD electing the Bank-Based Capital Approach is required to file the unaudited financial report, Schedule 1, schedules of counterparty credit exposures, and the Margin Report with the Commission and NFA no later than 17 business days after the applicable month-end reporting date.²³⁷ A nonbank SD must file its annual report with the Commission and NFA no later than 60 calendar days after the end of its fiscal year.²³⁸

The 2024 Proposal also detailed relevant financial reporting requirements of the UK PRA Financial Reporting Rules.²³⁹ The UK PRA Financial Reporting Rules require a PRA-designated UK nonbank SD to report information to the PRA concerning its capital and financial condition sufficient to provide a comprehensive view of the firm's risk profile, including information on the firm's capital requirements, leverage ratio, large exposures, and liquidity requirements.²⁴⁰ PRA-designated UK nonbank SDs must follow the templates and instructions provided in the PRA Rulebook for purposes of the prudential requirements reporting referred to COREP.²⁴¹ Under the COREP requirements, PRA-designated UK nonbank SDs are required to provide, on a quarterly basis,²⁴² calculations in relation to the PRA-designated UK nonbank SD's capital and capital requirements,²⁴³ capital ratios and capital levels,²⁴⁴ and market risk,²⁴⁵ among other items.

In addition to the prudential requirements reporting, Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook imposes financial information

reporting on PRA-designated UK nonbank SDs that are subject to section 403(1) of the Companies Act 2006 (*i.e.*, entities that are parent companies²⁴⁶ and report on a consolidated basis using UK-adopted International Financial Reporting Standards (IFRS) and that issue securities admitted to trading on a UK-regulated market).²⁴⁷ The relevant reporting templates and instructions, referred to as FINREP, are included in Chapter 6 of the Reporting (CRR) Part of the PRA Rulebook. Under the FINREP requirements, PRA-designated UK nonbank SDs subject to the requirements of Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook are required to provide the following documents to the PRA, among other items: (i) on a quarterly basis, a balance sheet statement (or statement of financial position) that reflects the PRA-designated UK nonbank SD's financial condition;²⁴⁸ (ii) on a quarterly basis, a statement of profit or loss;²⁴⁹ (iii) on a quarterly basis, a breakdown of financial liabilities by product and by counterparty sector;²⁵⁰ (iv) on a quarterly basis, a listing of subordinated financial liabilities;²⁵¹ and (v) on an annual basis, a statement of changes in equity.²⁵²

Under the FINREP requirements, a PRA-designated UK nonbank SD subject to the requirements of Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook is also required to provide the PRA with additional financial information, including a breakdown of

²⁴⁶ A parent company (*i.e.*, "parent undertaking") is defined in Companies Act 2006, Section 1162.

²⁴⁷ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 4 Reporting (Part Seven A CRR), Article 430, Rule 3. The International Accounting Standards Board is an independent, private-sector body that develops and approves IFRS.

²⁴⁸ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Templates 1.1., 1.2., and 1.3 at Annex III (for reporting according to IFRS) and Templates 1.1., 1.2., and 1.3 at Annex IV (for reporting according to national accounting frameworks).

²⁴⁹ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 2 at Annex III (for reporting according to IFRS) and Template 2 at Annex IV (for reporting according to national accounting frameworks).

²⁵⁰ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 8.1 at Annex III (for reporting according to IFRS) and Template 8.1 at Annex IV (for reporting according to national accounting frameworks).

²⁵¹ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 8.2 at Annex III (for reporting according to IFRS) and Template 8.2 at Annex IV (for reporting according to national accounting frameworks).

²⁵² PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 46 at Annex III (for reporting according to IFRS) and Template 46 at Annex IV (for reporting according to national accounting frameworks).

²²⁹ *Id.* and 17 CFR 23.105(e)(4).

²³⁰ *Id.* at 8048 and 17 CFR 23.105(f).

²³¹ *Id.*

²³² 2024 Proposal at 8048, Regulation 23.105(l), and Schedule 1 of Appendix B to Subpart E of Part 23 ("Schedule 1"). 17 CFR 23.105(l) and 17 CFR Appendix B to Subpart E of Part 23. Schedule 1 includes a nonbank SD's holding of U.S Treasury securities, U.S. government agency debt securities, foreign debt and equity securities, money market instruments, corporate obligations, spot commodities, and cleared and uncleared swaps, security-based swaps, and mixed swaps in addition to other position information.

²³³ 2024 Proposal 8048 and schedules 2, 3 and 4, respectively, of Appendix B to Subpart E of Part 23.

²³⁴ 2024 Proposal 8048 and 17 CFR 23.105(k) and (l), and schedules 2, 3 and 4 of Appendix B to Subpart E of Part 23.

²³⁵ 2024 Proposal 8048 and 17 CFR 23.105(m).

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ 2024 Proposal at 8048–8050.

²⁴⁰ 2024 Proposal at 8048–8049 and PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 4 Reporting (Part Seven A CRR), Rule 1.

²⁴¹ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions.

²⁴² PRA Rulebook, CRR Firms, Reporting (CRR) Part, 5 Reporting Requirements, Chapter 3 Format and Frequency of Reporting on Own Funds, Own Funds Requirements.

²⁴³ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I, Templates C 01.00 and C 02.00.

²⁴⁴ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I, Template C 03.00.

²⁴⁵ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I, Template C 02.00.

its loans and advances by product and type of counterparty,²⁵³ as well as detailed information regarding its derivatives trading activities,²⁵⁴ collateral, and guarantees.²⁵⁵

For PRA-designated UK nonbank SD that are not subject to financial information reporting under Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook, the Regulatory Reporting Part of the PRA Rulebook dictates the applicable reporting requirements.²⁵⁶ Specifically, as firms that fall into Regulated Activity Group 3 (“RAG 3”), PRA-designated UK nonbank SDs are required to provide the following documents to the PRA, among other items: (i) on a quarterly basis, a balance sheet statement (or statement of financial position) that reflects the PRA-designated UK nonbank SD’s financial condition;²⁵⁷ (ii) on a quarterly basis, a statement of profit or loss;²⁵⁸ and (iii) on an annual basis, an annual report and accounts.²⁵⁹ The Applicants represented that the six UK PRA-designated nonbank SDs currently registered with the Commission are designated as RAG 3 firms and are required to provide the aforementioned documents.²⁶⁰

²⁵³ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Templates 5.1 and 6.1 at Annex III (for reporting according to IFRS) and Templates 5.1 and 6.1 at Annex IV (for reporting according to national accounting frameworks).

²⁵⁴ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 10 at Annex III (for reporting according to IFRS) and Template 10 at Annex IV (for reporting according to national accounting frameworks).

²⁵⁵ PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 13 at Annex III (for reporting according to IFRS) and Template 13 at Annex IV (for reporting according to national accounting frameworks).

²⁵⁶ As indicated by the Applicants, the Regulatory Reporting Part of the PRA Rulebook applies to all PRA-designated UK nonbank SDs. See Responses to Staff Questions dated October 5, 2023.

²⁵⁷ PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulated Activity Group 3, Rule 9.2 (referencing Templates 1.1., 1.2., and 1.3 at Annex III and Templates 1.1., 1.2., and 1.3 at Annex IV of Chapter 6 of the Reporting (CRR) Part) and Rule 9.3.

²⁵⁸ PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulated Activity Group 3, Rule 9.2 (referencing Template 2 at Annex III and Template 2 at Annex IV of Chapter 6 of the Reporting (CRR) Part) and Rule 9.3.

²⁵⁹ PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulated Activity Group 3, Rule 9.2 and Rule 9.3.

²⁶⁰ See Response to Staff Questions dated October 5, 2023. For the avoidance of doubt, as represented by the Applicants, the six PRA-designated UK nonbank SDs currently registered with the Commission are subject to the RAG 3 requirements in the Regulatory Reporting Part of the PRA Rulebook but are not subject to the FINREP requirements set forth in Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook. As such, the six PRA-designated UK nonbank SDs currently registered with the Commission are required to

Furthermore, all PRA-designated UK nonbank SDs are required to prepare annual audited accounts and a strategic report (together, “annual audited financial report”) pursuant to Parts 15 and 16 of the Companies Act 2006.²⁶¹ The audit of the accounts and report is required to be performed by one or more independent statutory auditors, which have the required skill, resources, and experience to perform their duties based on the complexity of the firm’s business and the regulatory requirements to which the firm is subject.²⁶² PRA-designated UK nonbank SDs must submit the annual audited financial report to the PRA within 80 business days from the firm’s accounting reference date.²⁶³ In addition, under generally applicable company law requirements, PRA-designated UK nonbank SDs are required to submit the annual audited financial report to the UK Registrar of Companies.²⁶⁴ The registrar makes the report available to the public on its website, free of charge.²⁶⁵

The annual audited accounts must comprise, at a minimum, a balance sheet, a profit and loss statement, and notes about the accounts.²⁶⁶ The auditor’s audit report must include: (i) a description of the annual accounts subject to the audit and the financial reporting framework that was applied in their preparation; (ii) a description of the scope of the audit, which must specify the auditing standards used to conduct the audit; (iii) an audit opinion

submit to the PRA only Templates 1 through 3 of FINREP.

²⁶¹ Companies Act 2006, Sections 393 to 414D and 475. Section 475 provides for an exemption from the audit requirement for certain entities (*i.e.*, “small companies”, qualifying “subsidiary companies” and “dormant companies”). None of the six PRA-designated UK nonbank SD, however, falls into the exempt categories. See Responses to Staff Questions dated October 5, 2023.

²⁶² Companies Act 2006, Section 485 *et seq.*; see also PRA Rulebook, CRR Firms, Auditors Part, Rule 3 Auditors’ Qualifications, and Rule 4 Auditors’ Independence.

²⁶³ PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulatory Activity Group 3, Rules 9.1. and 9.4. The “accounting reference date” is determined in accordance with Section 391 of the Companies Act 2006 and depending on the firm’s date of incorporation.

²⁶⁴ Companies Act 2006, Section 441. The deadline for filing the annual audited financial report with the UK Registrar of Companies is nine months from the firm’s accounting reference date for private companies and six months from the firm’s accounting reference date for public companies. *Id.*, Articles 442 (setting forth the filing deadlines by category of firm) and 391 (defining the terms “accounting reference period” and “accounting reference date”).

²⁶⁵ Companies Act 2006, Sections 1080 and 1085. Information filed with the UK Registrar of Companies is available at: <https://www.gov.uk/government/organisations/companies-house>.

²⁶⁶ Companies Act 2006, Section 396.

stating whether the annual accounts give a true and fair view of the state of affairs and/or the profit and loss of the firm, as applicable, and whether the annual accounts have been prepared in accordance with the relevant financial reporting framework; and (iv) a reference to any matters emphasized by the auditor that did not qualify the audit opinion.²⁶⁷

The strategic report is required to include a review of the development and performance of the PRA-designated UK nonbank SD’s during the financial year and a description of the principal risks and uncertainties that the firm faces.²⁶⁸ The auditors are required to express an opinion on whether the strategic report is consistent with the accounts for the same financial year, and whether the strategic report has been prepared in accordance with applicable legal requirements.²⁶⁹ The opinion also must state whether the auditor has identified material misstatements in the strategic report and, if so, describe the misstatement.²⁷⁰

In addition, as noted in the 2024 Proposal, the SEC’s UK Order granting substituted compliance for financial reporting to UK nonbank SBSDs, as supplemented by the SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information, require a UK nonbank SBSD to file an unaudited FOCUS Report with the SEC on a monthly basis.²⁷¹ The FOCUS Report is required to include, among other statements and schedules: (i) a statement of financial condition; (ii) a statement of the UK nonbank SBSD’s capital computation in accordance with home country Basel-based requirements; (iii) a statement of income/loss; and (iv) a statement of capital withdrawals.²⁷² A UK nonbank SBSD is required to file its FOCUS Report with the SEC within 35 calendar days of the month end.²⁷³

Based on its review of the UK Application and the relevant UK laws and regulations, the Commission preliminarily determined that, subject to the conditions specified in the 2024 Proposal, the UK PRA Financial Reporting Rules are comparable to CFTC Financial Reporting Rules in purpose and effect. The Commission noted that both sets of rules provide the PRA,

²⁶⁷ *Id.*, Section 495.

²⁶⁸ *Id.*, Section 414C.

²⁶⁹ *Id.*, Section 496.

²⁷⁰ *Id.*

²⁷¹ See 2024 Proposal at 8050 and UK Order. See also SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

²⁷² See, SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

²⁷³ *Id.*

Commission, and NFA with financial information to monitor a nonbank SD's compliance with capital requirements, and to assess a nonbank SD's overall safety and soundness.²⁷⁴ Specifically, the Commission preliminarily found that the UK PRA Financial Reporting Rules impose reporting requirements that are comparable with respect to overall form and content to the CFTC Financial Reporting Rules.²⁷⁵ In this regard, both the CFTC Financial Reporting Rules and the UK PRA Financial Reporting Rules require a nonbank SD to file statements of financial condition, statements of profit and loss, and statements of regulatory capital that, collectively, provide information for the PRA, Commission, and NFA to assess a nonbank SD's overall ability to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, and cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.²⁷⁶

The proposed conditions would ensure that the Commission and NFA receive appropriate and timely financial information from PRA-designated UK nonbank SDs to monitor the firms' compliance with UK PRA capital requirements and to assess the firms' overall safety and soundness. The proposed conditions would require a PRA-designated UK nonbank SD to provide the Commission and NFA with copies of the relevant templates of the FINREP reports and COREP reports that correspond to the PRA-designated UK nonbank SD's statement of financial condition, statement of income/loss, and statement of regulatory capital, total risk exposure, and capital ratios. These templates consist of FINREP templates 1.1 (Balance Sheet Statement: assets), 1.2 (Balance Sheet Statement: liabilities), 1.3 (Balance Sheet Statement: equity), and 2 (Statement of profit or loss), and COREP templates 1 (Own Funds), 2 (Own Funds Requirements) and 3 (Capital Ratios). In addition, the Commission proposed to require PRA-designated UK nonbank SDs to submit to the Commission and NFA copies of the PRA-designated UK nonbank SD's annual audited financial report.²⁷⁷

The proposed conditions would also require that the PRA-designated UK nonbank SD provide the reports and statements with balances converted to

U.S. dollars.²⁷⁸ The Commission further recognized that the requirement to convert accounts denominated in British pound to U.S. dollars on the annual audited financial report may have an unintended impact on the opinion expressed by the independent auditor. The Commission, therefore, proposed to accept the annual audited financial report denominated in British pound.²⁷⁹

The proposed conditions also would require a PRA-designated UK nonbank SD to file with the Commission and NFA its: (i) FINREP reports and COREP reports within 35 calendar days of the end of each month; and (ii) annual audited financial report on the earlier of the date the report is filed with the PRA or the date the report is required to be filed with the PRA.²⁸⁰

The Commission also proposed a condition to require PRA-designated UK nonbank SDs to file with the Commission and NFA, on a monthly basis, Schedule 1 showing the aggregate securities, commodities, and swap positions of the firm at fair market value as of the reporting date.²⁸¹ The Commission explained that Schedule 1 provides the Commission and NFA with detailed information regarding the financial positions that a nonbank SD holds as of the end of each month,

²⁷⁸ *Id.* In the 2024 Proposal, the Commission proposed that the conversion of account balances from British pound to U.S. dollars would not be required to be subject to the audit of the independent auditor. A PRA-designated UK nonbank SD would be required to report the exchange rate that it used to convert balances from British pound to U.S. dollars to the Commission and NFA as part of the financial reporting.

²⁷⁹ *Id.*

²⁸⁰ *Id.* The Commission noted that the UK PRA Financial Reporting Rules require PRA-designated UK nonbank SDs to submit the unaudited FINREP and COREP templates to PRA on a quarterly basis, whereas the CFTC Financial Reporting Rules contain a more frequent reporting requirement by requiring nonbank SDs that elect the Bank-Based Approach to file unaudited financial information with the Commission and NFA on a monthly basis. In emphasizing the importance of financial statement reporting requirements for the Commission's and NFA's oversight and the Commission's experience in monitoring the financial conditions of registrants through the receipt of monthly financial statements, the Commission proposed to condition the Comparability Order on a more frequent reporting submission. See 2024 Proposal at 8050–8051. The Commission also noted that PRA-designated UK nonbank SDs are required to submit the annual audited financial report to the PRA within 80 business days of the firm's accounting reference date. See PRA Rulebook, Regulatory Reporting Part, Rule 9.1.

²⁸¹ 2024 Proposal at 8052. Schedule 1 includes a nonbank SD's holding of U.S. Treasury securities, U.S. government agency debt securities, foreign debt and equity securities, money market instruments, corporate obligations, spot commodities, and cleared and uncleared swaps, security-based swaps, and mixed swaps in addition to other position information.

including the firm's swaps positions, which allows the Commission and NFA to monitor the types of investments and other activities that the firm engages in and would assist the Commission and NFA in monitoring the safety and soundness of the firm.²⁸² The Commission proposed to require that Schedule 1 be filed by a PRA-designated UK nonbank SD along with the firm's monthly submission of selected FINREP and COREP templates.²⁸³ The Commission also proposed to require that Schedule 1 be prepared with balances reported in U.S. dollars.

The Commission further proposed that, in lieu of filing FINREP and COREP reports, PRA-designated UK nonbank SDs that are registered with the SEC as UK nonbank SBSDs could satisfy this condition by filing with the CFTC and NFA, on a monthly basis, copies of the unaudited FOCUS Reports that the PRA-designated UK nonbank SDs are required to file with the SEC pursuant to the SEC UK Order, as supplemented by the SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information. The filing of a FOCUS Report was proposed as an elective option for the PRA-designated UK nonbank SD, as an alternative to the filing of unaudited FINREP templates, COREP templates, and Schedule 1 that such firms would otherwise be required to file with the Commission and NFA pursuant to the proposed Comparability Order. In this connection, the Commission noted that all six of the PRA-designated UK nonbank SDs are currently registered with the SEC as UK nonbank SBSDs and would be eligible to file copies of their monthly FOCUS Report with the Commission and NFA in lieu of the FINREP and COREP templates and Schedule 1. A PRA-designated UK nonbank SD electing to file copies of its monthly FOCUS Report would be required to submit the reports to the Commission and NFA within 35 calendar days of the end of each month.

Proposing that PRA-designated UK nonbank SDs that are registered with the SEC as UK nonbank SBSDs file the FOCUS Report in lieu of the FINREP and COREP templates and Schedule 1 as an elective option was consistent with Commission Regulation 23.105(d)(3), which at the time the 2024 Proposal was issued, provided that a nonbank SD or nonbank MSP that is also registered with the SEC as a broker or dealer, an SBSD, or a major security-based swap participant might elect to file a FOCUS Report in lieu of the financial reports required by the Commission. On April

²⁷⁴ 2024 Proposal at 8050.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.* at 8051.

²⁸² 2024 Proposal at 8052.

²⁸³ *Id.*

30, 2024, the Commission amended Commission Regulation 23.105(d)(3) to mandate the filing of a FOCUS Report by such dually-registered entities, including dually-registered non-U.S. nonbank SDs, in lieu of the Commission's financial reports.²⁸⁴ As such, the Commission is also adopting as final a revised Condition 10 to require that PRA-designated UK nonbank SDs registered as UK nonbank SBSDs comply with the requirement to file periodic financial statements by filing a copy of the FOCUS Report that the PRA-designated UK nonbank SDs are required to file with the SEC.

The Commission also proposed a condition to require a PRA-designated UK nonbank SD to submit with each set of selected FINREP and COREP templates, annual audited financial report, and the applicable Schedule 1, a statement by an authorized representative or representatives of the PRA-designated UK nonbank SD that to the best knowledge and belief of the person(s) the information contained in the respective reports and statements is true and correct, including the conversion of balances in the statements to U.S. dollars, as applicable.²⁸⁵ The statement by the authorized representative or representatives of the PRA-designated UK nonbank SD was intended to be a substitute of the oath or affirmation required of nonbank SDs under Commission Regulation 23.105(f),²⁸⁶ to ensure that reports and statements filed with the Commission and NFA are prepared and submitted by firm personnel with knowledge of the financial reporting of the firm who can attest to the accuracy of the reporting and conversion.²⁸⁷

The Commission noted that a Margin Report would assist the Commission and NFA in their assessment of the safety and soundness of the PRA-designated UK nonbank SDs by providing information regarding the firm's swap book and the extent to which it has uncollateralized exposures to counterparties or has not met its financial obligations to counterparties.

The Commission explained that this information, along with the list of custodians holding both the firms' and counterparties' collateral for swap transactions, would assist with identifying potential financial impacts to the nonbank SD resulting from defaults on its swap transactions. The Commission further proposed to require a PRA-designated UK nonbank SD to file the Margin Report with the Commission and NFA within 35 calendar days of the end of each month, which corresponds with the proposed timeframe for the PRA-designated UK nonbank SD to file the selected FINREP and COREP templates or FOCUS Report, as applicable. The Commission also proposed to require the Margin Report to be provided with balances reported in U.S. dollars.

The Commission's preliminary determination did not require a PRA-designated UK nonbank SD to file the model metrics and counterparty credit exposure information required by Commission Regulations 23.105(k) and (l)²⁸⁸ in recognition that NFA's current SD risk monitoring program requires all SDs, including PRA-designated UK nonbank SDs, to file with NFA on a monthly basis certain risk metrics that are comparable with the risk metrics contained in Commission Regulation 23.105(k) and (l) and address the market risk and credit risk of the SD's positions.²⁸⁹ Specifically, the Commission noted that NFA's monthly risk metric information includes: (i) VaR for interest rates, credit, foreign exchange, equities, commodities, and total VaR; (ii) total stressed VaR; (iii) interest rate, credit spread, foreign exchange market, and commodity sensitivities; (iv) total swaps current exposure both before and after offsetting

against collateral held by the firm; and (v) a list of the 15 largest swaps counterparty current exposures before collateral and net of collateral.²⁹⁰

Furthermore, the Commission recognized that although the UK PRA Financial Reporting Rules do not contain an analogue to the CFTC's requirements for nonbank SDs to file monthly model metric information and counterparty exposures information, the PRA has access to comparable information. More specifically, the Commission noted that, under the UK PRA Financial Reporting Rules, the PRA has broad powers to request any information necessary for the exercise of its functions.²⁹¹ As such, the PRA has access to information allowing it to assess the ongoing performance of risk models and to monitor the PRA-designated UK nonbank SD's credit exposures, which may be comprised of credit exposures to primarily other UK and EU counterparties. In addition, the COREP reports, which PRA-designated UK nonbank SDs are required to file with the PRA on a quarterly basis, include information regarding the PRA-designated UK nonbank SD's risk exposure amounts, including risk-weighted exposure amounts for credit risk.²⁹²

2. Comment Analysis and Final Determination

The Commission received comments regarding the comparability of financial reporting and specific comments addressing several of the financial reporting issues on which the Commission solicited feedback. Better Markets expressed a general disagreement with the Commission's preliminary finding of comparability, arguing that the number and variety of conditions regarding financial reporting are the most compelling evidence that the requirements are not comparable.²⁹³ More generally, Better Markets asserted that the 2024 Proposal did not provide a sufficient analysis supporting the Commission's preliminary conclusion that the UK PRA and the U.S. financial

²⁸⁴ See *Capital and Financial Reporting Requirements of Swap Dealers and Major Swap Participants*, 89 FR 45569 (May 23, 2024).

²⁸⁵ 2024 Proposal at 8052.

²⁸⁶ 17 CFR 23.105(f). Commission Regulation 23.105(f) requires a nonbank SD to attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct. The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.

²⁸⁷ 2024 Proposal at 8052.

²⁸⁸ Commission Regulation 23.105(k) requires a nonbank SD that has obtained approval from the Commission or NFA to use internal capital models to submit to the Commission and NFA each month information regarding its risk exposures, including VaR, and requires certain credit risk exposure information from model and non-model approved firms. 17 CFR 23.105(k). Commission Regulation 23.105(l) requires each nonbank SD to provide information to the Commission and NFA regarding its counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries in Schedules 2, 3, and 4, respectively. 17 CFR 23.105(l).

²⁸⁹ 2024 Proposal at 8052–8053. As previously noted, however, the current six PRA-designated UK nonbank SDs will be required to include credit risk information set forth in Schedules 2–4 of Appendix B to Subpart E in the monthly FOCUS Report that the firms will be required to file with the Commission under Condition 10 of the final Comparability Order. In addition, as previously noted, each PRA-designated UK nonbank SD will be required to file Schedule 1 under Condition 12 of the final Comparability Determination.

²⁹⁰ See 2024 Proposal at 8053 and *NFA Financial Requirements, Section 17—Swap Dealer and Major Swap Participant Reporting Requirements* ("NFA Section 17 Rule"), available here: <https://www.nfa.futures.org/rulebooksql/rules.aspx?RuleID=SECTION%2017&Section=7>, and *Notice to Members—Monthly Risk Data Reporting for Swap Dealers* (May 30, 2017) ("NFA Notice I-17-10"), available here: <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4817>.

²⁹¹ See 2024 Proposal at 8053 and FSMA, Part XI (indicating that the PRA has broad information gathering powers).

²⁹² See 2024 Proposal at 8053 and PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I.

²⁹³ Better Markets Letter at p. 14.

reporting frameworks would produce comparable outcomes.²⁹⁴

Better Markets also disagreed with the 2024 Proposal to the extent that the Commission proposed not to require PRA-designated UK nonbank SDs that have been approved by the PRA to use capital models to file the monthly model metric information required by Commission Regulation 23.105(k) with the Commission or NFA.²⁹⁵ Commission Regulation 23.105(k) requires nonbank SDs that have been approved by the Commission or NFA to use models to compute market risk or credit risk for computing capital requirements to file certain information with the Commission and NFA on a monthly basis.²⁹⁶ As noted above, the information required to be filed includes: (i) for nonbank SDs approved to use market risk models, a listing of any products that the nonbank SD excludes from the approved market risk model and the amount of the standardized market risk charge taken on such products; (ii) a graph reflecting, for each business line of the nonbank SD, the daily intra-month VaR; (iii) the aggregate VaR for the nonbank SD; (iv) certain credit risk information for swaps, mixed swaps and security-based swaps, including: (a) overall current exposure, (b) current exposure listed by counterparty for the 15 largest exposures, (c) the 10 largest commitments listed by counterparty, (d) maximum potential exposure listed by counterparty for the 15 largest exposures, (e) aggregate maximum potential exposure, (f) a summary report reflecting the SD's current and maximum potential exposures by credit rating category, and (g) a summary report reflecting current exposure for each of the top ten countries to which the nonbank SD is exposed.²⁹⁷ Better Markets stated that by not requiring the information contained in Commission Regulation 23.105(k), the Commission was proposing to take a back seat to the UK and blindly accept the assessments resulting from the PRA-designated UK nonbank SDs' use of internal models to calculate risk.²⁹⁸

With respect to Better Markets' statement that the number and variety of conditions regarding financial reporting are the most compelling evidence that the requirements are not comparable, the Commission disagrees that the inclusion of conditions in the Comparability Order demonstrates that

the UK PRA Financial Reporting Requirement are not comparable to CFTC Financial Reporting Requirements in achieving the overall objective of ensuring the safety and soundness of nonbank SDs. As discussed in section I.E. above, the conditions impose obligations on PRA-designated UK nonbank SDs to provide information to the Commission and NFA necessary for the effective oversight of the PRA-designated UK nonbank SDs on an ongoing basis. As also discussed in section I.E. above, Commission staff engaged in a thorough analysis of the UK PRA Capital Rules and UK PRA Financial Reporting Rules, which supports the Commission's conclusion that the respective regulatory frameworks would produce comparable outcomes.

The Commission also does not agree that its approach is effectively deferring model oversight to the PRA or that it is otherwise "blindly" accepting the internal model-based assessments of the PRA-designated UK nonbank SDs. As noted above, pursuant to NFA rules, all registered SDs, including PRA-designated UK nonbank SDs, are required to submit to NFA, on a monthly basis, a list of specified risk metrics related to the SD's market risk and credit risk exposures.²⁹⁹ Specifically, the risk metrics include: (i) VaR for interest rates, credit, foreign exchange, equities, commodities, and total VaR; (ii) total stressed VaR; (iii) interest rate, credit spread, foreign exchange market, and commodity sensitivities; (iv) total swaps current exposure both before and after offsetting against collateral held by the firm; and (v) a list of the 15 largest swaps counterparty current exposures.³⁰⁰ As part of its regulatory oversight program, NFA uses the risk metrics information to identify firms that may pose heightened risk and to allocate appropriate oversight resources. NFA also may request additional information from a nonbank SD to the extent it determines that information in the risk metrics or other financial filings warrants a need for additional follow-up. Furthermore, Commission staff has access to the collected risks metrics information and participates in NFA's risk monitoring function by regularly

exchanging information and discussing potential risks with NFA staff.

As the list of specified risk metrics discussed above indicates, although the information collected by NFA is not identical to the information required under Commission Regulation 23.105(k), there is a significant overlap in the data items. The Commission also notes that NFA, in its role of primary supervisor of nonbank SDs' risk management practices, has identified the risk data items listed in NFA Notice I-17-10 as the most relevant risk metrics to be collected for oversight purposes. As such, the Commission finds that the information required pursuant to NFA Notice I-17-10 would provide the Commission and NFA with key data allowing them to monitor nonbank SDs' risk exposures. In addition, the Commission has the ability to request additional information from its registrants, including PRA-designated UK nonbank SDs, at any time. Finally, the Commission notes that the PRA, which will be conducting the initial approval and ongoing assessment of the performance of the PRA-designated UK nonbank SDs' internal models, under a regulatory framework that the Commission finds comparable to the CFTC Capital Rules, will have access to additional information that the PRA deems relevant in the conduct of such approval and assessment. The Commission, therefore, concludes that it is not necessary to require PRA-designated UK nonbank SDs relying on the final Comparability Order to submit the model metric information and credit risk information mandated by Commission Regulations 23.105(k) and (l).

Finally, the Applicants addressed the Commission's request for comment on the compliance dates for the reporting conditions that the proposed Comparability Order would impose on PRA-designated UK nonbank SDs.³⁰¹ The Applicants requested that the Commission set the compliance date at least six months following the issue date of the final Comparability Order to allow PRA-designated UK nonbank SDs to adequately prepare for compliance with the reporting conditions imposed by the Comparability Order.³⁰²

The Commission believes that granting an additional period of time to allow PRA-designated UK nonbank SDs to develop and implement the necessary systems and processes for compliance with the Comparability Order is appropriate with respect to the new reporting obligations imposed on PRA-

²⁹⁴ *Id.* at p. 11.

²⁹⁵ *Id.* at pp. 14–15.

²⁹⁶ 17 CFR 23.105(k).

²⁹⁷ 17 CFR 23.105(k)(1).

²⁹⁸ Better Markets Letter at p.15.

²⁹⁹ NFA Section 17 Rule, available here: <https://www.nfa.futures.org/rulebooksql/rules.aspx?RuleID=SECTION%2017&Section=7>, and NFA Notice I-17-10, available here: <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4817>.

³⁰⁰ See 2024 Proposal at 8053, NFA Section 17 Rule, and NFA Notice I-17-10.

³⁰¹ Applicants' Letter at p. 8.

³⁰² *Id.*

designated UK nonbank SDs under the final Order. For other reporting obligations, for which a process already exists, such as the reports that PRA-designated UK nonbank SDs currently submit to the Commission and NFA pursuant to CFTC Staff Letter 22–10,³⁰³ prepare pursuant to the UK PRA Financial Reporting Rules, and/or submit to the SEC (*i.e.*, FOCUS Reports), additional time for compliance does not appear necessary. Accordingly, the Commission is setting a compliance date of 180 calendar days from the date of publication of the final Comparability Order in the **Federal Register**, to comply with final Condition 14, which requires PRA-designated UK nonbank SDs to file monthly Margin Reports with the Commission and NFA.

For purposes of clarity, the Commission also notes that PRA-designated UK nonbank SDs may present the financial information required to be provided to the Commission and NFA under the final Comparability Order in accordance with generally accepted accounting principles that the PRA-designated UK nonbank SD uses to prepare general purpose financial statements in the UK. This clarification is consistent with proposed Condition 9, which the Commission adopts without modification in the final Comparability Order, requiring that the PRA-designated UK nonbank SD prepares and keeps current ledgers and other similar records “in accordance with [the PRA Rulebook] and conforming with the applicable accounting principles.”³⁰⁴ In taking the position that PRA-designated UK nonbank SDs may provide financial reporting prepared in accordance with the accounting standards applicable in their home jurisdiction, the Commission considered the nature of the financial reporting information required from nonbank SDs for purposes of monitoring their overall financial condition and compliance with capital requirements.

³⁰³ CFTC Staff Letter No. 22–10, *Extension of Time-Limited No-Action Position for Foreign Based Nonbank Swap Dealers domiciled in Japan, Mexico, the United Kingdom, and the European Union*, issued by MPD on August 17, 2022. CFTC Staff Letter No. 22–10, which extended the expiration of CFTC Letter 21–20, provides that MPD would not recommend an enforcement action to the Commission if a non-U.S. nonbank SD covered by the letter, subject to certain conditions, complied with their respective home-country capital and financial reporting requirements in lieu of the Commission’s capital and financial reporting requirements set forth in Commission Regulations 23.100 through 23.106, pending the Commission’s determination of whether the capital and financial reporting requirements of certain foreign jurisdictions are comparable to the Commission’s corresponding requirements.

³⁰⁴ 2024 Proposal at 8059.

Specifically, the Commission notes that the requirements for how nonbank SDs calculate their risk-weighted assets and capital ratio, in both the UK and the U.S., follow a rules-based approach consistent with the Basel standards, and, consequently, the Commission does not anticipate that a variation in the applicable accounting standards would materially impact this calculation.³⁰⁵ In this regard, the Commission notes that PRA-designated UK nonbank SDs currently submit financial reports, including a statement of financial condition and a statement of regulatory capital, pursuant to CFTC Staff Letter 22–10.³⁰⁶ The reports provide the Commission with appropriate information to assess the financial and operational condition of PRA-designated UK nonbank SDs, as well as the firms’ compliance with the capital ratios imposed on PRA-designated UK nonbank SDs under the UK PRA Capital Rules.

In summary, the Commission adopts the final Comparability Order and conditions substantially as proposed with respect to the comparability of the CFTC Financial Reporting Rules and UK PRA Financial Reporting Requirements, subject to the amendment in Condition 10 to mandate the filing by EU nonbank SDs registered as EU nonbank SBSs of a copy of the FOCUS Report that such

³⁰⁵ Furthermore, the Commission’s approach to permitting PRA-designated UK nonbank SDs to maintain financial books and records, and to file financial reports and other financial information, prepared in accordance with local accounting standards is consistent with the SEC’s final comparability determinations for non-U.S. SBSs. German Order at 59812 and SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information at 59219. Specifically, the SEC stated that the use of local reporting requirements will avoid non-U.S. SBSs “having to perform and present two Basel capital calculations (one pursuant to local requirements and one pursuant to U.S. requirements).” SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information at 59219. The SEC noted, in this regard, that the Basel standards are international standards that have been adopted in the U.S. and in jurisdictions where substituted compliance is available for capital under the SEC comparability determinations and that, therefore, requirements for how firms calculate capital pursuant to the Basel standards generally should be similar. *Id.* The Commission’s approach to permitting PRA-designated UK nonbank SDs to maintain financial books and records, and file financial information, prepared in accordance with local accounting standards will also facilitate financial reporting by dually-registered PRA-designated UK nonbank SDs—UK nonbank SBSs. In such case, dually-registered entities would not have to perform multiple calculations under different accounting standards or submit two different FOCUS Reports.

³⁰⁶ CFTC Staff Letter No. 22–10, *Extension of Time-Limited No-Action Position for Foreign Based Nonbank Swap Dealers domiciled in Japan, Mexico, the United Kingdom, and the European Union*, August 17, 2022.

dually-registered PRA-designated UK nonbank SDs are required to file with the SEC. The Commission also specifies, in final Conditions 10, 12, and 14, that the conversion of balances to U.S. dollars must be done using a commercially reasonable and observable British pound/U.S. dollar spot rate as of the date of the respective report. Finally, the Commission also grants an additional compliance period for the new reporting obligations imposed on PRA-designated UK nonbank SDs under the final Order set forth below.

E. Notice Requirements

1. Proposed Determination

The Commission noted in the 2024 Proposal that the CFTC Financial Reporting Rules require nonbank SDs to provide the Commission and NFA with written notice of certain defined events.³⁰⁷ Commission Regulation 23.105(c) requires a nonbank SD to file written notice with the Commission and NFA of the following events: (i) the nonbank SD’s regulatory capital is less than the minimum amount required; (ii) the nonbank SD’s regulatory capital is less than 120 percent of the minimum amount required; (iii) the nonbank SD fails to make or to keep current required financial books and records; (iv) the nonbank SD experiences a reduction in the level of its excess regulatory capital of 30 percent or more from the amount last reported in a financial report filed with the Commission; (v) the nonbank SD plans to distribute capital to equity holders in an amount in excess of 30 percent of the firm’s excess regulatory capital; (vi) the nonbank SD fails to post to, or collect from, a counterparty (or group of counterparties under common ownership or control) required initial and variation margin, and the aggregate amount of such margin equals or exceeds 25 percent of the nonbank SD’s minimum capital requirement; (vii) the nonbank SD fails to post to, or collect from, swap counterparties required initial and variation margin, and the aggregate amount of such margin equals or exceeds 50 percent of the nonbank SD’s minimum capital requirement; and (viii) the nonbank SD is registered with the SEC as an SBS and files a notice with the SEC under applicable SEC Rules.³⁰⁸

The notices are part of the Commission’s overall program of helping to ensure the safety and soundness of nonbank SDs and the

³⁰⁷ 2024 Proposal at 8053–8054 and 17 CFR 23.105(c).

³⁰⁸ 17 CFR 23.105(c).

swaps markets in general.³⁰⁹ Notices provide the Commission and NFA with an opportunity to assess whether there is an actual or potential financial and/or operational issue at a nonbank SD. In situations where there is an underlying issue, Commission and NFA staff engage with the nonbank SD in an effort to minimize potential adverse impacts on the firm, swap counterparties, and the larger swaps market.³¹⁰

The UK capital and resolution framework, in turn, require PRA-designated UK nonbank SDs to provide certain notices to the PRA concerning the firm's compliance with relevant laws and regulations.³¹¹ The Commission noted that the UK PRA Financial Reporting Rules require a PRA-designated UK nonbank SD to provide notice to the PRA within five business days if the firm fails to meet its combined buffer requirement, which at a minimum consists of a capital conservation buffer of 2.5 percent of the PRA-designated UK nonbank SD's total risk exposure amount.³¹² To meet its capital buffer requirements, a PRA-designated UK nonbank SD must hold common equity tier 1 capital in addition to the minimum common equity tier 1 ratio requirement of 4.5 percent of the firm's core capital requirement of 8 percent of the firm's total risk exposure amount.³¹³ The notice to the PRA must be accompanied by a capital conservation plan that sets out how the PRA-designated UK nonbank SD will restore its capital levels.³¹⁴ The capital conservation plan is required to include: (i) the "maximum distributable amount" calculated in accordance with the PRA rules; (ii) estimates of income and expenditures and a forecast balance sheet; (iii) measures to increase the capital ratios of the PRA-designated UK nonbank SD; and (iv) a plan and timeframe for the increase in the capital of the PRA-designated UK nonbank SD with the objective of meeting fully the combined buffer requirement.³¹⁵ The PRA is required to assess the capital

conservation plan and may approve the plan only if it considers that the plan would be reasonably likely to conserve or raise sufficient capital to enable the PRA-designated UK nonbank SD to meet its combined capital buffer requirement within a timeframe that the PRA considers to be appropriate.³¹⁶ A PRA-designated UK nonbank SD is required to notify the PRA as early as possible where it has identified a material risk to its ability to meet the combined buffer according to the capital conservation plan and timeframe approved by the PRA.³¹⁷

In addition, a PRA-designated UK nonbank SD must notify the PRA if the firm's management considers that the firm is failing or will in the near future fail to satisfy one or more of the "threshold conditions," which are the minimum requirements that a PRA-designated UK nonbank SD must meet to be permitted to carry the regulated activities in which it engages.³¹⁸ In broad terms, the PRA's threshold conditions include, among other things, requirements that the firm has appropriate financial resources and capacity to measure, monitor and manage risks.³¹⁹

Emphasizing that the requirement for a nonbank SD to file notice with the Commission and NFA if the firm becomes undercapitalized or if the firm experiences a decrease of excess regulatory capital below defined levels is a central component of the Commission's and NFA's oversight program for nonbank SDs, the Commission proposed a condition to require a PRA-designated UK nonbank SD to file with the Commission and NFA copies of notices filed under the Capital Buffers Part of the PRA Rulebook by PRA-designated UK nonbank SDs alerting the PRA of a breach of the PRA-designated UK nonbank SD's combined capital buffer.³²⁰ The Commission proposed to require that the notice be filed by the PRA-designated UK nonbank SD within 24 hours of the filing of the notice with the PRA.

The Commission, however, preliminarily determined that the requirement for a PRA-designated UK

nonbank SD to provide notice of a breach of its capital buffer requirements to the PRA is not sufficiently comparable in purpose and effect to the CFTC notice provisions contained in Commission Regulation 23.105(c)(1) and (2),³²¹ which require a nonbank SD to provide notice to the Commission and to NFA if the firm fails to meet its minimum capital requirement or if the firm's regulatory capital falls below 120 percent of its minimum capital requirement ("Early Warning Level"). The Commission noted that, in its preliminary view, the requirement for a PRA-designated UK nonbank SD to provide notice of a breach of its capital buffer requirements does not achieve a comparable outcome to the CFTC's Early Warning Level requirement due to the difference in the thresholds triggering a notice requirement in the respective rule sets. Therefore, the Commission proposed a condition to require a PRA-designated UK nonbank SD to file a notice with the Commission and NFA if the firm's capital ratio does not equal or exceed 12.6 percent.³²² The proposed condition would further require the PRA-designated UK nonbank SD to file the notice with the Commission and NFA within 24 hours of when the firm knows or should have known that its regulatory capital was below 120 percent of its minimum capital requirement.³²³

The Commission also noted that the UK PRA Financial Reporting Rules also do not contain an explicit requirement for a PRA-designated UK nonbank SD to notify the PRA if the firm fails to maintain current books and records, experiences a decrease in regulatory capital over levels previously reported, or fails to collect or post initial margin with uncleared swap counterparties that exceed certain threshold levels.³²⁴ The UK PRA Financial Reporting Rules also do not require a PRA-designated UK nonbank SD to provide the PRA with advance notice of equity withdrawals initiated by equity holders that exceed defined amounts or percentages of the firm's excess regulatory capital.³²⁵

To ensure that the Commission and NFA receive prompt information concerning potential operational or financial issues that may adversely

³⁰⁹ *Id.*

³¹⁰ See 2024 Proposal at 8053.

³¹¹ *Id.* at 8054.

³¹² See 2024 Proposal at 8054 and PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.4. The combined capital buffer requirement is the total common equity tier 1 capital required to meet the sum of the capital conservation buffer and the institution-specific countercyclical capital buffer. PRA Rulebook, Capital Buffers Part, Chapter 1 Application and Definitions, Rule 1.2.

³¹³ *Id.*

³¹⁴ See 2024 Proposal at 8054 and PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rules 4.4 and 4.5.

³¹⁵ See 2024 Proposal at 8054 and PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.5.

³¹⁶ See 2024 Proposal at 8054 and Supervisory Statement SS6/14 Implementing Capital Buffers, Prudential Regulation Authority, January 2021 ("SS6/14"), available here: <https://www.bankofengland.co.uk/prudential-regulation/publication/2014/implementing-crdiv-capital-buffers-ss>.

³¹⁷ *Id.*

³¹⁸ See 2024 Proposal at 8054 and PRA Rulebook, CRR Firms, Notifications Part, Chapter 8 Specific Notifications, Rule 8.3.

³¹⁹ FSMA, Part 4A and Schedule 6.

³²⁰ See 2024 Proposal at 8055.

³²¹ 17 CFR 23.105(c)(1) and (2).

³²² 2024 Proposal at 8055.

³²³ *Id.*

³²⁴ *Id.* at 8056.

³²⁵ Commission Regulation 23.105(c)(5) requires a nonbank SD to provide written notice to the Commission and NFA two business days prior to the withdrawal of capital by action of the equity holders if the amount of the withdrawal exceeds 30 percent of the nonbank SD's excess regulatory capital. 17 CFR 23.105(c)(5).

impact the safety and soundness of a PRA-designated UK nonbank SD, the Commission proposed to condition the Comparability Order to require PRA-designated UK nonbank SDs to file certain notices mandated by Commission Regulation 23.105(c) with the Commission and NFA as discussed below. Pursuant to the proposed conditions, a PRA-designated UK nonbank SD would be required to file a notice the Commission and NFA if the firm fails to maintain current books and records with respect to its financial condition and financial reporting requirements.³²⁶ The Commission stated that, in this context, books and records would include current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting the PRA-designated UK nonbank SD's asset, liability, income, expense, and capital accounts in accordance with the accounting principles accepted by the relevant authorities.³²⁷ The Commission further stated that it preliminarily believed that the maintenance of current books and records is a fundamental and essential component of operating as a registered nonbank SD and that the failure to comply with such a requirement may indicate an inability of the firm to promptly and accurately record transactions and to ensure compliance with regulatory requirements, including regulatory capital requirements. As such, the Commission proposed to condition the proposed Order on a PRA-designated UK nonbank SD providing the Commission and NFA with a written notice within 24 hours if the firm fails to maintain books and records on a current basis.³²⁸

The Commission further proposed to condition the Comparability Order on a PRA-designated UK nonbank SD filing a notice with the Commission and NFA if: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin on uncleared swap and security-based swap positions that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the PRA-designated UK nonbank SD for uncleared swap and

security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement; (iii) a PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; and (iv) a PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement. The Commission proposed to require this notice so that, in the event that such a notice is filed, the Commission and NFA may commence communication with the PRA-designated UK nonbank SD and the PRA to obtain an understanding of the facts that have led to the failure to exchange material amounts of initial margin and variation margin in accordance with the applicable margin rules, and to assess whether there is a concern regarding the financial condition of the firm that may impair its ability to meet its financial obligations to customers, counterparties, creditors, and general market participants, or otherwise adversely impact the firm's safety and soundness.³²⁹

The Commission did not propose to require a PRA-designated UK nonbank SD to file notices with the Commission and NFA concerning withdrawals of capital or changes in capital levels as such information would be reflected in the financial statement reporting filed with the Commission and NFA as conditions of the order, and because the PRA-designated UK nonbank SD's capital levels are monitored by the PRA. As such, the Commission preliminarily considered that the separate reporting of the information to the Commission would be superfluous.³³⁰

The Commission proposed to require that a PRA-designated UK nonbank SD file any notices required under the Order with the Commission and NFA reflecting any balances, where applicable, in U.S. dollars. The Commission stated that each notice required by the proposed Comparability Order had to be filed in accordance with

instructions issued by the Commission or NFA.³³¹

Based on its review of the UK Application and the relevant UK laws and regulations, and subject to the proposed conditions discussed above and specified in the proposed Comparability Order, the Commission preliminarily determined that the UK PRA Financial Reporting Rules related to notice provisions are comparable in purpose and effect to the notice provisions of the CFTC Financial Reporting Rules.³³²

2. Comments and Final Determination

With respect to the proposed requirements in Condition 20 that a PRA-designated UK nonbank SD file a notice with the Commission and NFA within 24 hours of when the firm knew or should have known that its regulatory capital fell below 120 percent of its minimum capital requirement, the Applicants asserted that the wording of the proposed condition raises practical challenges as it would require notification prior to the discovery of the relevant event.³³³ The Applicants recommended that the Commission amend the proposed condition to require notice within 24 hours of when the firm "knew" that its regulatory capital fell below 120 percent of the minimum capital requirement.³³⁴ Similarly, with respect to proposed Condition 21, which would require a PRA-designated UK nonbank SD to file a notice with the Commission and NFA within 24 hours if the firm fails to make or keep current the financial books and records, the Applicants recommended that the Commission amend the condition to require that a PRA-designated UK file a notice within 24 hours "of when it knows it has failed to make or keep current the financial books and records."³³⁵ In addition, with respect to proposed Condition 20, the Applicants asserted that, pursuant to the condition, a PRA-designated UK nonbank SD would calculate the Early Warning Level by applying a buffer of 20 percent in excess capital, in the form of common equity tier 1 capital, on top of the firm's capital conservation buffer, which, at a minimum, equals 2.5 percent of the firm's total risk exposure amount and must be met in the form of common equity tier 1 capital. In the Applicants' view, an aggregate notification trigger of 12.6 percent of total risk exposure amount would be too

³²⁶ 2024 Proposal at 8056.

³²⁷ For comparison, see Commission Regulation 23.105(b), which similarly defines the term "current books and records" as used in the context of the Commission's requirements. 17 CFR 23.105(b).

³²⁸ 2024 Proposal at 8056.

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.* at 8054–8057.

³³³ Applicants' Letter at p. 5.

³³⁴ *Id.*

³³⁵ *Id.*

high. The Applicants recommended that the Commission set the notification trigger at 120 percent of the minimum total capital requirement.³³⁶

The Early Warning Level notice requirement is a central component of the Commission's and NFA's oversight programs. The Commission, however, recognizes that by requiring a PRA-designated UK nonbank SD to provide notice if its capital ratio falls below 120 percent of the firm's minimum capital requirement, as defined to comprise the applicable capital buffers, the Commission would be imposing a higher threshold level for the notice trigger than is currently applicable to nonbank SDs under the CFTC Capital Rules. To achieve the condition's goal of providing the Commission and NFA with information on decreases in capital that may indicate financial or operational challenges at the firm, the Commission is revising proposed Condition 20 to require instead that a PRA-designated UK nonbank SD provide notice to the Commission if it experiences a 30 percent or more decrease in its excess regulatory capital as compared to the last reported.³³⁷ The condition is consistent with the requirement applicable to nonbank SDs under Commission Regulation 23.105(c)(4).³³⁸ The Commission believes that this condition, combined with the condition requiring a PRA-designated UK nonbank SD to file with the Commission and NFA copies of notices filed with the PRA of a breach of the PRA-designated UK nonbank SD's combined capital buffer, will provide a timely opportunity to the Commission and NFA to initiate conversations and fact finding with a PRA-designated UK nonbank SD that may be experiencing operational or financial issues that may adversely impact the firm's ability to meet its obligations to market participants, including customers or swap counterparties.

In connection with the Applicants' general request that the Commission set the compliance date of the Comparability Order at least six months following the issuance of the final Order, the Commission believes, as stated above, that granting an additional period of time to allow PRA-designated UK nonbank SDs to establish and

implement the necessary systems and processes to comply with the notice reporting obligations imposed by the Comparability Order is appropriate with respect to certain notice obligations. Specifically, the Commission understands that establishing a system and process for monitoring material decreases in excess regulatory capital as required by final Condition 20 or for monitoring failures to collect or post initial margin or variation margin for uncleared swap transactions that exceed specified thresholds for purposes of complying with final Condition 22 may take time.³³⁹ Conversely, the Commission does not believe that additional time is necessary for implementing a system and process of providing a notice to the Commission and NFA in connection with the occurrence of events that PRA-designated UK nonbank SDs currently monitor and/or report to the PRA. The Commission is also of the view that, given the nature of the notice obligation, PRA-designated UK nonbank SDs should be in a position to comply with all other notice obligations, including those requiring PRA-designated UK nonbanks SDs to provide notice to the Commission and NFA if they fail to make or keep current financial books and records or if they fail to maintain regulatory capital in the form of common equity tier 1 equal or in excess of the U.S. dollar equivalent of \$20 million, immediately upon effectiveness of the Comparability Order. Specifically, with respect to the requirement in Condition 21 that a PRA-designated UK nonbank SD notify the Commission and NFA if the firm fails to make or keep current the financial books and records, the Commission notes that maintaining current books and records of all financial transactions is a fundamental recordkeeping requirement for a registered nonbank SD, and is essential to provide management with the information necessary to ensure that transactions are timely and accurately reported and that the firm complies

³³⁹ With regard to Condition 22, the Commission also notes, for clarity, that in proposing a notice condition based on thresholds of "required" margin, the Commission's intent was to set the notice trigger by reference to margin amounts that are legally required to be exchanged under the applicable margin requirements. To determine the applicable margin requirements, the Commission will consider the framework set forth in Commission Regulation 23.160. To the extent PRA-designated UK nonbank SDs intending to rely on the Comparability Order have inquiries regarding the scope of uncleared swap margin transactions to be monitored for purposes of complying with final Condition 22, MPD will discuss such inquiries with the PRA-designated UK nonbank SD during the confirmation process referenced in final Condition 8 of the Comparability Order.

with capital and other regulatory requirements. The Commission finds that it is necessary for a nonbank SD to maintain internal controls and procedures to affirmatively monitor that financial books and records are being maintained on a current basis. The Commission also notes that the language of Condition 21 is consistent with the timing standard of Commission Regulation 23.105(c)(3).³⁴⁰ As such, the Commission is adopting Condition 21 as proposed. The Commission, however, is setting a compliance date of 180 calendar days after the publication of the final Comparability Order in the **Federal Register** with respect to the notice reporting obligations under final Conditions 20 and 22 of the Comparability Order.

With respect to the notice requirement in final Condition 22, the Applicants also recommended that the Commission clarify the term "minimum capital requirement," used in connection with the thresholds triggering a notice requirement.³⁴¹ In response, the Commission will amend the condition to indicate that, in the context of final Condition 22, the PRA-designated UK nonbank SD's "minimum capital requirement" is the core capital requirement under the UK PRA Capital Rules, excluding capital buffers.

Finally, the Applicants recommended that the Commission amend proposed Condition 24 to require that a PRA-designated UK nonbank SDs, or an entity acting on its behalf, notify the Commission and NFA of "material changes" to the UK PRA Capital Rules or UK PRA Financial Reporting Rules instead of "proposed or final material changes" to the UK PRA Capital Rules or UK PRA Financial Reporting Rules.³⁴² Separately, the Applicants noted that the language of proposed Condition 24 is confusing in that it differentiates between rules that are "imposed on" and those that "apply to" PRA-designated UK nonbank SDs.³⁴³ The Commission did not intend to distinguish between rules that are "imposed on" and rules that "apply to" PRA-designated UK nonbank SDs and will use instead the defined terms "UK PRA Capital Rules" and "UK PRA Financial Reporting Rules" to address the potential for confusion. The

³⁴⁰ 17 CFR 23.105(c)(3).

³⁴¹ Applicants' Letter at p. 7. The Applicants indicated that in the context of proposed Condition 22, they understand the term "minimum capital requirement" to mean an amount equal to 8 percent of the PRA-designated UK nonbank SD's total risk exposure amount.

³⁴² Applicants' Letter at p. 8.

³⁴³ Applicants' Letter at p. 8.

³³⁶ Applicants' Letter at p. 6.

³³⁷ For clarity, by "excess regulatory capital," the Commission refers to the capital ratio by which the firm's capital exceeds the core capital ratio requirement of 8 percent of the firm's risk-weighted assets. For instance, if a firm maintains a capital ratio of 20 percent, its excess regulatory capital would be 12 percent. In this example, 30 percent of the excess regulatory capital would equal 3.6 percent.

³³⁸ 17 CFR 23.105(c)(4).

Commission, however, believes that it is necessary that the Commission and NFA receive an advance notice of potential material changes to the foreign jurisdiction's rules to allow the Commission a sufficient time to assess the potential impact of the proposed amendments and to address potential changes to the Comparability Determination and Comparability Order. As such, the Commission is adopting Condition 24 as proposed with regard to the required notice of "proposed and final material changes" to the UK PRA Capital Rules and UK PRA Financial Reporting Rules.

The Commission did not receive any comments with respect to the following proposed notice conditions: (i) the PRA-designated UK nonbank SD files notice with the Commission and NFA within 24 hours of being informed by the PRA that the firm is not in compliance with any component of the UK PRA Capital Rules or UK PRA Financial Reporting Rules (proposed Condition 15); (ii) the PRA-designated UK nonbank SD files notice with the Commission and NFA within 24 hours if the firm fails to maintain regulatory capital in the form of common equity tier 1 capital, as defined in Article 26 of UK CRR, equal to or in excess of the U.S. dollar equivalent of \$20 million (proposed Condition 16); (iii) the PRA-designated UK nonbank SD provides the Commission and NFA with notice within 24 hours of filing a capital conservation plan (proposed Condition 17); (iv) the PRA-designated UK nonbank SD files notice with the Commission and NFA within 24 hours of being required by the PRA to maintain additional capital or additional liquidity requirements, or to restrict its business operations, or to comply with certain other additional requirements that the PRA may impose pursuant to the UK PRA Capital Rules and the UK PRA Financial Reporting Rules (proposed Condition 18); (v) the PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to maintain its MREL (proposed Condition 19); or (vi) the PRA-designated UK nonbank SD files notice of PRA approving a change in the firm's fiscal year-end date, which must be filed with the Commission and NFA at least 15 business days prior to the effective date of the change (proposed Condition 23).

With regard to the proposed condition requiring that the PRA-designated UK nonbank SD file a notice with the Commission and NFA within 24 hours of filing a capital conservation plan, the Commission will revise the condition to require that the notice be filed within 24

hours of when the PRA-designated UK nonbank SD breaches its combined capital buffer requirement and is required to file a capital conservation plan. Thus, the Commission will help ensure that the PRA-designated UK nonbank SD provides a timely notice within 24 hours of breaching its combined capital buffer requirement instead of 24 hours of filing the capital conservation plan, which may occur up to five business days after the breach of the combined buffer requirement.

In conclusion, the Commission finds that the regulatory notice provisions of the UK PRA Financial Reporting Rules and the CFTC Financial Reporting Rules, after consideration of the conditions imposed in the final Comparability Order, are comparable in purpose and effect, and achieve comparable outcomes, by providing timely notice to the PRA, and to the Commission and NFA, of specified events at a nonbank SD that may potentially indicate an ongoing issue with the safety and soundness of the firm and/or its ability to meet its obligations to swap counterparties, creditors, or other market participants without the firm becoming insolvent. As such, the Commission adopts the final Comparability Order and conditions as proposed with respect to the Commission's analysis of comparability of the PRA and Commission's nonbank SD notice reporting requirements, subject to the revisions in final Conditions 17 and 20, and the clarifying changes to final Condition 24 discussed above. The Commission is also adopting a compliance date for certain notice reporting requirements as discussed above in the final Comparability Order.

F. Supervision and Enforcement

1. Preliminary Determination

In the 2024 Proposal, the Commission discussed the oversight of nonbank SDs, noting that the Commission and NFA conduct ongoing supervision of nonbank SDs to assess their compliance with the CEA, Commission regulations, and NFA rules by reviewing financial reports, notices, risk exposure reports, and other filings that nonbank SDs are required to file with the Commission and NFA.³⁴⁴ The 2024 Proposal also noted that the Commission and NFA also conduct periodic examinations as part of the supervision of nonbank SDs, including routine onsite examinations of nonbank SDs' books, records, and operations to ensure compliance with CFTC and NFA requirements.³⁴⁵ In this

regard, as noted in section I.E. above, section 17(p) of the CEA requires NFA, as a registered futures association, to establish minimum capital and financial requirements for nonbank SDs and to implement a program to audit and enforce compliance with such requirements.³⁴⁶

The Commission also discussed the financial reports and notices required under the CFTC Financial Reporting Rules, noting that the reports and notices provide the Commission and NFA with information necessary to: ensure the nonbank SD's compliance with minimum capital requirements; assess the firm's overall safety and soundness by being able to meet its financial obligations to customers, counterparties, creditors, and general market participants; and identify potential issues at a nonbank SD that may impact the firm's ability to maintain compliance with the CEA and Commission regulations.³⁴⁷ As discussed in the 2024 Proposal, the Commission and NFA also have the authority to require a nonbank SD to provide any additional financial and/or operational information as the Commission or NFA may specify to monitor the safety and soundness of the firm.³⁴⁸ The Commission further noted that it has authority to take disciplinary actions against a nonbank SD for failing to comply with the CEA and Commission regulations. In this regard, section 4b-1(a) of the CEA provides the Commission with exclusive authority to enforce the capital requirements imposed on nonbank SDs adopted under section 4s(e) of the CEA.³⁴⁹

With respect to PRA-designated UK nonbank SDs, the Commission noted in the 2024 Proposal that the PRA conducts oversight of the firm's compliance with the UK PRA Capital Rules and the UK PRA Financial Reporting Rules. In this regard, the Commission noted that the PRA has supervision, audit, and investigation powers with respect to PRA-designated UK nonbank SDs, which include the powers to obtain specified information reasonably required in connection with the exercise of the PRA's functions, the power to conduct or order investigations, and the power to impose sanctions on PRA-designated UK nonbank SDs that breach their regulatory obligations, including those deriving from the UK PRA Capital Rules

³⁴⁶ 7 U.S.C. 21(p).

³⁴⁷ 2024 Proposal at 8057.

³⁴⁸ Commission Regulation 23.105(h) (17 CFR 23.105(h)). See also 2024 Proposal at 8057.

³⁴⁹ 7 U.S.C. 6s(e).

³⁴⁴ 2024 Proposal at 8057.

³⁴⁵ *Id.*

and the UK PRA Financial Reporting Rules.³⁵⁰

The PRA also monitors the capital adequacy of PRA-designated UK nonbank SDs through supervisory measures on an ongoing basis. The monitoring includes assessing the notices and the capital conservation plan discussed in section II.E.1. above. In addition, the PRA is empowered with a variety of measures to address a PRA-designated UK nonbank SD's financial deterioration.³⁵¹ Under its general supervisory powers, the PRA may impose new requirements to a PRA-designated UK nonbank SD if the firm is failing, or likely to fail, to satisfy the threshold conditions for which the PRA is responsible.³⁵² More specifically, a breach in a PRA-designated UK nonbank SD's capital buffers automatically triggers restrictions on the firm's ability to make certain distributions (e.g., pay certain dividends or employee bonuses).³⁵³ In addition, the PRA may impose administrative penalties or other administrative measures, including prudential charges, if a PRA-designated nonbank SD's liquidity position falls below the liquidity and stable funding requirements.³⁵⁴

In case of non-compliance with the capital and liquidity thresholds, the PRA may also order PRA-designated UK nonbank SDs to comply with additional requirements, including: (i) maintaining additional capital in excess of the minimum requirements, if certain conditions are met; (ii) requiring that the PRA-designated UK nonbank SD submit a plan to restore compliance with applicable capital or liquidity thresholds; (iii) imposing restrictions on the business or operations of the PRA-designated UK nonbank SD; (iv) imposing restrictions or prohibitions on distributions or interest payments to

shareholders or holders of additional tier 1 capital instruments; (v) requiring additional or more frequent reporting requirements; and (vi) imposing additional specific liquidity requirements.³⁵⁵ The PRA may also sanction the PRA-designated UK nonbank SD if the firm's capital or liquidity fall below the applicable thresholds or the PRA has evidence that the firm will breach such thresholds in the next 12 months.³⁵⁶ The PRA may also withdraw a PRA-designated UK nonbank SD's authorization if the firm no longer meets its minimum capital requirements.³⁵⁷

In addition, if the capital and liquidity requirements are breached, the PRA may take early measures to intervene, such as requiring management to take certain actions, order members of management to be removed or replaced, or require changes to the firm's business strategy or legal or operational structure, among other measures.³⁵⁸

Although the PRA generally has broad discretion as to what powers it may exercise, the UK PRA Capital Rules and the UK PRA Financial Reporting Rules specifically mandate that the PRA require PRA-designated UK nonbank SDs to hold increased capital when: (i) risks or elements of risks are not covered by the capital requirements imposed by the UK PRA Capital Rules; (ii) the PRA-designated UK nonbank SD lacks robust governance arrangements, appropriate resolution and recovery plans, processes to manage large exposures or effective processes to maintain on an ongoing basis the amounts, types, and distribution of capital needed to cover the nature and level of risks to which it might be exposed; or (iii) the sole application of other administrative measures would be unlikely to timely and sufficiently improve the firm's arrangements and processes.³⁵⁹

Based on its review of the Application and its analysis of the relevant laws and regulations, the Commission preliminarily found that the PRA has the necessary powers to supervise, investigate, and discipline PRA-designated UK nonbank SDs for compliance with the applicable capital and financial reporting requirements, and to detect and deter violations of, and ensure compliance with, the applicable UK capital and financial reporting requirements.³⁶⁰ Furthermore, the Commission noted that it retains supervision, examination, and enforcement authority over PRA-designated UK nonbank SDs that are covered by the Comparability Order.³⁶¹ Specifically, the Commission noted that a non-U.S. nonbank SD that operates under substituted compliance remains subject to the Commission's examination authority and may be subject to a Commission enforcement action if the firm fails to comply with a foreign jurisdiction's capital adequacy or financial reporting requirements.³⁶² The ability of the Commission to exercise its enforcement authority over a PRA-designated UK nonbank SD is not conditioned upon a finding by the PRA of a violation of the UK PRA Capital Rules or UK PRA Financial Reporting Rules. In addition, as each PRA-designated UK nonbank SD is a member of NFA, the firm is subject to NFA membership rules, examination authority, and disciplinary process.³⁶³

2. Comment Analysis and Final Determination

The Commission did not receive comments directly related to its analysis set forth in the proposed Comparability Determination and Comparability Order, or on its preliminary determination that the PRA has the necessary powers to supervise, investigate, and discipline PRA-designated UK nonbank SDs for non-compliance with the applicable UK capital and financial reporting requirements. The Commission has reviewed its preliminary Comparability Determination and finds that the PRA-designated UK nonbank SDs are subject to a supervisory and enforcement framework that is comparable to the Commission's supervisory and enforcement framework for nonbank SDs.

³⁵⁰ 2024 Proposal at 8058.

³⁵¹ 2024 Proposal at 8029.

³⁵² *Id.* See also 17 CFR 23.106(a)(4)(ii), which provides that all nonbank SDs, regardless of whether they rely on a Comparability Order or Comparability Determination, remain subject to the Commission's examination and enforcement authority.

³⁵³ 7 U.S.C. 21(p).

³⁵⁰ 2024 Proposal at 8057 and FSMA, Parts 4A, XI, and XIV.

³⁵¹ See 2024 Proposal at 8057 and PRA, *The Prudential Regulation Authority's approach to banking supervision*, July 2023, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors>.

³⁵² 2024 Proposal at 8057 and FSMA, Part 4A, Section 55M.

³⁵³ PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.3.

³⁵⁴ Capital Requirements Regulations 2013, Regulation 35B and FSMA, Part XIV Disciplinary Measures (setting forth the PRA's disciplinary power with respect to all rules adopted under FSMA). The Applicants represented that "CRR rules" (i.e., general PRA rules applying to CRR firms, including PRA-designated UK nonbank SDs) are adopted pursuant to FSMA, Part 9D, and as such the PRA has power to impose disciplinary measures in connection with these rules. See Response to Staff Questions dated October 5, 2023.

³⁵⁵ FSMA, Parts 4A, Sections 55M and 55P, and Capital Requirements Regulation 2013, Regulation 35B.

³⁵⁶ FSMA, Parts 4A and XIV.

³⁵⁷ FSMA, Part 4A, Sections 55J–55K.

³⁵⁸ Bank Recovery and Resolution (No. 2) Order 2014, Article 2 (defining "conditions for early intervention" in case of breach of UK CRR requirements or requirements derived from CRD) and Part 8 (laying down the procedure to be followed by the PRA to determine whether early intervention measures should be taken under FSMA). If additional requirements are met, it is also possible that the Bank of England, as the resolution authority, may assess the PRA-designated UK nonbank SD as "failing or likely to fail," triggering a resolution action, which could occur even before the firm actually breached its minimum capital requirements. Banking Act 2009, Sections 4 to 83.

³⁵⁹ Capital Requirements Regulation 2013, Section 34.

As detailed in section II.F.1. above, PRA-designated UK nonbank SDs are subject to direct supervision by the PRA in its capacity of prudential regulator. The PRA has supervision, audit, and investigation powers with respect to the six PRA-designated UK nonbank SDs currently registered with the Commission.

The Commission's assessment of the PRA's supervisory programs included an evaluation of the PRA's authority to supervise PRA-designated UK nonbank SDs based on applicable UK laws and regulations, as discussed in section II.F.1. above. This evaluation included an assessment of the financial reporting that PRA-designated UK nonbank SDs are required to provide to the PRA, the PRA's ability to conduct examinations, including onsite inspections of PRA-designated UK nonbank SDs, and the PRA's ability to impose sanctions or take other action to address noncompliance with applicable laws and regulations. Based upon its evaluation, the Commission preliminarily determined that the relevant UK laws and regulations are comparable in purpose and effect to the CEA and Commission regulations, and that the PRA has appropriate power to supervise PRA-designated UK nonbank SDs for compliance with the UK PRA Capital Rules and UK PRA Financial Reporting Rules. The Commission further determined, based on applicable UK laws and regulations, that the PRA has the ability to sanction PRA-designated UK nonbank SDs for failing to comply with regulatory requirements. Specifically, as discussed in section II.F.1. above, the PRA has the power to impose sanctions on the PRA-designated UK nonbank SD if the firm's capital or liquidity fall below the applicable thresholds,³⁶⁴ and may impose various requirements on PRA-designated UK nonbank SDs, including a requirement to hold additional capital if certain conditions are met.³⁶⁵ The PRA may also withdraw a PRA-designated UK nonbank SD's authorization to operate if the firm no longer meets its minimum capital requirements.³⁶⁶

Furthermore, as discussed in this Comparability Determination, by issuing a Comparability Order, the Commission is not ceding its supervisory and enforcement authorities. PRA-designated UK nonbank SDs that are subject to a Comparability Order are

registered with the Commission as SDs and are members of NFA, and, as such, are subject to the CEA, Commission regulations, and NFA membership rules and requirements. In this regard, PRA-designated UK nonbank SDs covered by a Comparability Order are required to directly provide the Commission with additional information upon the Commission's request to facilitate the ongoing supervision of such firms.³⁶⁷ Further, section 17 of NFA's SD Financial Requirements rule provides that each SD member of NFA must file the financial, operational, risk management and other information required by NFA in the form and manner prescribed by NFA.³⁶⁸ The ability to obtain information directly from PRA-designated UK nonbank SDs ensures that the Commission and NFA have access to the information necessary to monitor the financial condition of such firms and to assess the firms' compliance with applicable capital and financial reporting requirements. PRA-designated UK nonbank SDs covered by a Comparability Order remain subject to the Commission's examination and enforcement authority with respect to all elements of the CEA and Commission regulations, including capital and financial reporting.³⁶⁹

In addition, as detailed in section I.E. above, the conditions set forth in the Comparability Order reflect the fact that the Commission and NFA have a continuing obligation to conduct ongoing oversight, including potential examination, of PRA-designated UK nonbank SDs to ensure compliance with the Comparability Order and with relevant CEA requirements and Commission regulations. Specifically, the conditions require PRA-designated UK nonbank SDs to file directly with the Commission and NFA financial reports and notices that are comparable to the financial reports and notices filed by nonbank SDs domiciled in the U.S. In addition to requiring PRA-designated UK nonbank SDs to maintain current books and records reflecting all transactions,³⁷⁰ the conditions further require each PRA-designated UK nonbank SD covered by the Comparability Order to file directly with the Commission and NFA: (i) monthly and annual financial reports;³⁷¹ (ii) notice that the firm was informed by the PRA that it is not in compliance with

the UK PRA Capital Rules and/or UK PRA Financial Reporting Rules;³⁷² (iii) notice that the firm has experienced a decrease of 30 percent or more in its excess regulatory capital as compared to the last excess regulatory capital reported in filings with the Commission and NFA;³⁷³ (iv) notice that the firm has breached its combined capital buffer requirement and is required to file a capital conservation plan with the PRA;³⁷⁴ (v) notice that the firm has failed to maintain regulatory capital in the form of common equity tier 1 capital equal to or in excess of the U.S. dollar equivalent of \$20 million;³⁷⁵ and (vi) notice that the firm has failed to maintain current financial books and records.³⁷⁶ The Comparability Order further requires the Applicants to provide notice to the Commission of any material changes to the information submitted in the application, including, but not limited to, proposed and final material changes to the UK PRA Capital Rules or UK PRA Financial Reporting Rules and proposed and final material changes to the PRA's supervisory authority or supervisory regime over PRA-designated UK nonbank SDs.³⁷⁷ The financial information and notices required to be filed directly with the Commission and NFA under the Comparability Order, and through the Commission's and NFA's direct authority to obtain additional information from PRA-designated UK nonbank SDs, will allow the Commission and NFA to conduct ongoing oversight of such firms to assess their overall safety and soundness.

Although Commission Regulation 23.106 does not condition the issuance of a Comparability Order on the Commission and the authority or authorities in the relevant foreign jurisdiction having entered into a formal MOU or similar arrangement, the Commission recognizes the benefit that such an arrangement may provide. Specifically, although Commission staff may engage directly with PRA-designated UK nonbank SDs to obtain information regarding their financial and operational condition, it may not be able to exchange and discuss such firm-specific information³⁷⁸ with the PRA or

³⁷² Condition 15 of the final Comparability Order.

³⁷³ Condition 20 of the final Comparability Order.

³⁷⁴ Condition 17 of the final Comparability Order.

³⁷⁵ Condition 16 of the final Comparability Order.

³⁷⁶ Condition 21 of the final Comparability Order.

³⁷⁷ Condition 24 of the final Comparability Order.

³⁷⁸ The sharing of non-public information by CFTC staff would require assurances related to the use and treatment of such information in a manner consistent with Section 8(e) of the CEA, 7 U.S.C. 12(e).

³⁶⁴ FSMA, Parts 4A and XIV.

³⁶⁵ FSMA, Parts 4A, Sections 55M and 55P, and Capital Requirements Regulation 2013, Regulation 35B.

³⁶⁶ FSMA, Part 4A, Sections 55J–55K.

³⁶⁷ 17 CFR 23.105(h).

³⁶⁸ NFA Section 17 Rule available at NFA's website: <https://www.nfa.futures.org/rulebooksq/index.aspx>.

³⁶⁹ 17 CFR 23.106(a)(4)(ii).

³⁷⁰ Condition 9 of the final Comparability Order.

³⁷¹ Conditions 10 and 11 of the final Comparability Order.

reach shared expectations on procedures for conducting on-site examinations in the UK.³⁷⁹ Therefore, Commission staff will continue its engagement with PRA staff to negotiate and finalize an MOU or similar arrangement to facilitate the joint supervision of PRA-designated UK nonbank SDs.

III. Final Capital Comparability Determination and Comparability Order

A. Commission's Final Comparability Determination

Based on the UK Application and the Commission's review of applicable UK laws and regulations, as well as the review of comments submitted in response to the Commission's request for comment on the UK Application and the proposed Comparability Determination and Comparability Order, the Commission finds that the UK PRA Capital Rules and the UK PRA Financial Reporting Rules, subject to the conditions set forth in the Comparability Order below, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules. In reaching this conclusion, the Commission recognizes that there are certain differences between the UK PRA Capital Rules and CFTC Capital Rules and certain differences between the UK PRA Financial Reporting Rules and the CFTC Financial Reporting Rules. The Comparability Order is subject to conditions that are necessary to promote consistency in regulatory outcomes, or to reflect the scope of substituted compliance that would be available notwithstanding certain differences. In the Commission's view, the differences between the two rules sets are not inconsistent with providing a substituted compliance framework for PRA-designated UK nonbank SDs subject to the conditions specified in the Order below.

Furthermore, the Comparability Determination and Comparability Order are limited to the comparison of the UK PRA Capital Rules to the Bank-Based Approach contained within the CFTC Capital Rules. As noted previously, the Applicants have not requested, and the Commission has not performed, a comparison of the UK PRA Capital

Rules to the Commission's NLA Approach or TNW Approach.

B. Order Providing Conditional Capital Comparability Determination for Certain PRA-Designated UK Nonbank Swap Dealers

It is hereby determined and ordered, pursuant to Commodity Futures Trading Commission ("CFTC" or "Commission") Regulation 23.106 (17 CFR 23.106) under the Commodity Exchange Act ("CEA") (7 U.S.C. 1 *et seq.*) that a swap dealer ("SD") subject to the Commission's capital and financial reporting requirements under sections 4s(e) and (f) of the CEA (7 U.S.C. 6s(e) and (f)), that is organized and domiciled in the United Kingdom ("UK") and designated for prudential supervision by the UK Prudential Regulation Authority ("PRA"), may satisfy the capital requirements under section 4s(e) of the CEA and Commission Regulation 23.101(a)(1)(i) (17 CFR 23.101(a)(1)(i)) ("CFTC Capital Rules"), and the financial reporting rules under section 4s(f) of the CEA and Commission Regulation 23.105 (17 CFR 23.105) ("CFTC Financial Reporting Rules"), by complying with certain specified requirements of the UK laws and regulations cited below and otherwise complying with the following conditions, as amended or superseded from time to time:

(1) The SD is not subject to regulation by a prudential regulator defined in section 1a(39) of the CEA (7 U.S.C. 1a(39));

(2) The SD is organized under the laws of the UK and is domiciled in the UK;

(3) The SD is licensed as an investment firm in the UK and is designated for prudential supervision by the PRA ("PRA-designated UK nonbank SD");

(4) The PRA-designated UK nonbank SD is subject to and complies with: *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 as restated and applicable in the UK* ("UK CRR"), the provisions implementing the *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC* ("CRD"), including *Capital Requirements Regulations 2013* and *Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014*, Commission

Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions ("Liquidity Coverage Delegated Regulation"), the provisions of the Banking Act 2009 and its secondary legislation related to the minimum requirement for own funds and eligible liabilities ("MREL"), and the rules of the PRA as reflected in the PRA Rulebook (collectively the "UK PRA Capital Rules");

(5) The PRA-designated UK nonbank SD satisfies at all times applicable capital ratio and leverage ratio requirements set forth in Article 92 of UK CRR and the rules in PRA Rulebook, CRR Firms, Leverage Ratio—Capital Requirements and Buffers Part, Chapter 3 Minimum Leverage Ratio, the capital conservation buffer requirements set forth in PRA Rulebook, CRR Firms, Capital Buffers Part, and applicable liquidity requirements set forth in PRA Rulebook, CRR Firms, Liquidity Coverage Requirement—UK Designated Investment Firms Part and PRA Rulebook, CRR Firms, Liquidity (CRR) Part, and otherwise complies with the requirements to maintain a liquidity risk management program as required under PRA Rulebook, CRR Firms, Internal Liquidity Adequacy Assessment Part;

(6) The PRA-designated UK nonbank SD is subject to and complies with: Reporting (CRR) and Regulatory Reporting parts of the PRA Rulebook and the Companies Act 2006, Parts 15 and 16 (collectively and together with UK CRR, the "UK PRA Financial Reporting Rules");

(7) The PRA-designated UK nonbank SD maintains at all times an amount of regulatory capital in the form of common equity tier 1 capital as defined in Article 26 of UK CRR, equal to or in excess of the equivalent of \$20 million in United States dollars ("U.S. dollars"). The PRA-designated UK nonbank SD shall use a commercially reasonable and observable British pound/U.S. dollar exchange rate to convert the value of the pound-denominated common equity tier 1 capital to U.S. dollars;

(8) The PRA-designated UK nonbank SD has filed with the Commission a notice stating its intention to comply with the UK PRA Capital Rules and the UK PRA Financial Reporting Rules in lieu of the CFTC Capital Rules and the CFTC Financial Reporting Rules. The notice of intent must include the PRA-designated UK nonbank SD's representation that the firm is organized and domiciled in the UK, is a licensed investment firm designated for prudential supervision by the PRA, and

³⁷⁹ For UK nonbank SDs regulated by the FCA, the Commission and the FCA are signatories to a supervisory MOU that covers information sharing and examinations. *Memorandum of Understanding Concerning Cooperation and the Exchange of Information in the Context of Supervising Covered Firms* (June 20, 2019).

is subject to, and complies with, the UK PRA Capital Rules and UK PRA Financial Reporting Rules. A PRA-designated UK nonbank SD may not rely on this Comparability Order until it receives confirmation from Commission staff, acting pursuant to authority delegated by the Commission under Commission Regulation 140.91(a)(11) (17 CFR 140.91(a)(11)), that the PRA-designated UK nonbank SD may comply with the UK PRA Capital Rules and UK PRA Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Reporting Rules. Each notice filed pursuant to this condition must be submitted to the Commission via email to the following address:

MPDFinancialRequirements@cftc.gov;

(9) The PRA-designated UK nonbank SD prepares and keeps current ledgers and other similar records in accordance with the PRA Rulebook, General Organisational Requirements Part, Rule 2.2 and Record Keeping Part, Rule 2.1 and 2.2, and conforming with the applicable accounting principles;

(10) The PRA-designated UK nonbank SD files with the Commission and with the National Futures Association (“NFA”) a copy of templates 1.1 (Balance Sheet Statement: assets), 1.2 (Balance Sheet Statement: liabilities), 1.3 (Balance Sheet Statement: equity), and 2 (Statement of profit or loss) of the financial reports (“FINREP”) that PRA-designated UK nonbank SDs are required to submit pursuant to PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulatory Activity Group 3, Rule 9.2, and templates 1 (Own Funds), 2 (Own Funds Requirements) and 3 (Capital Ratios) of the common reports (“COREP”) that PRA-designated UK nonbank SDs are required to submit pursuant to PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 4 Reporting (Part Seven A CRR), Article 430 Reporting on Prudential Requirements and Financial Information, Rule 1. The FINREP and COREP templates must be provided with balances converted to U.S. dollars, using a commercially reasonable and observable British pound/U.S. dollar spot rate as of the date of the reports, and must be filed with the Commission and NFA within 35 calendar days of the end of each month. PRA-designated UK nonbank SDs that are registered as security-based swap dealers (“SBSDs”) with the U.S. Securities and Exchange Commission (“SEC”) must comply with this condition by filing with the Commission and NFA a copy of Form X-17A-5 (“FOCUS Report”) that the PRA-designated UK nonbank SD is required to file with the SEC or its

designee pursuant to an order granting conditional substituted compliance with respect to Securities Exchange Act of 1934 Rule 18a-7. The copy of the FOCUS Report must be filed with the Commission and NFA within 35 calendar days after the end of each month in the manner, format and conditions specified by the SEC in *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a-7*, 86 FR 59208 (Oct. 26, 2021);

(11) The PRA-designated UK nonbank SD files with the Commission and with NFA a copy of its annual audited accounts and strategic report (together, “annual audited financial report”) that are required to be prepared and published pursuant to Parts 15 and 16 of Companies Act 2006. The annual audited financial report may be reported in British pound. The annual audited financial report must be filed with the Commission and NFA on the earlier of the date the report is filed with the PRA or the date the report is required to be filed with the PRA pursuant to the UK PRA Financial Reporting Rules;

(12) The PRA-designated UK nonbank SD files Schedule 1 of appendix B to Subpart E of part 23 of the Commission’s regulations (17 CFR 23 Subpart E—appendix B) with the Commission and NFA on a monthly basis. Schedule 1 must be prepared with balances reported in U.S. dollars, using a commercially reasonable and observable British pound/U.S. dollar spot rate as of the date of the report, and must be filed with the Commission and NFA within 35 calendar days of the end of each month. PRA-designated UK nonbank SDs that are registered as SBSDs must comply with this condition by filing with the Commission and NFA a copy of the FOCUS Report that they file with the SEC or its designee as set forth in Condition 10;

(13) The PRA-designated UK nonbank SD submits with each set of FINREP and COREP templates, annual audited financial report, and Schedule 1 of appendix B to Subpart E of part 23 of the Commission’s regulations, a statement by an authorized representative or representatives of the PRA-designated UK nonbank SD that to the best knowledge and belief of the representative or representatives, the information contained in the reports, including the conversion of balances in the reports to U.S. dollars, is true and correct;

(14) The PRA-designated UK nonbank SD files a margin report containing the information specified in Commission Regulation 23.105(m) (17 CFR 23.105(m)) (“Margin Report”) with the Commission and with NFA within 35 calendar days of the end of each month. The Margin Report’s balances must be reported in U.S. dollars, using a commercially reasonable and observable British pound/U.S. dollar spot rate as of the date of the report;

(15) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours of being informed by the PRA that the firm is not in compliance with any component of the UK PRA Capital Rules or the UK PRA Financial Reporting Rules;

(16) The PRA-designated UK nonbank SD files a notice within 24 hours with the Commission and NFA if it fails to maintain regulatory capital in the form of common equity tier 1 capital as defined in Article 26 of UK CRR, equal to or in excess of the U.S. dollar equivalent of \$20 million using a commercially reasonable and observable British pound/U.S. dollar exchange rate;

(17) The PRA-designated UK nonbank SD provides the Commission and NFA with notice within 24 hours of breaching its combined capital buffer requirement and being required to file a capital conservation plan with the PRA pursuant to PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.4;

(18) The PRA-designated UK nonbank SD provides the Commission and NFA with notice within 24 hours if it is required by the PRA to maintain additional capital or additional liquidity requirements, or to restrict its business operations, or to comply with other requirements pursuant to Financial Services and Markets Act 2000, Part 4A or the Capital Requirements Regulation 2013, Regulation 35B;

(19) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to maintain its MREL, if the PRA-designated UK nonbank SD is subject to such requirement as set forth by the Bank of England pursuant to the Banking Act 2009, section 3A and the Bank Recovery and Resolution (No. 2) Order 2014, Part 9;

(20) The PRA-designated UK nonbank SD files a notice with the Commission and NFA if it experiences a 30 percent or more decrease in its excess regulatory capital as compared to that last reported in the financial information filed pursuant to Condition 10. The notice filed with Commission and NFA must be filed within two business days of the firm experiencing the 30 percent or

more decrease in excess regulatory capital;

(21) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to make or keep current the financial books and records;

(22) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours of the occurrence of any of the following: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin to the PRA-designated UK nonbank SD on uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the PRA-designated UK nonbank SD for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement; (iii) the PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and non-cleared security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; or (iv) the PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement. For purposes of the calculation, the PRA-designated UK nonbank SD's minimum capital requirement is the core capital requirement under the UK PRA Capital Rules, excluding capital buffers;

(23) The PRA-designated UK nonbank SD files a notice with the Commission and NFA of a change in its fiscal year-end approved or permitted to go into effect by the PRA. The notice required by this paragraph will satisfy the requirement for a nonbank SD to obtain the approval of NFA for a change in fiscal year-end under Commission Regulation 23.105(g) (17 CFR 23.105(g)). The notice of change in fiscal year-end must be filed with the Commission and NFA at least 15 business days prior to the effective date of the PRA-designated

UK nonbank SD's change in fiscal year-end;

(24) The PRA-designated UK nonbank SD or an entity acting on its behalf notifies the Commission of any material changes to the information submitted in the application for Comparability Determination, including, but not limited to, proposed and final material changes to the UK PRA Capital Rules or UK PRA Financial Reporting Rules and proposed and final material changes to the PRA's supervisory authority or supervisory regime over PRA-designated UK nonbank SDs; and

(25) Unless otherwise noted in the conditions above, the reports, notices, and other statements required to be filed by the PRA-designated UK nonbank SD with the Commission and NFA pursuant to the conditions of this Comparability Order must be submitted electronically to the Commission and NFA in accordance with instructions provided by the Commission or NFA.

*It is also hereby determined and ordered that this Comparability Order becomes effective upon its publication in the **Federal Register**, with the exception of Conditions 14, 20, and 22, which will become effective 180 calendar days after publication of the Comparability Order in the **Federal Register**.*

Issued in Washington, DC, on July 3, 2024, 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 Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the United Kingdom Prudential Regulation Authority—Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, and Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Rostin Behnam

I support the Commission's approval of four comparability determinations and related orders finding that the capital and financial reporting requirements in Japan, Mexico, the European Union (France and Germany), and the United Kingdom (for swap dealers (SDs) designated for prudential supervision by the UK Prudential Regulation

Authority (PRA)) are comparable to the Commission's capital and financial reporting requirements applicable to nonbank SDs. These are the first comparability determinations that the Commission has finalized for applications filed following the July 2020 adoption of its regulatory framework for substituted compliance for non-U.S. domiciled nonbank SDs.¹ There are currently 15 non-U.S. nonbank SDs that are eligible to comply with these conditional orders: three in Japan; three in Mexico; two in Germany and one in France for the EU; and six in the UK that are PRA-designated.

As part of the process leading to the Commission's final comparability determinations and orders, Commission staff engaged in a thorough analysis of each foreign jurisdictions' capital and financial reporting frameworks and considered the public comments received on the proposed determinations and orders. Based on those reviews, the Commission has determined that the respective foreign jurisdictions' rules are comparable in purpose and effect, and achieve comparable outcomes, to the CFTC's capital and financial reporting rules. Specifically, the Commission considered the scope and objectives of the foreign regulators' capital adequacy and financial reporting requirements; the ability of those regulators to supervise and enforce compliance with their respective capital and financial reporting requirements; and other facts or circumstances the Commission deemed relevant for each of the applications.

In certain instances, the Commission found that a foreign jurisdiction's rules impose stricter standards. In limited circumstances, where the Commission concluded that a foreign jurisdiction lacks comparable and comprehensive requirements on a specific issue, the Commission included a targeted condition designed to impose an equally stringent standard. The Commission has issued the final orders consistent with its authority to issue a comparability determination with the conditions it deems appropriate. These conditions aim to ensure that the orders only apply to nonbank SDs that are eligible for substituted compliance in these respective jurisdictions and that those non-U.S. nonbank SDs comply with the foreign country's capital and financial reporting requirements as well as certain additional capital, financial reporting, recordkeeping, and regulatory notice requirements. This approach acknowledges that jurisdictions may adopt unique approaches to achieving comparable outcomes. As a result, the Commission has focused on whether the applicable foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the corresponding Commission requirements for nonbank SDs, not whether they are comparable in every aspect or contain identical elements.

With these comparability determinations, the Commission fully retains its enforcement and examination authority as well as its

¹ *Capital Requirements of Swap Dealers and Major Swap Participants*, 85 FR 57462 (Sept. 15, 2020). The Commission issued the final rule on July 24, 2020.

ability to obtain financial and event specific reporting to maintain direct oversight of nonbank SDs located in these four jurisdictions. The avoidance of duplicative requirements without a commensurate benefit to the Commission's oversight function reflects the Commission's approach to recognizing the global nature of the swap markets with dually-registered SDs that operate in multiple jurisdictions, which mandate prudent capital and financial reporting requirements. This is, however, an added benefit and not the Commission's sole justification for issuing these comparability determinations.

The comparability orders will become effective upon their publication in the **Federal Register**. For several order conditions, the Commission is granting an additional compliance period of 180 calendar days. To rely on a comparability order, an eligible non-U.S. nonbank SD must notify the Commission of its intention to satisfy the Commission's capital and financial requirements by substituted compliance and receive a Commission confirmation before relying on a determination.

I appreciate the hard work and dedication of the staff in the Market Participants Division over the past several years to propose and finalize these four determinations. I also thank the staff in the Office of the General Counsel and the Office of International Affairs for their support on these matters.

Appendix 3—Statement of Commissioner Kristin N. Johnson

I support the Commodity Futures Trading Commission's (Commission or CFTC) issuance of four final capital and financial reporting comparability determinations and related orders (together, Final Comparability Determinations) for non-U.S. nonbank swap dealers (foreign nonbank SDs) and non-U.S. nonbank major swap participants (foreign nonbank MSPs) organized and domiciled in the United Kingdom (UK), the European Union (specifically, France and Germany), Mexico, and Japan.¹

The Final Comparability Determinations allow eligible foreign nonbank SDs to satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (CEA) and Commission regulations if they: (1) are subject to, and comply with, comparable capital and financial reporting requirements under the laws and regulations applicable in their home countries and (2) comply with the conditions enumerated in the applicable Final Comparability Determination. Under this conditional substituted compliance framework, foreign nonbank SDs in the relevant jurisdictions that comply with these conditions are deemed to be in compliance with the Commission's capital and financial reporting requirements.

Well-calibrated capital requirements create a cushion to absorb unexpected losses in

times of market stress, and well-calibrated financial reporting requirements provide the Commission with information to monitor the business operations and financial condition of registered SDs. These tools are critical to managing systemic risk and fostering the stability of U.S. derivatives markets and the U.S. financial system. The Commission's substituted compliance framework addresses the need to promote sound global derivatives regulation while mitigating potentially duplicative cross-border regulatory requirements for non-U.S. market participants operating in our markets. Where the Commission permits substituted compliance, it must retain sufficient oversight, examination, and enforcement authority to ensure compliance with the foreign jurisdiction's laws and the conditions to substituted compliance.

Crucially, while these Final Comparability Determinations permit foreign nonbank SDs to comply with home country regulations in lieu of compliance with Commission regulations, the Commission is also imposing important guardrails to ensure continuous supervision of the operations and financial condition of the foreign SD.

Background

For an example of the detrimental consequences of failing to adequately capitalize nonbank swap market participants, one need look no further than the 2008 global financial crisis. According to the U.S. Government Accountability Office, the crisis, which threatened the stability of the U.S. financial system and the health of the U.S. economy, may have led to \$10 trillion in losses, including large declines in employment and household wealth, reduced tax revenues from lower economic activity, and lost economic output.² In response to the crisis, in 2010, the U.S. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which amended the CEA to create a new regulatory framework for swaps.

As amended, section 4s(e) of the CEA directs the Commission and prudential regulators to impose minimum capital requirements on SDs registered with the Commission. Section 4s(e) adopts separate approaches for the imposition of minimum capital requirements on bank and nonbank SDs. For bank SDs, prudential regulators are authorized to set the minimum capital requirements. For nonbank SDs, the Commission is authorized to set those requirements. The amended CEA also sets out financial reporting requirements for SDs. Under section 4s(f) of the CEA, registered SDs are required to make financial condition reports and other reports regarding transactions and positions as mandated by Commission regulations.

In 2020, the Commission adopted regulations implementing both the capital and financial reporting requirements for SDs, which were amended in 2024 (the Capital

and Financial Reporting Rules).³ The Capital and Financial Reporting Rules set minimum capital levels that nonbank SDs must maintain and financial reporting requirements that nonbank SDs must comply with, including filing periodic unaudited financial statements and an annual audited financial report.⁴

Like the U.S., many other nations adopted their own regulatory regimes to govern swaps markets in the aftermath of the financial crisis. Since then, regulators from around the world have endeavored to improve the resilience of swaps markets and establish a global set of standards on critical risk management issues, such as capital and financial reporting requirements. These efforts led to the development of the Principles for Financial Market Infrastructures, to which many jurisdictions, including our own, look for guidance.⁵

The Dodd-Frank Act amendments specifically address the cross-border application of the CFTC's swaps regime. Section 2(i) of the CEA establishes that the CEA's swaps provisions apply to foreign swaps activities that have a "direct and significant" connection to, or effect on, U.S. markets. In line with section 2(i) of the CEA, the Capital and Financial Reporting Rules set out a substituted compliance framework in Commission Regulation 23.106 for foreign nonbank SDs seeking to comply with the Commission's capital and financial reporting requirements.

The substituted compliance framework consists of comparability determinations that afford "due consideration [to] international comity principles" while being "consistent with . . . the Commission's interest in focusing its authority on potential significant risks to the U.S. financial system."⁶ The determinations involve an assessment of the home-country requirements that is a principles-based, holistic approach, focusing on whether the applicable home-country requirements have comparable objectives and achieve comparable outcomes to the Commission's Capital and Financial Reporting Rules.

Today's Final Comparability Determinations

The Final Comparability Determinations will apply to 15 foreign nonbank SDs

³ Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

⁴ The reporting requirements imposed on bank SD and bank MSPs were "more limited" "as the financial condition of these entities will be predominantly supervised by the applicable prudential regulator and subject to its capital and financial reporting requirements." *Id.* at 57513. In May 2024, the Commission adopted amendments to the Capital and Financial Reporting Rules that codified two previously-issued staff letters providing interpretive guidance and no-action relief and made other technical amendments. 89 FR 45569 (May 23, 2024).

⁵ Principles for Financial Market Infrastructures, Bank for International Settlements and International Organization of Securities Commissions (Apr. 2012), <https://www.bis.org/cpmi/publ/d101a.pdf>.

⁶ Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 FR 56924, 56924 (Sept. 14, 2020).

¹ Though the Final Comparability Determinations will apply to foreign nonbank MSPs in the relevant jurisdictions, there are no such MSPs currently registered with the Commission at this time. I will refer only to SDs herein.

² United States Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act (Jan. 2013), <https://fraser.stlouisfed.org/title/gao-reports-testimonies-6136/financial-regulatory-reform-622249>.

currently registered with the Commission and subject to oversight by the UK Prudential Regulation Authority, the European Central Bank, the Mexican Comisión Nacional Bancaria y de Valores, and the Financial Services Agency of Japan. I commend staff for their hard work on the Final Comparability Determinations, including their work to thoroughly and thoughtfully analyze and address comments.

Importantly, while the Final Comparability Determinations permit foreign nonbank SDs in the relevant jurisdictions to comply with home country regulations in lieu of compliance with Commission regulations, there are numerous protections in place to ensure the Commission's ability to supervise on an ongoing basis the adequacy of the foreign nonbank SDs' compliance. The Final Comparability Determinations all include key conditions with which the foreign nonbank SDs must comply. For example, each of the Final Comparability Determinations requires that the foreign nonbank SDs provide monthly and annual financial reports to the Commission—and the Commission can request additional information as required to facilitate ongoing supervision. Each Final Comparability Determination also requires the foreign nonbank SDs to notify the Commission if adverse events occur, such as a significant decrease in excess regulatory capital, a significant failure of a counterparty to post required margin, or non-compliance with certain capital or financial reporting requirements. Finally, in recognition of the fact that a country's capital standards and financial reporting requirements may change over time, the Final Comparability Determinations require the foreign nonbank SDs to provide notice of material changes to the home country capital or financial reporting frameworks.

Moreover, the foreign nonbank SDs subject to these determinations are registered with the Commission and are members of the National Futures Association (NFA). Therefore, these entities are subject to the CEA, Commission regulations, and NFA membership rules, and each entity remains subject to Commission supervisory, examination and enforcement authority. As noted in the Final Comparability Determinations, if a foreign SD fails to comply with its home country's capital and financial reporting requirements, the Commission may initiate an action for a violation of the Commission's Capital and Financial Reporting Rules.

As I have previously noted,⁷ it is important to recognize foreign market participants'

compliance with the laws and regulations of their regulators when the requirements lead to an outcome that is comparable to the outcome of complying with the CFTC's corresponding requirements. Respect for partner regulators in foreign jurisdictions advances the Commission as a global standard setter for sound derivatives regulation and enhances market stability.

I thank the staff in the Market Participants Division for their hard work on these matters, particularly Amanda Olear, Tom Smith, and Lily Bozhanova.

Appendix 4—Statement of Commissioner Caroline D. Pham

I am pleased to support the order granting conditional substituted compliance in connection with certain capital and financial reporting requirements applicable to nonbank swap dealers subject to regulation by the United Kingdom Prudential Regulatory Authority (UK PRA) (UK Final Order). The UK Final Order, on balance, reflects an appropriate approach by the CFTC to collaboration with non-U.S. regulators that is consistent with IOSCO's 2020 report on *Good Practices on Processes for Deference*.¹

I would like to thank Amanda Olear, Thomas Smith, Rafael Martinez, Liliya Bozhanova, Joo Hong, and Justin McPhee from the CFTC's Market Participants Division for their truly hard work on the UK Final Order and for addressing my concerns regarding the conditions for notice requirements.² I also thank the UK PRA for its assistance and support.

The CFTC's capital comparability determinations are the result of tireless efforts spanning over a decade since the global financial crisis. I commend the staff for working together with our regulatory counterparts around the world to promote regulatory cohesion and financial stability, and mitigate market fragmentation and systemic risk.

[FR Doc. 2024–15094 Filed 7–17–24; 8:45 am]

BILLING CODE 6351–01–P

Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Proposed Order on Japanese Capital Comparability Determination (July 27, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072722c>.

¹IOSCO Report, “Good Practices on Processes for Deference” (June 2020), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD659.pdf>.

²Concurring Statement of Commissioner Caroline D. Pham Regarding Proposed Order and Request for Comment on an Application for a Capital Comparability Determination (Nov. 10, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement111022>; Statement of Commissioner Caroline D. Pham in Support of Proposed Order and Request for Comment on Comparability Determination for UK PRA Swap Dealer Capital and Financial Reporting Requirements (Jan. 24, 2024), <https://www.cftc.gov/PressRoom/speechesTestimony/phamstatement012424>.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Regulation in the European Union

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: On June 27, 2023, the Commodity Futures Trading Commission (“Commission” or “CFTC”) issued a notice and request for comment on an application submitted by the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association requesting that the Commission determine that registered nonbank swap dealers organized and domiciled within the European Union may comply with certain capital and financial reporting requirements under the Commodity Exchange Act and Commission regulations by being subject to, and complying with, corresponding capital and financial reporting requirements of the European Union. The Commission also solicited public comment on a proposed comparability determination and related order providing for the conditional availability of substituted compliance in connection with the application. The Commission is adopting the proposed order with certain modifications and clarifications to address comments. The final order provides that a nonbank swap dealer organized and domiciled in the French Republic or the Federal Republic of Germany may satisfy the capital requirements and the financial reporting rules under the applicable provisions of the Commodity Exchange Act and Commission regulations by complying with certain specified EU laws and regulations and conditions set forth in the order.

DATES: This determination was made by the Commission on June 24, 2024.

FOR FURTHER INFORMATION CONTACT:

Amanda L. Olear, Director, 202–418–5283, aolear@cftc.gov; Thomas Smith, Deputy Director, 202–418–5495, tsmith@cftc.gov; Rafael Martinez, Associate Director, 202–418–5462, rmartinez@cftc.gov; Warren Gorlick, Associate Director, 202–418–5195, wgorlick@cftc.gov; Liliya Bozhanova,

⁷ Kristin N. Johnson, Commissioner, CFTC, Combatting Systemic Risk and Fostering Integrity of the Global Financial System Through Rigorous Standards and International Comity (Jan. 24, 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement012424>; Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Notice and Order on EU Capital Comparability Determination (June 7, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement060723c>; Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Proposed Order and Request for Comment on Mexican Capital Comparability Determination (Nov. 10, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement111022c>;

Special Counsel, 202–418–6232, lbzhanova@cftc.gov; Joo Hong, Risk Analyst, 202–418–6221, jhong@cftc.gov; Justin McPhee, Risk Analyst, 202–418–6223; jmchpee@cftc.gov; Anna Semmes, Attorney-Advisor, 202–418–5673, asemmes@cftc.gov, Market Participants Division; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission is issuing an order providing that registered nonbank swap dealers (“SDs”) organized and domiciled in the French Republic (“France”) and Federal Republic of Germany (“Germany”) and subject to capital and financial reporting requirements of the European Union (“EU nonbank SDs”) may satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (“CEA”) ¹ and Commission regulations ² by being subject to, and complying with, comparable capital and financial reporting requirements under the relevant European Union (“EU”) laws and regulations, subject to certain conditions set forth in the order below. The order is based on the proposed comparability determination and related proposed order published by the Commission on June 27, 2023,³ as modified in certain aspects to address comments and to clarify its terms.

I. Introduction

A. Regulatory Background—CFTC Capital, Margin, and Financial Reporting Requirements for Swap Dealers and Major Swap Participants

Section 4s(e) of the CEA ⁴ directs the Commission and “prudential regulators” ⁵ to impose capital requirements on SDs and major swap participants (“MSPs”) registered with

the Commission.⁶ Section 4s(e) also directs the Commission and prudential regulators to adopt regulations imposing initial and variation margin requirements on swaps entered into by SDs and MSPs that are not cleared by a registered derivatives clearing organization (“uncleared swaps”).

Section 4s(e) applies a bifurcated approach with respect to the above Congressional directives, requiring each SD and MSP that is subject to the regulation of a prudential regulator (“bank SD” and “bank MSP,” respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the applicable prudential regulator, and requiring each SD and MSP that is not subject to the regulation of a prudential regulator (“nonbank SD” and “nonbank MSP,” respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the Commission.⁷ Therefore, the Commission’s authority to impose capital requirements and margin requirements for uncleared swap transactions extends to nonbank SDs and nonbank MSPs, including nonbanking subsidiaries of bank holding companies regulated by the Federal Reserve Board.⁸

The prudential regulators implemented section 4s(e) in 2015 by amending existing capital requirements applicable to bank SDs and bank MSPs to incorporate swap transactions into their respective bank capital frameworks, and by adopting rules imposing initial and variation margin requirements on bank SDs and bank MSPs that engage in uncleared swap transactions.⁹ The Commission adopted final rules imposing initial and variation

margin obligations on nonbank SDs and nonbank MSPs for uncleared swap transactions on January 6, 2016.¹⁰ The Commission also approved final capital requirements for nonbank SDs and nonbank MSPs on July 24, 2020, which were published in the **Federal Register** on September 15, 2020 with a compliance date of October 6, 2021 (“CFTC Capital Rules”).¹¹

Section 4s(f) of the CEA addresses SD and MSP financial reporting requirements.¹² Section 4s(f) authorizes the Commission to adopt rules imposing financial condition reporting obligations on all SDs and MSPs (*i.e.*, nonbank SDs, nonbank MSPs, bank SDs, and bank MSPs). Specifically, section 4s(f)(1)(A) provides, in relevant part, that each registered SD and MSP must make financial condition reports as required by regulations adopted by the Commission.¹³ The Commission’s financial reporting obligations were adopted with the Commission’s nonbank SD and nonbank MSP capital requirements, and also had a compliance date of October 6, 2021 (“CFTC Financial Reporting Rules”).¹⁴

B. Commission Capital Comparability Determinations for Non-U.S. Nonbank Swap Dealers and Non-U.S. Nonbank Major Swap Participants

Commission Regulation 23.106 establishes a substituted compliance framework whereby the Commission may determine that compliance by a non-U.S. domiciled nonbank SD or non-U.S. domiciled nonbank MSP with its home country’s capital and financial reporting requirements will satisfy all or parts of the CFTC Capital Rules and all or parts of the CFTC Financial Reporting Rules (such a determination referred to as a “Comparability Determination”).¹⁵

¹⁰ *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 81 FR 636 (Jan. 6, 2016).

¹¹ *Capital Requirements of Swap Dealers and Major Swap Participants*, 85 FR 57462 (Sept. 15, 2020). On April 30, 2024, the Commission amended the capital and financial reporting requirements to revise certain financial reporting obligations, among other changes. See *Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants*, 89 FR 45569 (May 23, 2024). The amendments have limited impact on nonbank SDs covered by this order.

¹² 7 U.S.C. 6s(f).

¹³ 7 U.S.C. 6s(f)(1)(A).

¹⁴ 85 FR 57462.

¹⁵ 17 CFR 23.106. Commission Regulation 23.106(a)(1) provides that a request for a Comparability Determination may be submitted by a non-U.S. nonbank SD or non-US nonbank MSP, a trade association or other similar group on behalf of its SD or MSP members, or a foreign regulatory authority that has direct supervisory authority over one or more non-US nonbank SDs or non-U.S. nonbank MSPs. However, Commission regulations

Continued

¹ 7 U.S.C. 1 *et seq.* The CEA may be accessed through the Commission’s website, www.cftc.gov.

² 17 CFR Chapter I. Commission regulations may be accessed through the Commission’s website, www.cftc.gov.

³ *Notice of Proposed Order and Request for Comment on an Application for Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union*, 88 FR 41774 (June 27, 2023) (“2023 Proposal”).

⁴ 7 U.S.C. 6s(e).

⁵ The term “prudential regulators” is defined in the CEA to mean the Board of Governors of the Federal Reserve System (“Federal Reserve Board”); the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency. 7 U.S.C. 1a(39).

⁶ Subject to certain exceptions, the term “swap dealer” is generally defined as any person that: (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

⁷ 7 U.S.C. 1a(49). The term “major swap participant” is generally defined as any person who is not an SD, and: (i) subject to certain exclusions, maintains a substantial position in swaps for any of the major swap categories as determined by the Commission; (ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or (iii) is a financial entity that: (a) is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and (b) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission. 7 U.S.C. 1a(33).

⁸ 7 U.S.C. 6s(e)(2).

⁹ 7 U.S.C. 6s(e)(1) and (2).

¹⁰ *Margin and Capital Requirements for Covered Swap Entities*, 80 FR 74840 (Nov. 30, 2015).

The Commission's capital adequacy and financial reporting requirements are designed to address and manage risks that arise from a firm's operation as an SD or MSP. Given their functions, both sets of requirements and rules must be applied on an entity-level basis (meaning that the rules apply on a firm-wide basis, irrespective of the type of transactions involved) to effectively address risk to the firm as a whole. The availability of such substituted compliance is conditioned upon the Commission issuing a Comparability Determination finding that the relevant foreign jurisdiction's capital adequacy and financial reporting requirements for non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs are comparable to the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules. The Commission would issue a Comparability Determination in the form of an order ("Comparability Order").¹⁶

The Commission's approach for conducting a Comparability Determination with respect to the CFTC Capital Rules and the CFTC Financial Reporting Rules is a principles-based, holistic approach that focuses on assessing whether the applicable foreign jurisdiction's capital and financial reporting requirements have comparable objectives with, and achieve comparable outcomes to, corresponding CFTC requirements.¹⁷ The Commission's assessment is not a line-by-line evaluation or comparison of a foreign jurisdiction's regulatory requirements with the Commission's requirements.¹⁸ In performing the analysis, the Commission recognizes that jurisdictions may adopt differing approaches to achieving regulatory

objectives and outcomes, and the Commission will focus on whether the foreign jurisdiction's capital and financial reporting requirements are based on regulatory objectives, and produce regulatory outcomes, that are comparable to the Commission's in purpose and effect, and not whether they are comparable in every aspect or contain identical elements.

A person requesting a Comparability Determination is required to submit an application to the Commission containing: (i) a description of the objectives of the relevant foreign jurisdiction's capital adequacy and financial reporting requirements applicable to entities that are subject to the CFTC Capital Rules and the CFTC Financial Reporting Rules; (ii) a description (including specific legal and regulatory provisions) of how the relevant foreign jurisdiction's capital adequacy and financial reporting requirements address the elements of the CFTC Capital Rules and CFTC Financial Reporting Rules, including, at a minimum, the methodologies for establishing and calculating capital adequacy requirements and whether such methodologies comport with international standards; and (iii) a description of the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements. The applicant must also submit, upon request, such other information and documentation as the Commission deems necessary to evaluate the comparability of the capital adequacy and financial reporting requirements of the foreign jurisdiction.¹⁹

The Commission will consider an application for a Comparability Determination to be a representation by the applicant that the laws and regulations of the foreign jurisdiction that are submitted in support of the application are finalized and in force, that the description of such laws and regulations is accurate and complete, and that, unless otherwise noted, the scope of such laws and regulations encompasses the relevant non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs domiciled in the foreign jurisdiction.²⁰ Each non-U.S. nonbank

SD or non-U.S. nonbank MSP that seeks to rely on a Comparability Order is responsible for determining whether it is subject to the foreign laws and regulations found comparable in the Comparability Order. A non-U.S. nonbank SD or non-U.S. nonbank MSP that is not legally required to comply with a foreign jurisdiction's laws and/or regulations determined to be comparable in a Comparability Order may not voluntarily comply with such laws and/or regulations in lieu of compliance with the CFTC Capital Rules or the CFTC Financial Reporting Rules.

The Commission may consider all relevant factors in making a Comparability Determination, including: (i) the scope and objectives of the relevant foreign jurisdiction's capital and financial reporting requirements; (ii) whether the relevant foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital requirements and financial reporting requirements; (iii) the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements; and (iv) any other facts or circumstances the Commission deems relevant, including whether the Commission and foreign regulatory authority or authorities have a memorandum of understanding ("MOU") or similar arrangement that would facilitate supervisory cooperation.²¹

In performing the comparability assessment for foreign nonbank SDs, the Commission's review will include the extent to which the foreign jurisdiction's requirements address: (i) the process of establishing minimum capital requirements for nonbank SDs and how such process addresses risk, including market risk and credit risk of the nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting minimum requirements; (iii) the financial reports and other financial information submitted by a nonbank SD to its relevant regulatory authority and whether such information provides the regulatory authority with the means necessary to effectively monitor the financial condition of the nonbank SD;

comparability assessment. A Comparability Determination and Comparability Order based on an inaccurate description of foreign laws and regulations may not be valid.

²¹ 17 CFR 23.106(a)(3) and 85 FR 57462 at 57520–57522.

also provide that any non-U.S. nonbank SD or non-U.S. nonbank MSP that is dually-registered with the Commission as a futures commission merchant ("FCM") is subject to the capital requirements of Commission Regulation 1.17 (17 CFR 1.17) and may not petition the Commission for a Comparability Determination. 17 CFR 23.101(a)(5) and (b)(4), respectively.

Furthermore, substituted compliance is not available to non-U.S. bank SDs and non-U.S. bank MSPs with respect to their respective financial reporting requirements under Commission Regulation 23.105(p). Commission Regulation 23.105(p), however, permits non-U.S. bank SDs and non U.S. bank MSPs that do not submit financial reports to a U.S. prudential regulator to file with the Commission a statement of financial condition, certain regulatory capital information, and Schedule 1 of appendix C to Subpart E of part 23 of the Commission's regulations prepared and presented in accordance with the accounting standards permitted by the non-U.S. bank SD's or non-U.S. bank MSP's home country regulatory authorities. 17 CFR 23.105(p)(2).

¹⁶ 17 CFR 23.106(a)(3).

¹⁷ 17 CFR 23.106(a)(3)(ii). See also 85 FR 57462 at 57521.

¹⁸ See 85 FR 57462 at 57521.

¹⁹ 17 CFR 23.106(a)(2).

²⁰ The Commission provides the applicant with an opportunity to review for accuracy and completeness the Commission's description of relevant home country laws and regulations on which a proposed Comparability Determination and a proposed Comparability Order are based. The Commission relies on this review, and any corrections or feedback received, as part of the

and (iv) the regulatory notices and other communications between a nonbank SD and its foreign regulatory authority that address potential adverse financial or operational issues that may impact the firm. With respect to the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the foreign jurisdiction's capital adequacy and financial reporting requirements, the Commission's review will include an assessment of the foreign jurisdiction's surveillance program for monitoring nonbank SDs' compliance with such capital adequacy and financial reporting requirements, and the disciplinary process imposed on firms that fail to comply with such requirements.²²

Commission Regulation 23.106 further provides that the Commission may impose any terms or conditions that it deems appropriate in issuing a Comparability Determination.²³ Any specific terms or conditions with respect to capital adequacy or financial reporting requirements will be set forth in the Commission's Comparability Order. As a general condition to all Comparability Orders, the Commission will require notification from the applicants of any material changes to information submitted by the applicants in support of a comparability finding, including, but not limited to, changes in the foreign jurisdiction's relevant laws and regulations, as well as changes to the relevant supervisory or regulatory regime.

To rely on a Comparability Order, a nonbank SD or nonbank MSP domiciled in the foreign jurisdiction and subject to supervision by the relevant regulatory authority (or authorities) in the foreign jurisdiction must file a notice with the Commission of its intent to comply with the applicable capital adequacy and financial reporting requirements of the foreign jurisdiction set forth in the Comparability Order in lieu of all or parts of the CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁴ Notices must be filed electronically with the Commission's Market Participants Division ("MPD").²⁵ The filing of a notice by a non-U.S. nonbank SD or non-U.S. nonbank MSP provides MPD

staff with the opportunity to engage with the firm and to obtain representations that it is subject to, and complies with, the laws and regulations cited in the Comparability Order and that it will comply with any listed conditions. MPD will issue a letter under delegated authority from the Commission confirming that the non-U.S. nonbank SD or non-U.S. nonbank MSP may comply with the foreign laws and regulations cited in the Comparability Order in lieu of complying with the CFTC Capital Rules and CFTC Financial Reporting Rules upon MPD's confirmation through discussions with the non-U.S. nonbank SD or non-U.S. nonbank MSP that the firm is subject to, and complies with, such foreign laws and regulations, is subject to the jurisdiction of the applicable foreign regulatory authority (or authorities), and can meet the conditions in the Comparability Order.²⁶

Each non-U.S. nonbank SD and each non-U.S. nonbank MSP that receives confirmation from the Commission that it may comply with a foreign jurisdiction's capital adequacy and financial reporting requirements will be deemed by the Commission to be in compliance with the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules. A non-U.S. nonbank SD or non-U.S. nonbank MSP that receives confirmation of substituted compliance remains subject, however, to the Commission's examination and enforcement authority.²⁷ Accordingly, if a nonbank SD or nonbank MSP fails to comply with the foreign jurisdiction's capital adequacy and/or financial reporting requirements, the Commission may initiate an action for a violation of the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.²⁸ In addition, a finding of a violation by a foreign jurisdiction's regulatory authority is not a prerequisite for the exercise of such examination and enforcement authority by the Commission.

C. Application for a Comparability Determination for EU Nonbank Swap Dealers

On September 24, 2021, the Institute of International Bankers ("IIB"), International Swaps and Derivatives Association ("ISDA"), and Securities Industry and Financial Markets

Association ("SIFMA") (collectively, the "Applicants") submitted an application ("EU Application") requesting that the Commission conduct a Comparability Determination and issue a Comparability Order finding that compliance by EU nonbank SDs domiciled in France or Germany with certain designated capital requirements of the EU and certain designated financial reporting requirements of the EU satisfies corresponding CFTC Capital Rules and CFTC Financial Reporting Rules applicable to a nonbank SD under sections 4s(e) and (f) of the CEA and Commission Regulations 23.101 and 23.105.²⁹ There are currently four EU nonbank SDs registered with Commission that are domiciled in France or Germany.³⁰

The Applicants represented that the capital adequacy and financial reporting requirements applicable to financial institutions licensed to operate in a member state of the EU ("EU Member State") are established by EU regulations and directives. Specifically, the Capital Requirements Regulation³¹ and the Capital Requirements Directive³² set forth capital and financial reporting requirements applicable to entities defined as "credit institutions" or "investment firms" within the EU, including EU nonbank SDs. The term "credit institution" includes an entity engaged in taking deposits or other repayable funds from the public and granting credits for its own account ("Banking Activities").³³ An entity engaged in Banking Activities is subject to the capital and financial reporting requirements of CRR and CRD. The term "credit institution" also

²⁹ Letter from Stephanie Webster, General Counsel, IIB, Steven Kennedy, Global Head of Public Policy, ISDA, and Kyle Brandon, Managing Director, Head of Derivatives Policy, SIFMA, dated September 24, 2021. The EU Application is available on the Commission's website at: <https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm>.

³⁰ BofA Securities Europe SA and Goldman Sachs Paris Inc. et Cie ("Goldman Sachs Paris") are nonbank SDs registered with the Commission and domiciled in France. Citigroup Global Markets Europe AG and Morgan Stanley Europe SE are also registered nonbank SDs and are domiciled in Germany.

³¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, as amended ("Capital Requirements Regulation" or "CRR").

³² Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended ("Capital Requirements Directive" or "CRD").

³³ CRR, Article 4(1)(1) (defining the term "credit institution").

²² The Commission would conduct a similar analysis, adjusted as appropriate to account for regulatory distinctions, in performing a comparability assessment for foreign nonbank MSPs. Commission Regulation 23.101(b) requires a nonbank MSP to maintain positive tangible net worth. 17 CFR 23.101(b). There are no MSPs currently registered with the Commission.

²³ 17 CFR 23.106(a)(5).

²⁴ 17 CFR 23.106(a)(4)(i).

²⁵ Notices must be filed in electronic form to the following email address: MPDFinancialRequirements@cftc.gov.

²⁶ 17 CFR 23.106(a)(4)(ii) and 17 CFR 140.91(a)(11).

²⁷ 17 CFR 23.106(a)(4)(ii). Confirmation will be issued by MPD under authority delegated by the Commission. Commission Regulation 140.91(a)(11). 17 CFR 140.91(a)(11).

²⁸ *Id.*

includes an entity engaged in: (i) dealing for its own account; (ii) underwriting financial instruments; or (iii) placing financial instruments on a firm commitment basis (collectively, “Investment Activities”), provided that the entity also meets certain defined financial thresholds set forth in the definition.³⁴ Specifically, an entity engaged in Investment Activities that maintains a total value of consolidated assets equal to or in excess of EUR 30 billion is required to be authorized as a “credit institution” and is subject to the capital and financial reporting requirements of CRR and CRD.³⁵

Credit institutions that qualify as “significant supervised entities” are subject to the direct prudential supervision of the European Central Bank (“ECB”).³⁶ Credit institutions that are “less significant supervised entities” are prudentially supervised by the applicable prudential supervisory authority in the entity’s home EU Member State (*i.e.*, “national competent authority”).³⁷ The term “competent

authority” is used in this Comparability Determination and Comparability Order to refer to the ECB or the national competent authority, as appropriate.

The term “investment firm” is defined as an entity authorized under the Markets in Financial Instruments Directive,³⁸ and whose regular business is the provision of one or more investment services to third parties and/or the performance of one or more investment-related activities on a professional basis (including Investment Activities as defined above).³⁹ An investment firm that engages in Investment Activities and maintains total consolidated assets of at least EUR 15 billion is also subject to the capital and financial reporting requirements of CRR and CRD.⁴⁰ The investment firm,

authorities in close cooperation with the ECB. With respect to the prudential supervision of less significant entities, the ECB has the power to issue regulations, guidelines or general instructions to the national competent authorities. SSM Regulation, Article 6(5)(a). At any time, the ECB can also decide to directly supervise a less significant entity to ensure that high supervisory standards are applied consistently. SSM Regulation, Article 6(5)(b).

³⁸ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (“Markets in Financial Instruments Directive” or “MiFID”).

³⁹ CRR, Article 4(1)(2) cross-referencing Article 4(1)(1) of MiFID.

⁴⁰ See Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (“Investment Firms Regulation” or “IFR”), Article 1(1) and (1)(2) (indicating that an investment firm that engages in Investment Activities is subject to CRR (and by cross-reference to CRD) if any of the following applies: (i) the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 15 billion; (ii) the total value of the consolidated assets of the investment firm is less than EUR 15 billion, and the investment firm is part of a group in which the total value of the consolidated assets of all investment firms in the group that individually have total assets of less than EUR 15 billion and that engage in Investment Activities is equal to or exceeds EUR 15 billion; or (iii) the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 5 billion, the investment firm engages in Investment Activities, and the competent authority has determined that the investment firm should be subject to CRR based on criteria set forth in Article 5 of Directive (EU) 2019/2034). See also, Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (“Investment Firms Directive” or “IFD”), Article 5 (providing that the competent authority may decide to apply the requirements of CRR to an investment firm whose consolidated assets are equal or exceed EUR 5 billion and that engages in Investment Activities if one or more of the following criteria apply: (i) the investment firm engages in Investment Activities on a scale that the failure or distress of the investment firm could lead to systemic risk; (ii) the investment firm is a clearing member; and/or (iii) the competent authority considers it to be

however, is not required to be authorized as a “credit institution” under the relevant provisions of the applicable national law in the EU Member State and is prudentially supervised by the national competent authority.⁴¹ Lastly, an entity defined as an “investment firm” that does not engage in Investment Activities, or that engages in Investment Activities but does not meet the criteria of either maintaining consolidated assets of at least EUR 15 billion or maintaining consolidated assets of at least EUR 5 billion and meeting certain criteria of significance and interconnectedness, is not subject to CRR and CRD.⁴² Such an investment firm is subject to capital and financial reporting requirements established by IFR and IFD, which EU Member States were required to adopt and apply by June 26, 2021.⁴³ The new IFR and IFD capital and financial reporting requirements are tailored to the risks faced and posed by smaller investment firms that operate differently from banking entities and larger investment firms. Such smaller investment firms are also prudentially supervised by the national competent authority.

Three of the four EU nonbank SDs currently registered with the Commission are subject to CRR and CRD.⁴⁴ The Application did not include

justified in light of the size, nature, scale, and complexity of the activities of the investment firm considering the importance of the investment firm for the economy of the EU or of the relevant EU Member State, the significance of the investment firm’s cross-border activities, and the interconnectedness of the investment firm with the financial system).

⁴¹ Although no EU nonbank SD currently registered with the Commission falls in this category, the analysis in the Comparability Determination would apply to such an investment firm. To capture investment firms that are subject to the capital and financial reporting requirements of CRR and CRD but are not required to be authorized as “credit institutions,” the Commission has removed the requirement in proposed Condition 3 that the EU nonbank SD be “treated for the purposes of the EU capital and financial reporting rules as an “institution,” as defined in [CRR].”

⁴² IFD, Article 5 (setting forth the criteria that may justify a decision by the competent authority to apply the requirements of CRR to an investment firm that engages in Investment Activities and whose consolidated assets equal or exceed EUR 5 billion).

⁴³ IFR, Article 66 and IFD, Article 67.

⁴⁴ BofA Securities Europe SA, Citigroup Global Markets Europe AG and Morgan Stanley Europe SE have been authorized as credit institutions. These three EU nonbank SDs also qualify as “significant supervised entities” subject to the direct supervision of the ECB. At the time the Commission issued the 2023 Proposal, Goldman Sachs Paris had a pending application for authorization as a credit institution. See Responses to Staff Questions of May 15, 2023. Subsequent to the publication of the 2023 Proposal, however, Goldman Sachs Paris informed the Commission that following further analysis and

³⁴ *Id.*

³⁵ *Id.* and CRD, Articles 8 and 8a (requiring an entity that engages in Investment Activities and meets the financial thresholds to submit an application for authorization as a “credit institution” under the relevant provisions of the applicable national law). CRR, Article 4(1)(1) provides that an entity carrying out Investment Activities meets the financial threshold for authorization as a credit institution if: (i) the total value of the consolidated assets of the entity is equal to or in excess of EUR 30 billion; (ii) the total value of the assets of the entity is less than EUR 30 billion, and the entity is part of a group in which the total value of the consolidated assets of all entities in that group that individually have total assets of less than EUR 30 billion and that engage in Investment Activities is equal to or in excess of EUR 30 billion; or (iii) the total value of the assets of the entity is less than EUR 30 billion, and the entity is part of a group in which the total value of the consolidated assets of all entities in the group that engage in Investment Activities is equal to or in excess of EUR 30 billion, where the consolidated supervisor, in consultation with the supervisory college, decides that the entity must be authorized as a credit institution to address potential risks of circumvention and potential risks for financial stability of the EU.

³⁶ See generally, Council Regulation (EU) 1024/2013 of 15 October 2013 Conferring Specific Tasks to the European Central Bank Concerning Policies Relating to the Prudential Supervision of Credit Institutions (“SSM Regulation”) and Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 Establishing the Framework for Cooperation within the Single Supervisory Mechanism Between the European Central Bank and the National Competent Authorities and with National Designated Authorities (“SSM Framework Regulation”).

The criteria for determining whether credit institutions are considered “significant supervised entities” include size, economic importance for the specific EU Member State or the EU economy, significance of cross-border activities, and request for or receipt of direct public financial assistance. SSM Regulation, Article 6 and SSM Framework Regulation, Articles 39–44 and 50–62.

³⁷ SSM Regulation, Article 6. Less significant entities are supervised by their national competent

an analysis of the comparability of the capital and financial reporting rules under the IFR and IFD to the CFTC Capital Rules and CFTC Financial Reporting Rules. As such, the Commission did not assess the comparability of the capital and financial reporting requirements imposed by IFR and IFD on smaller investment firms with the CFTC Capital Rules and CFTC Financial Reporting Rules. Therefore, an EU nonbank SD, or a future EU nonbank SD applicant, that is subject to the IFR and IFD frameworks and seeks substituted compliance for some or all of the CFTC Capital Rules and CFTC Financial Reporting Rules must submit an application to the Commission in accordance with Commission Regulation 23.106.⁴⁵ In addition, as noted above, the three EU nonbank SDs that are currently subject to CRR and CRD, and registered with the Commission, are domiciled in the EU Member States of France and Germany. The Commission's analysis therefore involved an assessment of how certain EU directives were implemented into the national laws of France and Germany. The Commission did not review the implementation of the relevant EU directives in other EU Member States. Therefore, an entity organized and domiciled in an EU Member State other than France or Germany that seeks to register with the Commission as an SD and to comply with some or all of the Commission's capital and financial reporting rules via substituted compliance must submit an application under Commission Regulation 23.106. Commission staff expects that it will engage with such potential entities during the registration process and use the analysis performed during this assessment in performing a comparability assessment of the applicant's home country capital and financial reporting requirements.

As noted above, three of the EU nonbank SDs currently registered with the Commission are subject to CRR and CRD. CRR, as a regulation, is binding in its entirety and directly applicable in all EU Member States.⁴⁶ CRD, as a

directive, was required to be transposed into EU Member States' national law.⁴⁷ France implemented CRD in various provisions of its Monetary and Financial Code ("MFC")⁴⁸ and through several ministerial orders, including Ministerial Order on Capital Buffers⁴⁹ and Ministerial Order on Internal Control.⁵⁰ France also adopted Ministerial Order on Distribution Restrictions⁵¹ and amended relevant national law provisions, including the above-referenced ministerial orders, to implement CRD V.⁵² Germany implemented CRD via amendments to the Banking Act (Kreditwesengesetz, "KWG") and its subordinate statutory instruments.⁵³ In addition, Germany adopted and published the Risk Reduction Act

CRR is directly applicable and binding law in France and Germany, the two EU Member States where EU nonbank SDs are currently organized and operating.

⁴⁷ TFEU, Article 288 (stating that a directive is binding as to the result to be achieved upon each EU Member State to which the directive is addressed, and further provides, however, that each EU Member State elects the form and method of implementing the directive). In this connection, EU Member States were required to implement and start applying amendments to CRD, introduced by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures ("CRD V") by December 29, 2020.

⁴⁸ In particular, MFC, Articles L.511–41 to L.511–50–1 contain provisions relating to prudential requirements applicable to credit institutions. In addition, MFC, Articles L.612–1 to L.612–50 relate to the role, functioning, and powers of the national competent authority.

⁴⁹ Arrêté of 3 November 2014 Relating to Capital Buffers of Banking Services Providers and Investment Firms Other Than Portfolio Management Companies ("Ministerial Order on Capital Buffers").

⁵⁰ Arrêté of 3 November 2014 on Internal Control of Companies in the Banking, Payment Services and Investment Services Sector Subject to the Control of Autorité de Contrôle Prudentiel et de Résolution ("Ministerial Order on Internal Control").

⁵¹ Arrêté of 25 February 2021 Relating to Distribution Restrictions Applicable to Credit Institutions, Financial Companies and Certain Investment Firms.

⁵² Specifically, to implement CRD V, France amended the MFC via Ordinance No. 2020–1635 of December 21, 2020 and Decree No. 2020–1637 of December 22, 2020, with most of the relevant changes becoming effective on December 29, 2020. France also introduced consecutive amendments to Ministerial Order on Capital Buffers and Ministerial Order on Internal Control, with the latest changes effective as of August 1, 2021.

⁵³ Specifically, the KWG includes, among other things, provisions related to capital adequacy requirements, including provisions granting power the Federal Ministry of Finance to issue statutory instruments to provide details on capital adequacy requirements (section 10(1)), provisions specifying the basis for imposing higher capital requirements (section 10(3)), provisions setting forth requirements related to capital buffers (sections 10c to 10i) and provisions describing the powers of the competent authority (sections 6b, 56, 60b).

(Risikoreduzierungs-gesetz, "RiG") on December 14, 2020 to implement CRD V, with most of the relevant changes becoming effective on December 28, 2020. CRR and CRD as implemented in French and German law are collectively referred to hereafter as the "EU Capital Rules" in this Comparability Determination and Comparability Order.

The Applicants also represented that in addition to CRR and CRD, the Bank Recovery and Resolution Directive ("BRRD") includes relevant EU capital requirements.⁵⁴ BRRD establishes a framework for recovery and resolution of credit institutions and investment firms, and mandates that EU Member States require such institutions to satisfy "a minimum requirement for own funds and eligible liabilities" ("MREL") if they meet certain requirements.⁵⁵ France implemented BRRD primarily via amendments to the MFC.⁵⁶ Germany transposed BRRD into national law by the Recovery and Resolution Act (Sanierungs und Abwicklungsgesetz, "SAG").⁵⁷

The Applicants further represent that with respect to supervisory financial reporting, Commission Implementing Regulation (EU) 2021/451 supplements CRR with implementing technical standards ("CRR Reporting ITS")⁵⁸

⁵⁴ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council ("Bank Recovery and Resolution Directive" or "BRRD"). EU Application, p. 5.

⁵⁵ EU Member States were required to transpose BRRD into national law and start applying the implementing measures from January 1, 2015. BRRD, Article 130. BRRD was amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards loss-absorbing and recapitalization capacity of credit institutions and investment firms and Directive 98/26/EC ("Bank Recovery and Resolution Directive II" or "BRRD II") and EU Member States were required to start applying national law measures implementing BRRD II by December 28, 2020. BRRD II, Article 3. BRRD as amended by BRRD II will be referred to as "BRRD" in this document, unless otherwise stated.

⁵⁶ Among other provisions, MFC Article L.613–44 relates in particular to the MREL requirement and Article R.613–46–1 defines the conditions that items and instruments need to meet to qualify as "eligible liabilities."

⁵⁷ In particular, SAG, section 49(1) and (2) relate to the MREL requirement.

⁵⁸ Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and

Continued

discussion with the relevant authorities, it was determined that on March 31, 2024, the entity had to start complying with the capital and financial reporting frameworks of IFR and IFD.

⁴⁵ 17 CFR 23.106. Because the Commission had not assessed the capital and financial reporting frameworks established by IFR and IFD at the time of issuance of the 2023 Proposal, an application for substituted compliance by Goldman Sachs Paris, if one is submitted in accordance with Commission Regulation 23.106, would be addressed separately from this Comparability Determination.

⁴⁶ Consolidated Version of the Treaty on the Functioning of the European Union, OJ (C 326) 171, Oct. 26, 2012 ("TFEU"), Article 288. Accordingly,

specifying, among other things, uniform formats and frequencies for the financial reporting required under CRR.⁵⁹ In addition, the ECB has adopted a regulation setting forth a common minimum set of financial information that should be reported by credit institutions subject to CRR, including EU nonbank SDs, on the basis of the CRR Reporting ITS (“ECB FINREP Regulation”).⁶⁰ The Applicants also represent that Directive 2013/34/EU⁶¹ contains provisions related to financial reporting, including a mandate that entities of a certain size be required to prepare annual audited financial statements and a management report.⁶² CRR, CRR Reporting ITS, ECB FINREP Regulation, relevant provisions of CRD regarding certain notice requirements as implemented in French and German law, and the relevant provisions of the Accounting Directive as implemented in French and German law are collectively referred to hereafter as the “EU Financial Reporting Rules” in this Comparability Determination and Comparability Order.

D. Proposed Comparability Determination and Proposed Comparability Order for EU Nonbank Swap Dealers

On June 27, 2023, the Commission published the 2023 Proposal, seeking comment on the EU Application and the Commission’s proposed Comparability Determination and Comparability Order.⁶³ The 2023 Proposal set forth the Commission’s preliminary Comparability Determination and proposed Comparability Order providing for the conditional availability of substituted compliance with the CFTC Capital Rules and CFTC Financial Reporting Rules for EU nonbank SDs regulated under CRR and CRD and domiciled in either Germany or France, subject to EU nonbank SDs’ compliance with EU laws and regulations, as well as conditions

specified in the proposed Comparability Order.⁶⁴

Based on its review of the EU Application and applicable EU laws and regulations, the Commission preliminarily found that the EU Capital Rules and the EU Financial Reporting Rules, subject to the conditions set forth in the proposed Comparability Order, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules. The Commission, however, noted that there were certain differences between the EU Capital Rules and CFTC Capital Rules and certain differences between the EU Financial Reporting Rules and the CFTC Financial Reporting Rules. As such, the Commission proposed certain conditions to the Comparability Order. The proposed conditions were designed to promote consistency in regulatory outcomes, to reflect the scope of substituted compliance that would be available notwithstanding the differences, and to ensure that the Commission and National Futures Association (“NFA”) receive information to monitor EU nonbank SDs for ongoing compliance with the Comparability Order.⁶⁵ The Commission further stated that, in its preliminary view, the identified differences would not be inconsistent with providing a substituted compliance framework for EU nonbank SDs subject to the conditions specified in the proposed Comparability Order.⁶⁶

⁶⁴ *Id.* at 41807–41810. Consistent with the process specified in section I.B. above for conducting Comparability Determinations, the Commission provided the Applicants with an opportunity to review for factual accuracy and completeness the Commission’s description of relevant EU laws and regulations on which the proposed Comparability Determination and proposed Comparability Order were based. The Commission has relied on the Applicants’ review, and has incorporated feedback and corrections received from the Applicants. As previously noted, a Comparability Determination and Comparability Order based on an inaccurate description of foreign laws and regulations may not be valid.

⁶⁵ NFA is a registered futures association (“RFA”) under section 17 of the CEA (7 U.S.C. 21). Each SD registered with the Commission is required to be an NFA member. 17 CFR 170.16. NFA, as an RFA, is also required by the CEA to adopt rules imposing minimum capital, segregation, and other financial requirements, as applicable, to its members, including SDs, that are at least as stringent as the Commission’s minimum capital, segregation, and other financial requirements for such registrants, and to implement a program to audit and enforce such requirements. 7 U.S.C. 21(p). Therefore, the Commission’s proposed Comparability Order required EU nonbank SDs to file certain financial reports and notices with NFA so that it may perform oversight of such firms as required under section 17 of the CEA. The Commission will refer to NFA in this Comparability Determination when referring to the requirements or obligations of an RFA.

⁶⁶ *Id.* at 41807.

The proposed Comparability Order was limited to the comparison of the EU Capital Rules to the CFTC Capital Rules’ Bank-Based Capital Approach (“Bank-Based Approach”) for computing regulatory capital for nonbank SDs, which is based on certain capital requirements imposed by the Federal Reserve Board for bank holding companies.⁶⁷ As noted by the Commission in the 2023 Proposal, the Applicants had not requested, nor has the Commission performed, a comparison of the EU Capital Rules to the Commission’s TNW Approach or NLA Approach.⁶⁸

E. General Comments on the EU Application and the Commission’s Proposed Finding of Comparability Between the CFTC Capital Rules and CFTC Financial Reporting Rules and the EU Capital Rules and EU Financial Reporting Rules

The public comment period on the EU Application and the proposed Comparability Determination and proposed Comparability Order ended on October 28, 2023. The Commission received three substantive comment letters from interested parties: Better Markets, Inc.; a joint letter from the Applicants; and William J. Harrington.⁶⁹ The Commission received 16 additional non-substantive comments from one

⁶⁷ *Id.* As described in the 2023 Proposal, the CFTC Capital Rules provide nonbank SDs with three alternative capital approaches: (i) the Tangible Net Worth Capital Approach (“TNW Approach”); (ii) the Net Liquid Assets Capital Approach (“NLA Approach”); and (iii) the Bank-Based Approach. See 2023 Proposal at 41780–41782 and 17 CFR 23.101. The Bank-Based Approach is consistent with the Basel Committee on Banking Supervision’s (“BCBS”) international framework for bank capital requirements (“BCBS framework” or “Basel standards”). The BCBS is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Institutions represented on the BCBS include the Federal Reserve Board, the ECB, Deutsche Bundesbank, Bank of England, Bank of France, Bank of Japan, Banco de Mexico, and Bank of Canada. The BCBS framework is available at https://www.bis.org/basel_framework/index.htm.

⁶⁸ See 2023 Proposal at 41784.

⁶⁹ Letter from Cantrell Dumas, Director of Derivatives Policy, Better Markets Inc. (“Better Markets”) (August 28, 2023) (“Better Markets Letter”); Letter from Stephanie Webster, General Counsel, IIB; Steven Kennedy, Global Head of Public Policy, ISDA; Kyle L. Brandon, Managing Director, Head of Derivatives Policy, SIFMA (August 24, 2023) (“Applicants’ Letter”); Letter from William J. Harrington (“Harrington”) (August 28, 2023) (“Harrington 08/28/2023 Letter”). The Commission also received a second letter from the Applicants, dated May 22, 2024, complementing their comments to the 2023 Proposal (“Applicants’ Supplemental Letter”). The comment letters for the 2023 Proposal are available at: https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7397&ctl00_ctl00_cphContentMainMainContent_gvCommentListChangePage=1.

repealing Implementing Regulation (EU) No 680/2014.

⁵⁹ EU Application, p. 21 and Responses to Staff Questions of May 15, 2023.

⁶⁰ Regulation (EU) 2015/534 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information.

⁶¹ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/394/EEC (“Accounting Directive”).

⁶² EU Application, p. 5. Accounting Directive, Articles 4, 19 and 34.

⁶³ 2023 Proposal at 41774.

individual that are not addressed in this Comparability Determination.⁷⁰

The Applicants filed a comment letter generally expressing support for the proposed Comparability Determination and Comparability Order, agreeing with the Commission's overall analysis and determination of comparability of the CFTC Capital Rules and CFTC Financial Reporting Rules and the EU Capital and EU Financial Reporting Rules.⁷¹ The Applicants also included several technical comments, further discussed in section II. below, on the proposed conditions requiring EU nonbank SDs to file a notice with the Commission and the NFA upon the occurrence of certain events.

Conversely, two commenters disagreed with the CFTC's proposed Comparability Determination and proposed Comparability Order.⁷² Better Markets asserted that the principles-based, holistic approach applied by the Commission, which assesses whether the applicable foreign jurisdiction's capital and financial requirements achieve comparable outcomes to the corresponding Commission requirements, "is insufficiently rigorous, leaving far too much room for inaccurate and unwarranted comparability determinations."⁷³

The Commission does not believe that the principles-based, holistic assessment that it conducted on the comparability of the EU Capital Rules and EU Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules was "insufficiently rigorous," nor does the Commission believe that it left "room for inaccurate and unwarranted comparability determinations." The principles-based, holistic approach employed in the Comparability Determination was performed in accordance with the substituted compliance assessment framework adopted by the Commission for capital and financial reporting requirements for

foreign nonbank SDs and set out in Commission Regulation 23.106. Consistent with this assessment framework, the Commission focused on whether the EU Capital Rules and EU Financial Reporting Rules are designed with the objective of ensuring overall safety and soundness of the EU nonbank SDs in a manner that is comparable with the Commission's overall objective of ensuring the safety and soundness of nonbank SDs.

As stated in section I.B. above, when adopting Commission Regulation 23.106, the Commission stated that its approach to substituted compliance is a principles-based, holistic approach that focuses on whether the foreign regulations are designed with the objectives of ensuring the overall safety and soundness of the non-US nonbank SD in a manner that is comparable with the Commission's overall capital and financial reporting requirements, and is not based on a line-by-line assessment or comparison of a foreign jurisdiction's regulatory requirements with the Commission's requirements.⁷⁴

As stated in the 2023 Proposal, due to the detailed and complex nature of the capital frameworks, differences in how jurisdictions approach and implement the requirements are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS framework.⁷⁵ Furthermore, as discussed in section I.B. above, the Commission stated when adopting Commission Regulation 23.106 that its approach to substituted compliance is a principles-based, holistic approach that focuses on whether the foreign regulations are designed with the objectives of ensuring the overall safety and soundness of the non-US nonbank SD in a manner that is comparable with the Commission's overall capital and financial reporting requirements, and is not based on a line-by-line assessment or comparison of a foreign jurisdiction's regulatory requirements with the Commission's requirements.⁷⁶

The approach and standards contained in Commission Regulation 23.106, with the focus on "comparable outcomes," are also consistent with the Commission's precedents of undertaking a principles-based, holistic assessment of the comparability of foreign regulatory regimes for purposes of substituted compliance for cross-border swap transactions. The Commission first outlined its approach to substituted compliance with respect

to swaps requirements in 2013, when it issued an Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations.⁷⁷ In the Guidance, the Commission stated that in evaluating whether a particular category of foreign regulatory requirement(s) is comparable and comprehensive to the applicable requirement(s) under the CEA and Commission regulations, the Commission will take into consideration all relevant factors, including but not limited to, the comprehensiveness of those requirement(s), the scope and objectives of the relevant regulatory requirement(s), the comprehensiveness of the foreign regulator's supervisory compliance program, as well as the home jurisdiction's authority to support and enforce its oversight of the registrant.⁷⁸ The Commission emphasized that in this context, "comparable does not necessarily mean identical."⁷⁹ Rather, the Commission stated that it would evaluate whether the home jurisdiction's regulatory requirement is comparable to, and as comprehensive as, the corresponding U.S. regulatory requirement(s).⁸⁰ In conducting comparability determinations based on the policy set forth in the Guidance, the Commission noted that the "outcome-based" approach recognizes that foreign regulatory systems differ and their approaches vary and may differ from how the Commission chose to address an issue, but that the foreign jurisdiction's regulatory requirements nonetheless achieve the regulatory outcome sought to be achieved by a certain provision of the CEA or Commission regulation.⁸¹

The Commission further elaborated on the required elements of comparability in 2016, when it issued final rules to address the cross-border application of the Commission's margin requirements for uncleared swap transactions. Specifically, the Commission stated that its substituted compliance approach reflects an outcome-based assessment of the comparability of a foreign jurisdiction's margin requirements with the Commission's corresponding

⁷⁰ The non-substantive comments are also available on the Commission's website at: https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7397&tl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=1.

⁷¹ Applicants' Letter at p. 2.

⁷² Better Markets Letter at p. 2; Harrington 08/28/2023 Letter at pp. 3–4 (referencing a separate submission to the Commission, dated October 20, 2022, in connection with the Commission's *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination From the Financial Services Agency of Japan*, 87 FR 48092, (August 8, 2022), and asserting, as further discussed below, that the Commission should condition the Comparability Determination on a prohibition against EU nonbank SDs' entering into swap contracts with certain specified features).

⁷³ Better Markets Letter at p. 3.

⁷⁴ 85 FR 57462 at 57521.

⁷⁵ See 2023 Proposal at 41785.

⁷⁶ 85 FR 57462 at 57521.

⁷⁷ *Interpretative Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations*, 78 FR 45292 (July 26, 2013) ("Guidance").

⁷⁸ Guidance at 45343.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See e.g., *Comparability Determination for the European Union: Certain Entity-Level Requirements*, 78 FR 78923 (December 27, 2013) at 78926.

requirements.⁸² The Commission further stated that it would evaluate the objectives and outcomes of the foreign margin requirements in light of foreign regulator(s)' supervisory and enforcement authority.⁸³ Consistent with its previously stated position, the Commission recognized that jurisdictions may adopt different approaches to achieving the same outcome and, therefore, the assessment would focus on whether the foreign jurisdiction's margin requirements are comparable to the Commission's in purpose and effect, not whether they are comparable in every aspect or contain identical elements.⁸⁴ The Commission's policy thus reflects an understanding that a line-by-line evaluation of a foreign jurisdiction's regulatory regime is not the optimum approach to assessing the comparability of complex structures whose individual components may differ based on jurisdiction-specific considerations, but which achieve the objective and outcomes set forth in the Commission's framework.

With respect to the EU Application, the process leading to the Commission's Comparability Determination involved Commission staff reviewing relevant EU laws, rules, and regulations cited in the EU Application, including relevant French and German provisions implementing EU laws, rules, and regulations into the national regulatory frameworks of the two EU Member States. Staff verified the assertions and citations contained in the EU Application regarding the specific EU Capital Rules and EU Financial Reporting Rules to the relevant EU laws, rules, and regulations.⁸⁵ Where necessary, staff obtained English language translations of French and German implementing provisions to further confirm statements in the EU Application or to confirm the full implementation of EU directives in the applicable EU Member State's laws and regulatory framework.

Commission staff also evaluated the comparability of the EU Capital Rules and EU Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules with respect to the following areas: (i) the process of establishing minimum capital

requirements for EU nonbank SDs and how such process addresses risk, including market risk and credit risk of the EU nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting an EU nonbank SD's minimum capital requirements; (iii) the financial reports and other financial information submitted by an EU nonbank SD to its relevant competent authorities, and whether such information provides the competent authorities with the means necessary to effectively monitor the financial condition of the EU nonbank SD; and (iv) the regulatory notices and other communications between an EU nonbank SD and its relevant competent authorities that address potential adverse financial or operational issues that may impact the firm.⁸⁶ With respect to the ability of the relevant competent authorities to supervise and enforce compliance with the EU Capital Rules and EU Financial Reporting Rules, the Commission's assessment included a review of the competent authorities' surveillance program for monitoring compliance by EU nonbank SDs with the EU Capital Rules and EU Financial Reporting Rules, and the disciplinary process imposed on firms that fail to comply with such requirements.⁸⁷ Contrary to the position articulated by Better Markets regarding the nature of the comparability assessment, the Commission believes that the principles-based, holistic assessment of the EU Capital Rules and EU Financial Reporting Rules against the CFTC Capital Rules and CFTC Financial Reporting Rules, as outlined above and discussed in detail in section II below, was sufficiently rigorous for purposes of determining if the EU laws and regulations are comparable in purpose and effect to the CEA and Commission regulations.

Better Markets further asserted that even under a principles-based, holistic approach, the EU capital and financial reporting requirements for EU nonbank SDs do not satisfy the test for an order granting substituted compliance because the EU's regulatory framework governing capital and financial reporting is not comparable to the corresponding CFTC requirements.⁸⁸ Better Markets cited the Commission's inclusion of conditions in the proposed Comparability Order as demonstrating the Commission's need "to compensate for the acknowledged gaps in the EU framework" and as a "de facto

admission that the regulations are not comparable and that the [EU Application] should be denied."⁸⁹ Better Markets claimed that the Commission proposed 12 filing requirements that must be met as a condition for the comparability determination, and stated that the Commission was not conducting a comparability assessment, but was engaging in a "de facto rewriting" of the EU's laws and rules in the form of conditions.⁹⁰

The Commission disagrees that the inclusion of conditions in the Comparability Order precludes a finding of comparability with respect to the EU Capital Rules and EU Financial Reporting Rules. The Commission's comparability assessment process, consistent with the holistic approach, contemplates the potential need for a Comparability Order to contain conditions. Specifically, Commission Regulation 23.106(a)(5) states that the Commission may impose any terms and conditions it deems appropriate in issuing a Comparability Order, including conditions with respect to capital adequacy and financial reporting requirements of non-U.S. nonbank SDs.⁹¹

The process employed in this Comparability Determination is consistent with the Commission's established approach to conducting comparability assessments. Upon a finding of comparability, the Commission's policy generally is that eligible entities may comply with a substituted compliance regime subject to the conditions the Commission places on its finding, and subject to the Commission's retention of its examination authority and its enforcement authority.⁹² In this regard, the Commission has stated that certain conditions included in a Comparability Order may be designed to ensure the

⁸⁹ *Id.* at pp. 2 and 4.

⁹⁰ *Id.* at p. 2.

⁹¹ 17 CFR 23.106(a)(5), which provides that in issuing a Capital Comparability Determination, the Commission may impose *any terms and conditions it deems appropriate*, including certain capital adequacy and financial reporting requirements on swap dealers (emphasis added). Commission Regulation 23.106(a)(3) establishes the Commission's standard of review for performing a Comparability Determination and provides that the Commission may consider all relevant factors, including whether the relevant foreign jurisdiction's capital adequacy and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital adequacy and financial reporting requirements for SDs. 17 CFR 23.106(a)(3)(ii).

⁹² 85 FR 57462 at 57520. See also Guidance at 45342–45344 and *Comparability Determination for the European Union: Certain Transaction Level Requirements*, 78 FR 78878 (December 27, 2013) at 78880.

⁸² *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements*, 81 FR 34817, 34836–34837 (May 31, 2016).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Staff also reviewed various documents relevant to the proposed Comparability Determination and proposed Comparability Order published by the competent authorities in English and/or French.

⁸⁶ 2023 Proposal, at 41784–41805.

⁸⁷ *Id.* at 41805–41807.

⁸⁸ Better Markets Letter at pp. 3–4.

Commission's direct access to books and records required to be maintained by an SD registered with the Commission.⁹³ Other conditions may address areas where the foreign jurisdiction lacks analogous requirements.⁹⁴ The inclusion of conditions in a Comparability Order was contemplated as an integral part of the Commission's holistic, principles-based approach to conducting comparability assessments and is not inconsistent with a grant of substituted compliance.

In particular, Commission Regulation 23.106(a)(5) states the Commission's authority to impose conditions in issuing a Comparability Determination in connection with the CFTC Capital Rules and the CFTC Financial Reporting Rules. As further discussed below, the conditions proposed in the 2023 Proposal are clearly of the nature contemplated by Commission Regulation 23.106(a)(5).

The Commission also does not believe that the inclusion of the conditions in the Comparability Order reflects a "rewriting" of the EU laws and regulations as asserted by Better Markets. Consistent with the Commission's policy described above, a majority of the conditions contained in the Comparability Order are designed to ensure that: (i) the EU nonbank SD is eligible for substituted compliance based on the laws and regulations of the EU and the relevant EU Member States that were reviewed by the Commission in performing the comparability assessment, and (ii) the Commission and NFA receive timely financial information and notices to effectively monitor an EU nonbank SD's compliance with the Comparability Order and to assess the ongoing safety and soundness of the EU nonbank SD. Specifically, there are 26 conditions in the final Comparability Order. Seven conditions set forth criteria that an EU nonbank SD must meet to be eligible for substituted compliance pursuant to the Comparability Order.⁹⁵ The seven

conditions ensure that only EU nonbank SDs that are within the scope of, and comply with, the EU Capital Rules and EU Financial Reporting Rules that were part of the Commission's comparability assessment may apply for substituted compliance.

Ten additional conditions require EU nonbank SDs within the scope of the Comparability Order to provide notice to the Commission and NFA of certain defined events,⁹⁶ and a further two conditions require EU nonbank SDs to file with the Commission and NFA copies of certain unaudited and audited financial reports that the firms provide to their respective competent authorities.⁹⁷ In addition, two additional conditions reflect administrative matters necessary to implement the substituted compliance framework.⁹⁸ Lastly, five conditions

(Condition 6); and (vii) is subject to prudential supervision by an EU Member State's supervisory authority with jurisdiction to enforce the requirements of the EU Capital Rules and the EU Financial Reporting Rules (Condition 7).

⁹⁶ The ten conditions require an EU nonbank SD to provide notice to the Commission in the event that the firm: (i) is informed by the relevant competent authority that it failed to comply with any component of the EU Capital Rules or EU Financial Reporting Rules (Condition 16); (ii) fails to maintain a minimum level of common equity tier 1 capital equal to or in excess of the equivalent of \$20 million (Condition 17); (iii) breaches its combined capital buffer requirement and is required to file a capital conservation plan with the relevant competent authority (Condition 18); (iv) is required by a competent authority to maintain additional capital or additional liquidity (Condition 19); (v) fails to meet the required MREL requirement (Condition 20); (vi) experiences a 30 percent or more decrease in its excess regulatory capital (Condition 21); (vii) fails to make or keep current financial books and records (Condition 22); (viii) fails to post or collect margin for uncleared swaps and non-cleared security-based swaps with one or more counterparties in amounts that exceed defined limits (Condition 23); (ix) changes its fiscal year-end date (Condition 24); and (x) is subject to material changes to the EU Capital Rules, EU Financial Reporting Rules, or the supervisory authority of the ECB or relevant Member State competent authority (Condition 25).

⁹⁷ The two conditions provide that an EU nonbank SD must file with the Commission and NFA: (i) a copy of SEC Form X-17A-5 ("FOCUS Report") that the EU nonbank SD files with the U.S. Securities and Exchange Commission ("SEC") or English language copies of certain financial reporting templates that the EU nonbank SD is required to submit to the relevant competent authorities pursuant to the CRR Reporting ITS or the ECB FINREP regulation, as applicable (Condition 11); and (ii) English language copies of its annual audited financial statements and management report that are required to be prepared and published pursuant to the Accounting Directive as implemented in the national laws of France and Germany (Condition 12).

⁹⁸ One of the administrative conditions provides that an EU nonbank SD must provide a notice to the Commission of its intent to comply with the Comparability Order and the EU Capital Rules and EU Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Financial Reporting Rules. The notice must include the EU nonbank SD's

impose obligations on EU nonbank SDs that align with certain of the Commission's requirements for nonbank SDs. The five conditions require an EU nonbank SD to: (i) maintain a minimum of \$20 million of common equity tier 1 capital (Condition 8); (ii) prepare and keep current financial books and records (Condition 10); (iii) file a monthly schedule of the firm's financial positions on Schedule 1 of appendix B to Subpart E of part 23 of the Commission's regulations (Condition 13); (iv) file a monthly report listing the custodians holding margin posted by, and collected by, the EU nonbank SD, the amount of margin held by each custodian, and the aggregate amount of margin required to be posted and collected by the EU nonbank SD (Condition 15); and (v) submit, with each filing of financial information, a statement by an authorized representative that, to the best knowledge and belief of the person making the representation, the information is true and correct (Condition 14).

As the substance of these conditions demonstrates, the primary objective of a majority of the conditions is not to compensate for regulatory gaps in the EU capital and financial reporting framework but rather to ensure that the Commission and NFA receive information to conduct ongoing monitoring of EU nonbank SDs for compliance with relevant capital and financial reporting requirements. As discussed above, in issuing the Comparability Order, the Commission is not ceding its supervisory and enforcement authorities. The Comparability Order permits EU nonbank SDs to satisfy the Commission's capital and financial reporting requirements by complying with certain laws and/or regulations of the EU that have been found to be comparable to the Commission's laws and/or regulations in purpose and effect. The Commission and NFA, however, have a continuing obligation to conduct ongoing oversight, including potential examination, of EU nonbank SDs that operate under a Comparability Order to ensure compliance with the Comparability Order, including its conditions. To that effect, the notice and financial reporting conditions set forth

representation that the firm is organized and domiciled in an EU Member State, is a licensed investment firm or a credit institution, and is subject to, and complies with, the EU Capital Rules and the EU Financial Reporting Rules (Condition 9). The second administrative condition provides that an EU nonbank SD must file any documents with the Commission and NFA via electronic transmission (Condition 26).

⁹³ *Comparability Determination for the European Union: Certain Transaction Level Requirements*, 78 FR 78878 (December 27, 2013) at 78880.

⁹⁴ Guidance at 45343.

⁹⁵ The seven criteria provide that the EU nonbank SD: (i) is not subject to capital rules of a U.S. prudential regulator (Condition 1); (ii) is organized and domiciled in France or Germany (Condition 2); (iii) is licensed as a credit institution or an investment firm in an EU Member State (Condition 3); (iv) is subject to CRR and CRD as implemented in France or Germany, as applicable (Condition 4); (v) satisfies at all times applicable CRR capital ratios and leverage ratios, satisfies CRD capital conservation buffer ratios, and maintains a liquidity risk management program as required under CRD (Condition 5); (vi) is subject to and complies with the EU financial reporting requirements that are part of the Commission's comparability assessment

in the Comparability Order provide the Commission and NFA with information necessary to monitor for such compliance and to evaluate the operational condition and ongoing financial condition of EU nonbank SDs. The Commission may also initiate an enforcement action against an EU nonbank SD that fails to comply with the conditions of the Comparability Order.⁹⁹

Furthermore, to the extent that a condition imposes a new obligation on EU nonbank SDs, the imposition of such condition is also consistent with Commission Regulation 23.106 and the Commission's established policy with regard to comparability determinations. As discussed above, the Commission contemplated that even in circumstances where the Commission finds two regulatory regimes comparable, the Commission may impose requirements on entities relying on substituted compliance where the Commission determines that the home jurisdiction's regime lacks comparable and comprehensive regulation on a specific issue.¹⁰⁰ The Commission's authority to impose such conditions is set out in Commission Regulation 23.106(a)(5), which states that the Commission may impose "any terms and conditions it deems appropriate, including certain capital adequacy and financial reporting requirements [on SDs]." ¹⁰¹

Better Markets further stated that, if the Commission grants substituted compliance with regard to materially different regulatory requirements, it must make a well-supported, evidence-based determination that those different requirements nevertheless will, in fact, lead to comparable regulatory outcomes.¹⁰² Better Markets further asserted that "[a] determination that a foreign jurisdiction's nonbank SDs rules would produce comparable regulatory outcomes is the beginning, not the end,

of the CFTC's obligation to ensure that the activities of the foreign nonbank SD entities do not pose risks to the U.S. financial system. As time goes on, regulatory requirements that, in theory, are expected to produce one regulatory outcome may, in practice, produce a different one. And, of course, the regulatory requirements may themselves be changed in a variety of ways. Finally, the effectiveness of an authority's supervision and enforcement program can become weakened for any number of reasons—the CFTC cannot assume that an enforcement program that is presently effective will continue to be effective.” ¹⁰³ Better Markets further asserted that to fulfill its obligation to protect the U.S. financial system, the Commission must ensure, on an ongoing basis, that each grant of substituted compliance remains appropriate over time by requiring, at a minimum, each Comparability Order, and each MOU with a foreign regulatory authority, to impose an obligation on the applicant, as appropriate, to: (i) periodically apprise the Commission of the activities and results of its supervision and enforcement programs, to ensure that they remain sufficiently robust to deter and address violations of the law; and (ii) immediately apprise the Commission of any material changes to the regulatory regime, including changes to rules or changes to how rules are interpreted, applied, or enforced.¹⁰⁴ Finally, Better Markets stated that if the Commission proceeds to finalize the Comparability Order, it must, at a minimum, ensure that the conditions are robustly maintained and enforced.¹⁰⁵

Although the Commission disagrees that the EU Capital Rules and the EU Financial Reporting Rules, as a whole, are materially different or do not achieve comparable outcomes, the Commission concurs that granting substituted compliance should be the result of a well-supported comparability assessment. Consistent with that view, the Commission believes that this final Comparability Determination articulates the Commission's analysis in sufficient detail and provides an appropriate explanation of how the foreign jurisdiction's requirements are comparable in purpose and effect with the Commission's requirements, and lead to comparable regulatory outcomes with the Commission's requirements. Specifically, section III of the 2023 Proposal and section II of the final Comparability Determination reflect,

among other observations, the Commission's detailed analysis with respect to each of the elements for consideration listed in Commission Regulation 23.106(a)(3).

The Commission also concurs that the availability of substituted compliance is conditioned upon a non-US nonbank SD's ongoing compliance with the terms and conditions of the final Comparability Order, and the Commission's ongoing assessment that the EU Capital Rules and EU Financial Reporting Rules remain comparable in purpose and effect with the CFTC Capital Rules and CFTC Financial Reporting Rules. As noted above, and discussed in more detail in sections II.D. and E. below, EU nonbank SDs are subject to notice and financial reporting requirements under the final Comparability Order that provide Commission and NFA staff with the ability to monitor the EU nonbank SDs' ongoing compliance with the conditions set forth in the final Comparability Order. In addition, the final Comparability Order requires an EU nonbank SD, or an entity acting on its behalf, to inform the Commission of changes to the relevant EU Capital Rules and EU Financial Reporting Rules so that the Commission may assess the continued effectiveness of the Comparability Order in ensuring that the EU laws and regulations have the comparable regulatory objectives of the CEA and Commission regulations of ensuring the safety and soundness of nonbank SDs.¹⁰⁶ Commission staff will also monitor the EU nonbank SDs directly as part of its supervisory program and will discuss with the firms any proposed or pending revisions to specific laws and rules cited in the final Comparability Order. Lastly, in addition to assessing the effectiveness of the Comparability Order as a result of revisions or proposed revisions to the EU laws, regulations, or supervisory regime, the Commission further notes that future material changes to the CFTC Capital Rules or CFTC Financial Reporting Rules, or the Commission's or NFA's supervisory programs, may necessitate an amendment to the

⁹⁹ As the Commission stated in the 2023 Proposal, a non-U.S. nonbank SD that operates under a Comparability Order issued by the Commission remains subject to the Commission's examination and enforcement authority. Specifically, the Commission may initiate an enforcement action against a non-U.S. nonbank SD that fails to comply with its home-country capital adequacy and/or financial reporting requirements cited in a Comparability Order. See 2023 Proposal at 41777. See also, 17 CFR 23.106(a)(4)(ii), which provides that the Commission may examine all nonbank SDs, regardless of whether the nonbank SDs rely on substituted compliance, and that the Commission may initiate an enforcement action under the Commission's capital and financial reporting regulations against a non-U.S. nonbank SD that fails to comply with a foreign jurisdiction's capital adequacy and financial reporting requirements.

¹⁰⁰ Guidance at 45343.

¹⁰¹ 17 CFR 23.106(a)(5).

¹⁰² Better Markets at p. 8.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at pp. 8–9.

¹⁰⁵ *Id.* at p. 14.

¹⁰⁶ Condition 25 of the final Comparability Order requires an EU nonbank SD, or an entity acting on its behalf, to notify the Commission of any material changes to the information submitted in its application, including, but not limited to, proposed and final material changes to the EU Capital Rules or EU Financial Reporting Rules and proposed and final material changes to the ECB's or the relevant EU Member State competent authority's supervisory authority or supervisory regime over EU nonbank SDs. The Commission notes that it made certain non-substantive, clarifying changes to the language of final Condition 25 as compared to proposed Condition 25.

Comparability Determination and Comparability Order to reflect those changes.¹⁰⁷

Another commenter, Harrington, stated that the Commission must condition the Comparability Order on an “outright prohibition against regulated entities providing [swap contracts that include a “flip clause”].”¹⁰⁸ Harrington has elsewhere referred to a description of a “flip clause” as a provision in swap contracts with structured debt issuers that reverses or “flips” the priority of payment obligations owed to the swap counterparty on the one hand and the noteholders on the other, following a specified event of default.¹⁰⁹ Based on Harrington’s description, flip clauses present a risk to the SD in synthetic transactions where payments under a swap contract are secured with the same collateral that would serve to cover payments under the notes issued by a structured debt issuer. In such circumstances, an “event of default” by the SD would cause the SD’s priority of payment from the collateral under a swap to “flip” to a more junior priority position, including for mark-to-market gains on “in the money” swaps.¹¹⁰ Harrington argued that each swap contract with a flip clause generates a “gaping credit exposure” for EU or other non-U.S. SDs.¹¹¹ Harrington recognized, however, that the CFTC margin requirements for uncleared swap transactions address his concerns associated with the inclusion of a flip clause.¹¹² Nonetheless, according to Harrington, risks arise in circumstances when non-U.S. margin rules exempt SDs from margin obligations in connection with swaps with a structured debt issuer.¹¹³

The Commission recognizes that given some definitional differences and differences in the activity thresholds with respect to the scope of application of the CFTC margin requirements and non-U.S. margin requirements, some transactions that are subject to the CFTC margin requirements for uncleared swaps may not be subject to margin requirements in another jurisdiction. In connection with this Comparability Determination, however, the Commission notes that both under the CFTC Capital Rules and the EU Capital Rules, uncollateralized exposures from uncleared swap transactions would generate a higher counterparty credit risk amount than the exposures resulting from transactions under which the counterparties have posted collateral.¹¹⁴ Accordingly, the Commission does not believe that the respective sets of rules adopt a conflicting approach or lead to a disparate outcome with respect to the capital treatment of uncollateralized uncleared swap exposures that would warrant a finding of non-comparability of the CFTC Capital Rules and the EU Capital Rules.

With regard to Harrington’s general recommendations, also included in his comments in connection with the adoption of the CFTC Capital Rules, that the Commission impose additional capital charges for swap contracts with a flip clause,¹¹⁵ the Commission notes that any change in its approach, if deemed appropriate, would be addressed separately from the Comparability Determination. As the Commission stated in adopting the CFTC Capital Rules, over time the Commission may consider adjusting the capital charges applicable to nonbank SDs that engage in bespoke swap transactions, including contracts involving flip clauses, as a result of its experience and as market developments may warrant.¹¹⁶ If the Commission proceeds with adjustments to the CFTC

Capital Rules, the Commission may reconsider the comparability between the CFTC Capital Rules and the EU Capital Rules in light of these changes.

II. Final Capital and Financial Reporting Comparability Determination and Comparability Order

The following section provides the Commission’s comparative analysis of the EU Capital Rules and the EU Financial Reporting Rules with the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules, as described in the 2023 Proposal, further modified to address comments received. As emphasized in the 2023 Proposal, the capital and financial reporting regimes are complex structures comprised of a number of interrelated regulatory components.¹¹⁷ Differences in how jurisdictions approach and implement these regimes are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS framework.

The Commission performed the analysis by assessing the comparability of the EU Capital Rules for EU nonbank SDs as set forth in the EU Application and in the English language translation of certain applicable EU laws and regulations with the Commission’s Bank-Based Approach for nonbank SDs. The Commission understands that three of the four EU nonbank SDs addressed by the EU Application, as of the date of the final Comparability Determination, are subject to a bank-based capital approach under the EU Capital Rules. A fourth entity, which at the time of issuance of the 2023 Proposal was subject to the regulatory framework applicable to the other three entities, began applying, as of March 31, 2024, different capital and financial reporting requirements, applicable to smaller investment firms in the EU.¹¹⁸ The Applicants have not described, and the Commission has not assessed, the EU or Member State capital and financial reporting requirements for smaller investment firms. Accordingly, when the Commission makes its final determination herein about the comparability of the EU Capital Rules with the CFTC Capital Rules, the determination pertains to the comparability of the EU Capital Rules

¹⁰⁷ 2023 Proposal at 41785 (n. 135).

¹⁰⁸ Harrington 08/28/2023 Letter at p. 3. Harrington submitted the Harrington 08/28/2023 Letter as a supplement to a previously submitted comment letter, dated October 20, 2022 (“Harrington 10/20/2022 Letter”), filed in connection with the Commission’s Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination From the Financial Services Agency of Japan, 87 FR 48092, (August 8, 2022)).

¹⁰⁹ William J. Harrington, *Submission to the U.S. Securities and Exchange Commission Re: File No. S7-08-12* (Nov. 19, 2018) at p. 8.

¹¹⁰ For additional information on the legal mechanics of a flip clause, see *Lehman Brothers Special Financing Inc v. Bank of America N.A.*, No. 18–1079 (2nd Cir. 2020).

¹¹¹ Harrington 08/28/2023 Letter at p. 6.

¹¹² Harrington 10/20/2022 Letter at p. 3 (noting that the requirement for SDs to post and collect variation margin for swap contracts with a securitization or structured debt issuer “generates the immense benefit of inducing U.S. securitization and structured debt issuers to forswear all swap contracts, both with and without a flip clause”).

¹¹³ Harrington 10/20/2022 Letter at p. 3 (arguing that “non-U.S. swap margin rules de facto exempt

a swap provider from collecting or posting variation margin under a new contract with most securitization and structured debt issuers”).

¹¹⁴ 12 CFR 217.34 and 12 CFR 217.132 (indicating that nonbank SDs may recognize the risk-mitigating effects of financial collateral for collateralized derivatives contracts) and CRR, Articles 274–275 (similarly indicating that EU nonbank SDs are allowed to recognize the risk-mitigating effect of collateral by deducting the amount of collateral from the replacement cost component of the exposure value calculation).

¹¹⁵ Harrington 10/20/2022 Letter at p. 24.

¹¹⁶ 85 FR 57462 at 57475. As stated in the adopting release to the CFTC Capital Rules, the Commission considered that its rules were appropriately calibrated to account for a wide variety of possible uncleared swap transactions, including bespoke transactions involving flip clauses or other unique features. See *id.*

¹¹⁷ See 2023 Proposal at 41785. BofA Securities Europe SA, Citigroup Global Markets Europe AG and Morgan Stanley Europe SE remain subject to the bank-based capital requirements established by CRR and CRD.

¹¹⁸ As noted above, Goldman Sachs Paris was required by its applicable regulatory authority to start applying the capital and financial reporting requirements established by IFR and IFD as of March 31, 2024.

with the Bank-Based Approach under the CFTC Capital Rules.

The Commission notes that any material changes to the information submitted in the EU Application, including, but not limited to, proposed and final material changes to the EU Capital Rules or EU Financial Reporting Rules, as well as any proposed and final material changes to the applicable supervisory authority or supervisory regime, will require notification to the Commission and NFA pursuant to Condition 25 of the final Comparability Order.¹¹⁹ Therefore, if there are subsequent material changes to the EU Capital Rules, EU Financial Reporting Rules, or the supervisory authority or supervisory regime, the Commission will review and assess the impact of such changes on the final Comparability Determination and Comparability Order as they are then in effect, and may amend or supplement the Comparability Order as appropriate.¹²⁰

A. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules and EU Capital Rules and EU Financial Reporting Rules

1. Preliminary Determination

As reflected in the 2023 Proposal and discussed above, the Commission preliminarily determined that the overall objectives of the EU Capital Rules and the CFTC Capital Rules are comparable in that both sets of rules are intended to ensure the safety and soundness of nonbank SDs by establishing regulatory regimes that require nonbank SDs to maintain a sufficient amount of qualifying regulatory capital to absorb losses, including losses from swaps and other trading activities, and to absorb decreases in the value of firm assets and increases in the value of firm liabilities

without the nonbank SDs becoming insolvent.¹²¹ The Commission further noted that the EU Capital Rules and CFTC Capital Rules are based on, and consistent with, the BCBS framework, which was designed to ensure that banking entities hold sufficient levels of capital to absorb losses and decreases in the value of firm assets and increases in the value of firm liabilities without the banks becoming insolvent.¹²²

The Commission also preliminarily found that the EU Capital Rules are comparable in purpose and effect to the CFTC Capital Rules given that both regulatory approaches compute the minimum capital requirements based on the level of a nonbank SD's on-balance sheet and off-balance sheet exposures, with the objective and purpose of ensuring that the nonbank SD's capital is adequate to absorb losses or decreases in the value of firm assets or increases in the value of firm liabilities resulting from such exposures. The Commission observed that the EU Capital Rules and CFTC Capital Rules provide for a comparable approach to the calculation of market risk and credit risk exposures using standardized or internal model-based approaches.¹²³ In addition, as discussed in the 2023 Proposal, the EU Capital Rules' and CFTC Capital Rules' requirements for identifying and measuring on-balance sheet and off-balance sheet exposures under standardized or internal model-based approaches are also consistent with the requirements set forth under the BCBS framework for identifying and measuring on-balance sheet and off-balance sheet exposures.¹²⁴

Finally, the Commission preliminarily noted that the EU Capital Rules and CFTC Capital Rules further achieve comparable outcomes and are comparable in purpose and effect in that both sets of rules limit the types of capital instruments that qualify as regulatory capital to cover the on-balance sheet and off-balance sheet risk exposures to high quality equity capital and qualifying subordinated debt instruments that meet conditions designed to ensure that the holders of the debt have effectively subordinated their claims to other creditors of the nonbank SD.¹²⁵ As discussed in the 2023 Proposal and in section II.B.

below, both the EU Capital Rules and the CFTC Capital Rules define high quality capital by the degree to which the capital represents permanent capital that is contributed, or readily available to a nonbank SD, on an unrestricted basis to absorb unexpected losses, including losses from swaps trading and other activities, without the nonbank SD becoming insolvent.¹²⁶

The Commission further stated that it preliminarily found the EU Financial Reporting Rules to be comparable in purpose and effect to the CFTC Financial Reporting Rules as both the EU and CFTC require nonbank SDs to file periodic financial reports, including unaudited financial reports and an annual audited financial report, detailing their financial operations and demonstrating their compliance with minimum capital requirements.¹²⁷ As discussed in the 2023 Proposal, in addition to providing the CFTC and EU competent authorities with information necessary to comprehensively assess the financial condition of a nonbank SD on an ongoing basis, the financial reports further provide the CFTC and EU competent authorities with information regarding potential changes in a nonbank SD's risk profile by disclosing changes in account balances reported over a period of time.¹²⁸ Such changes in account balances may indicate, among other things, that the nonbank SD has entered into new lines of business, has increased its activity in an existing line of business relative to other activities, or has terminated a previous line of business.¹²⁹

In assessing the comparability between the CFTC Financial Reporting Rules and the EU Financial Reporting Rules, the Commission noted that the prompt and effective monitoring of the financial condition of nonbank SDs through the receipt and review of periodic financial reports supports the Commission and EU competent authorities in meeting their respective objectives of ensuring the safety and soundness of nonbank SDs. In this regard, the Commission stated that the early identification of potential financial issues provides the Commission and EU authorities with an opportunity to address such issues with the nonbank SD before they develop to a state where the financial condition of the firm is impaired such that it may no longer hold a sufficient amount of qualifying regulatory capital to absorb decreases in the value of firm assets, absorb increases

¹¹⁹ See Condition 25 of the final Comparability Order. The Commission notes that it made certain non-substantive, clarifying changes to the language of final Condition 25 as compared to proposed Condition 25.

¹²⁰ See 2023 Proposal at 41785. As stated in the 2023 Proposal, the Commission may also amend or supplement the final Comparability Order to address any material changes to the CFTC Capital Rules and CFTC Financial Reporting Rules, including rule amendments to capital rules of the Federal Reserve Board that are incorporated into the CFTC Capital Rules' Bank-Based Approach under Commission Regulation 23.101(a)(1)(i), that are adopted after the final Comparability Order is issued. See *id.* (n. 135). The Commission is aware that the EU is in the process of adopting changes to the EU Capital Rules to implement the final elements of the Basel standards. See European Parliament, Legislative Observatory [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0342\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0342(COD)&l=en). The Commission will monitor progress on the regulatory changes and may amend or supplement the Comparability Order, as appropriate.

¹²¹ See 2023 Proposal at 41786.

¹²² The BCBS's mandate is to strengthen the regulation, supervision and practices of banks with the purpose of enhancing financial stability. See *Basel Committee Charter* available on the Bank for International Settlement website: www.bis.org/bcbs/charter.htm. See 2023 Proposal at 41786.

¹²³ 2023 Proposal at 41794–41795.

¹²⁴ *Id.*

¹²⁵ 2023 Proposal at 41788.

¹²⁶ *Id.*

¹²⁷ *Id.* at 48100.

¹²⁸ *Id.*

¹²⁹ *Id.*

in the value of firm liabilities, or cover losses from its business activities, including the firm's swap dealing activities and obligations to swap counterparties.¹³⁰

2. Comment Analysis and Final Determination

In response to the Commission's request for comment, Better Markets identified certain differences between the CFTC Capital Rules and Financial Reporting Rules and the EU Capital Rules and Financial Reporting Rules and stated that the differences mandated denial of the request for a comparability determination.¹³¹ Better Markets further stated that the imposition of conditions to achieve comparability between the regimes implicitly concedes that the regimes are not comparable, and is suboptimal and undesirable, as it creates a set of capital and reporting requirements that EU nonbank SDs must abide by and that the CFTC must monitor.¹³²

As described herein and in the 2023 Proposal, Commission staff has engaged in a detailed, comprehensive study and evaluation of the EU capital and financial reporting framework and has confirmed that its understanding of the elements and application of the framework is accurate. The Commission has also concluded, based on its evaluation, that the EU framework includes a comprehensive oversight program for monitoring EU nonbank SD's compliance with relevant EU Capital Rules.

Furthermore, as discussed in section I.E. above, the conditions set forth in the Comparability Order are generally intended to ensure that: (i) only EU nonbank SDs that are subject to the laws and regulations assessed under the Comparability Determination are eligible for substituted compliance; (ii) the EU nonbank SDs are subject to supervision by the relevant competent authority; and (iii) the EU nonbank SDs provide information to the Commission and NFA that is relevant to the ongoing supervision of their operations and financial condition. Considering this thorough analysis and the ongoing requirement for EU nonbank SDs to provide information to the Commission and NFA demonstrating compliance with the Comparability Order, the Commission is confident that it is capable of effectively conducting, together with NFA, oversight of the EU nonbank SDs consistent with the conduct of oversight of U.S.-domiciled

nonbank SDs. In light of the Commission's ultimate conclusion that the EU capital and financial reporting requirements are comparable based on the standards articulated in Commission Regulation 23.106(a)(3), the Commission believes that a failure to issue a Comparability Determination and Comparability Order would in fact be "suboptimal and undesirable" as it would impose duplicative requirements that would result in increased costs for registrants and market participants without a commensurate benefit from an oversight perspective.

As discussed in sections I.B. and E. above, and detailed herein, the Commission finds that the CFTC Capital Rules and Financial Reporting Rules and the EU Capital Rules and Financial Reporting Rules are comparable in purpose and effect, and have overall comparable objectives, notwithstanding the identified differences. In this regard, the Commission notes that, as described above, instead of conducting a line-by-line assessment or comparison of the EU Capital and Financial Reporting Rules and the CFTC Capital and Financial Reporting Rules, it has applied in the assessment set forth in the determination and order, a principles-based, holistic approach in assessing the comparability of both regimes, consistent with the standard of review it adopted in Commission Regulation 23.106(a)(3). Based on that principles-based, holistic assessment, the individual elements of which are described in more detail in sections II.B. through II.F. below, the Commission has determined that both sets of rules are designed to ensure the safety and soundness of nonbank SDs and achieve comparable outcomes. As such, the Commission adopts the Comparability Determination and Comparability Order as proposed with respect to the analysis of the regulatory objectives of the CFTC Capital Rules and Financial Reporting Rules and the EU Capital and Financial Reporting Rules.

B. Nonbank Swap Dealer Qualifying Capital

1. Preliminary Determination

As discussed in the 2023 Proposal, the Commission preliminarily determined that the EU Capital Rules are comparable in purpose and effect to CFTC Capital Rules with regard to the types and characteristics of a nonbank SD's equity that qualifies as regulatory capital in meeting its minimum requirements.¹³³ The Commission explained that the EU Capital Rules and

the CFTC Capital Rules for nonbank SDs both require a nonbank SD to maintain a quantity of high-quality and permanent capital that, based on the firm's activities and on-balance sheet and off-balance sheet exposures, is sufficient to absorb losses and decreases in the value of firm assets and increases in the value of firm liabilities without resulting in the firm becoming insolvent.¹³⁴ The Commission observed that the EU Capital Rules and the CFTC Capital Rules permit nonbank SDs to recognize comparable forms of equity capital and qualifying subordinated debt instruments toward meeting minimum capital requirements, with both the EU Capital Rules and the CFTC Capital Rules emphasizing high quality capital instruments.¹³⁵

In support of its preliminary Comparability Determination, the Commission noted that the CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital in the form of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in amounts that meet certain stated minimum requirements set forth in Commission Regulation 23.101.¹³⁶ Common equity tier 1 capital is generally composed of an entity's common stock instruments, and any related surpluses, retained earnings, and accumulated other comprehensive income, and is a more conservative or permanent form of capital that is last in line to receive distributions in the event of the entity's insolvency.¹³⁷ Additional tier 1 capital is generally composed of equity instruments such as preferred stock and certain hybrid securities that may be converted to common stock if triggering events occur and may have a preference in distributions over common equity tier 1 capital in the event of an insolvency.¹³⁸ Total tier 1 capital is composed of common equity tier 1 capital and further includes additional tier 1 capital. Tier 2 capital includes certain types of instruments that include both debt and equity characteristics such as qualifying subordinated debt.¹³⁹ Subordinated debt must meet certain conditions to qualify

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ 17 CFR 23.101(a)(1)(i) and 2023 Proposal at 41786–41787. The terms "common equity tier 1 capital," "additional tier 1 capital," and "tier 2 capital" are defined in the bank holding company regulations of the Federal Reserve Board. 12 CFR 217.20.

¹³⁷ 12 CFR 217.20(b).

¹³⁸ 12 CFR 217.20(c).

¹³⁹ 12 CFR 217.20(d).

¹³⁰ *Id.*

¹³¹ Better Markets Letter at p. 13.

¹³² *Id.*

¹³³ See 2023 Proposal at 41788.

as tier 2 capital under the CFTC Capital Rules.¹⁴⁰

The preliminary Comparability Determination also noted that the EU Capital Rules require an EU nonbank SD to maintain an amount of regulatory capital (*i.e.*, equity capital and qualifying subordinated debt) equal to or greater than 8 percent of the EU nonbank SD's total risk exposure, which is calculated as the sum of the firm's: (i) capital charges for market risk; (ii) risk-weighted exposure amounts for credit risk; (iii) capital charges for settlement risk; (iv) credit valuation adjustment ("CVA") risk of over-the-counter ("OTC") derivatives instruments; and (v) capital charges for operational risk. The EU Capital Rules limit the composition of regulatory capital to common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in a manner consistent with the BCBS framework. Specifically, the EU Capital Rules provide that an EU nonbank SD's regulatory capital may be composed of: (i) common equity tier 1 capital instruments, which generally include the EU nonbank SD's common equity (stock), retained earnings, and accumulated other comprehensive income; (ii) additional tier 1 capital instruments, which includes other forms of capital instruments and certain long-term convertible debt instruments; and (iii) tier 2 capital instruments, which include other reserves, hybrid capital instruments, and certain qualifying subordinated term debt.¹⁴¹ Capital instruments that qualify as common equity tier 1 capital under the EU Capital Rules include instruments that: (i) are issued directly by the EU nonbank SD; (ii) are paid in full and not funded directly or indirectly by the EU nonbank SD; and (iii) are perpetual.¹⁴² In addition, the principal amount of the common equity tier 1 capital instruments may not be reduced or repaid, except in the liquidation of the EU nonbank SD or the repurchase of shares pursuant to the permission of the appropriate regulatory authority.¹⁴³ Furthermore, to qualify as additional tier 1 capital, the capital instruments must meet certain conditions including: (i) the instruments are issued directly by

the EU nonbank SD and paid in full; (ii) the instruments are not owned by the EU nonbank SD or its subsidiaries; (iii) the purchase of the instruments is not funded directly or indirectly by the EU nonbank SD; (iv) the instruments rank below tier 2 instruments in the event of the insolvency of the EU nonbank SD; (v) the instruments are not secured or guaranteed by the EU nonbank SD or an affiliate; (vi) the instruments are perpetual and do not include an incentive for the EU nonbank SD to redeem them; and (vii) distributions under the instruments are pursuant to defined terms and may be cancelled under the full discretion of the EU nonbank SD.¹⁴⁴ Lastly, subordinated debt instruments must meet certain conditions to qualify as tier 2 regulatory capital under the EU Capital Rules, including that the: (i) loans are not granted by the EU nonbank SD or its subsidiaries; (ii) claims on the principal amount of the subordinated loans under the provisions governing the subordinated loan agreement rank below any claim from eligible liabilities instruments (*i.e.*, certain non-capital instruments), meaning that they are effectively subordinated to claims of all non-subordinated creditors of the EU nonbank SD; (iii) subordinated loans are not secured, or subject to a guarantee that enhances the seniority of the claim, by the EU nonbank SD, its subsidiaries, or affiliates; (iv) loans have an original maturity of at least five years; and (v) provisions governing the loans do not include any incentive for the principal amount to be repaid by the EU nonbank SD prior to the loans' maturity.¹⁴⁵

Based on its comparative assessment, the Commission preliminarily found that the types and characteristics of the equity instruments that qualify as common equity tier 1 capital and additional tier 1 capital under the EU Capital Rules are comparable to the types and characteristics of equity instruments comprising common equity tier 1 capital and additional tier 1 capital under the CFTC Capital Rules.¹⁴⁶ Specifically, the Commission noted that the EU Capital Rules' common equity tier 1 capital and additional tier 1 capital, and the CFTC Capital Rules' common equity tier 1 capital and additional tier 1 capital are comparable in that these forms of equity capital have similar characteristics (*e.g.*, the equity must be in the form of high-quality, committed, and permanent capital) and represent contributed equity capital that generally has no

priority to the distribution of firm assets or income with respect to other shareholders or creditors of the firm, which allows a nonbank SD to use this equity to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, and cover losses from business activities, including the firm's swap dealing activities.¹⁴⁷

The Commission also found subordinated debt under the EU Capital Rules comparable to tier 2 capital under the CFTC Capital Rules.¹⁴⁸ Specifically, the Commission noted that the qualifying conditions imposed on subordinated debt instruments are comparable under the EU Capital Rules and the CFTC Capital Rules in that they are designed to ensure that the debt has qualities supporting its recognition by a nonbank SD as equity for capital purposes, including by effectively subordinating the debt lenders' claims for repayment on the debt to other creditors of the nonbank SD and by limiting or restricting repayment of the subordinated loans if such repayments result in the nonbank SD's equity falling below certain defined thresholds.¹⁴⁹ The Commission preliminarily concluded that these terms and conditions provided assurances that the subordinated debt is appropriate to be recognized as regulatory capital available to a nonbank SD to meet its obligations and to absorb business losses and decreases in the value of firm assets and increases in the value of firm liabilities.¹⁵⁰

2. Comment Analysis and Final Determination

The Commission did not receive comments regarding its preliminary determination that the EU Capital Rules are comparable in purpose and effect to the CFTC Capital Rules with regard to the types and characteristics of a nonbank SD's equity and subordinated debt that qualifies as regulatory capital in meeting its minimum requirements. In conclusion, the Commission finds that the EU Capital Rules and the CFTC Capital Rules, are comparable in purpose and effect, and achieve comparable regulatory outcomes, with respect to the types of capital instruments that qualify as regulatory capital. Both the EU Capital Rules and the CFTC Capital Rules limit regulatory capital to permanent and conservative forms of capital, including common equity, capital surpluses, retained earnings, and subordinate debt where

¹⁴⁰ Subordinated debt must meet requirements set forth in SEC Rule 18a–1d. Specifically, subordinated debt instruments must have a term of at least one year (with the exception of approved revolving subordinated debt agreements which may have a maturity term that is less than one year), and contain terms that effectively subordinate the rights of lenders to receive any payments, including accrued interest, to other creditors of the firm. 17 CFR 23.101(a)(1)(i)(B) and 17 CFR 240.18a–1d.

¹⁴¹ 2023 Proposal at 41787.

¹⁴² *Id.* and CRR, Articles 26 and 28.

¹⁴³ *Id.*

¹⁴⁴ *Id.* and CRR, Article 50–52.

¹⁴⁵ *Id.* and CRR, Article 63.

¹⁴⁶ See 2023 Proposal at 41788.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

debt holders effectively subordinate their claims to repayment to all other creditors of the nonbank SD in the event of the firm's insolvency. Limiting regulatory capital to the above categories of equity and debt instruments promotes the safety and soundness of the nonbank SD by helping to ensure that the regulatory capital is not withdrawn or converted to other equity instruments that may have rights or priority with respect to payments, such as dividends or distributions in insolvency, over other creditors, including swap counterparties. The Commission, therefore, is adopting the Comparability Order as proposed with respect to the types and characteristics of equity and subordinated debt that qualifies as regulatory capital to meet minimum capital requirements under the EU Capital Rules.

C. Nonbank Swap Dealer Minimum Capital Requirement

1. Introduction to Nonbank Swap Dealer Minimum Capital Requirements

As reflected in the 2023 Proposal, the CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital that satisfies each of the following criteria: (i) an amount of common equity tier 1 capital of at least \$20 million; (ii) an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, provided that common equity tier 1 capital comprises at least 6.5 percent of the 8 percent; (iii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or in excess of 8 percent of the nonbank SD's uncleared swap margin amount;¹⁵¹ and (iv) the amount of capital required by NFA.¹⁵²

¹⁵¹ 17 CFR 23.101(a)(1)(i). *See also*, 2023 Proposal at 41781. The term "uncleared swap margin" is defined in Commission Regulation 23.100 to generally mean the amount of initial margin that a nonbank SD would be required to collect from each counterparty for each outstanding swap position of the nonbank SD. 17 CFR 23.100. A nonbank SD must include all swap positions in the calculation of the uncleared swap margin amount, including swaps that are exempt or excluded from the scope of the Commission's uncleared swap margin regulations. A nonbank SD must compute the uncleared swap margin amount in accordance with the Commission's margin rules for uncleared swaps. 17 CFR 23.154.

¹⁵² 17 CFR 23.101(a)(1)(i)(D). *See also* 2023 Proposal at 41781. Commission Regulation 23.101(a)(1)(i)(D) sets forth one of the minimum thresholds that a nonbank SD must meet as the "the amount of capital required by a registered futures association." As previously noted, NFA is currently the only entity that is registered with the

In comparison, the EU Capital Rules require an EU nonbank SD to maintain a fixed amount of minimum initial capital of EUR 5 million of common equity tier 1 capital.¹⁵³ The EU Capital Rules, consistent with the BCBS framework, further require each EU nonbank SD to maintain sufficient levels of capital to satisfy the following, expressed as a percentage of the EU nonbank SD's "total risk exposure amount" (*i.e.*, the sum of the EU nonbank SD's risk-weighted assets and exposures): (i) a common equity tier 1 capital ratio of 4.5 percent; (ii) a tier 1 capital ratio of 6 percent; and (iii) a total capital ratio of 8 percent. Furthermore, EU nonbank SDs must maintain a capital conservation buffer composed of common equity tier 1 capital in an amount equal to 2.5 percent of the firm's total risk exposure. The common equity tier 1 capital used to meet the capital conservation buffer must be separate and in addition to the 4.5 percent of common equity tier 1 capital required to meet its core 8 percent capital requirement.¹⁵⁴ As explained in the 2023 Proposal, the "total risk exposure amount" is calculated as the sum of the EU nonbank SD's: (i) capital requirements for market risk; (ii) risk-weighted exposure amounts for credit risk; (iii) capital requirements for CVA risk of OTC derivatives; and (iv) capital requirements for operational risk.¹⁵⁵ Capital charges for market risk and credit risk are computed based on an EU nonbank SD's on-balance sheet and off-balance sheet exposures, weighted according to risk.¹⁵⁶

2. Preliminary Determination and Comment Analysis

While noting certain differences in the minimum capital requirements and calculation of regulatory capital between the EU Capital Rules and the CFTC Capital Rules, the Commission preliminarily found that the EU Capital Rules and CFTC Capital Rules achieve, subject to the conditions in the proposed Comparability Determination and proposed Comparability Order, comparable outcomes by requiring a nonbank SD to maintain a minimum level of qualifying regulatory capital and subordinated debt to absorb losses from

Commission as a futures association. NFA has adopted the Commission's capital requirements as its own requirements, and has not adopted any additional or stricter minimum capital requirements. *See*, NFA rulebook, Financial Requirements section 18 Swap Dealer and Major Swap Participant Financial Requirements, available at [nfa.futures.org](https://www.nfa.futures.org).

¹⁵³ 2023 Proposal at 41793–41794.

¹⁵⁴ *See* 2023 Proposal at 41782.

¹⁵⁵ *Id.* at 41790.

¹⁵⁶ *Id.*

the firm's business activities, including its swap dealing activities, and decreases in the value of the firm's assets and increases in the firm's liabilities without the nonbank SD becoming insolvent.¹⁵⁷ As further discussed below, the Commission's preliminary finding of comparability was based on a principles-based, holistic comparative analysis of the three minimum capital requirement thresholds of the CFTC Capital Rules' Bank-Based Approach referenced above and the respective elements of the EU Capital Rules' requirements.

a. Fixed Amount Minimum Capital Requirement

As noted above, prong (i) of the CFTC Capital Rules requires each nonbank SD electing the Bank-Based Approach to maintain a minimum of \$20 million of common equity tier 1 capital. The CFTC's \$20 million fixed-dollar minimum capital requirement is intended to ensure that each nonbank SD maintains a level of regulatory capital, without regard to the level of the firm's dealing and other activities, sufficient to meet its obligations to swap market participants given the firm's status as a CFTC-registered nonbank SD and to help ensure the safety and soundness of the nonbank SD.¹⁵⁸ Also as noted above, the EU Capital Rules contain a requirement that an EU nonbank SD maintain a fixed amount of minimum initial capital of EUR 5 million of common equity tier 1 capital.¹⁵⁹

The Commission, in the 2023 Proposal, recognized that the \$20 million fixed-dollar minimum capital required under the CFTC Capital Rules is substantially higher than the EUR 5 million. Therefore, the Commission preliminarily proposed a condition to require each EU nonbank SD to maintain, at all times, an amount of common equity tier 1 capital in EUR, as defined in Article 26 of CRR, that is equivalent to \$20 million.¹⁶⁰

One commenter, Better Markets, argued that the establishment in the EU Capital Rules of a base level requirement that is substantially lower than the CFTC Capital Rules' fixed amount minimum requirement "demonstrates a fatal lack of

¹⁵⁷ *Id.* at 41795.

¹⁵⁸ 85 FR 57462 at 57492.

¹⁵⁹ 2023 Proposal at 41793–41794.

¹⁶⁰ *Id.* The Commission also noted that the three current EU nonbank SDs subject to the EU Capital Rules maintain common equity tier 1 capital denominated in EUR in amounts substantially in excess of the equivalent of \$20 million based on financial filings made with the Commission. *Id.* (note 261.)

comparability.”¹⁶¹ Better Markets further asserted that the proposed condition requiring that EU nonbank SDs maintain a minimum level common equity tier 1 capital equivalent to \$20 million is evidence, in and of itself, that the EU Capital Rules are not comparable to the CFTC Capital Rules.¹⁶²

As noted above, the Commission recognized the material difference in the requirement under the EU Capital Rules and the CFTC Capital Rules with respect to the \$20 million minimum dollar amount of regulatory capital a nonbank SD is required to maintain. The Commission’s proposed condition, however, effectively addresses this difference by providing that an EU nonbank SD may not avail itself of substituted compliance unless it maintains a minimum amount of common equity tier 1 capital denominated in EUR that is equivalent to \$20 million. Furthermore, the imposition of conditions in a Comparability Order, as discussed in section I.E. above, is authorized by Commission Regulation 23.106(a)(5), which provides that the Commission may issue terms and conditions as it deems appropriate. In addition, as further noted in section I.E. above, the Guidance also provides that the Commission may impose conditions as part of the substituted compliance process to address a lack of comparable and comprehensive regulation in a home jurisdiction.¹⁶³ In this connection, the Commission concludes that requiring EU nonbank SDs to maintain an amount of regulatory capital in the form of common equity tier 1 items, as defined in Article 26 of CRR, equal to or in excess of the equivalent of \$20 million will impose an equally stringent standard to the analogue requirement under the CFTC Capital Rules and will appropriately address the substantially lower minimum fixed amount capital requirement under the EU Capital Rules.

In conclusion, the Commission finds that the EU Capital Rules and the CFTC Capital Rules, with the imposition of the condition for EU nonbank SDs to maintain a minimum level of common equity tier 1 capital in an amount equivalent to at least \$20 million, are comparable in purpose and effect and achieve comparable outcomes with respect to capital requirements based on a minimum dollar amount. The requirement for a nonbank SD with limited swap dealing or other business activities to maintain a minimum level of regulatory capital equivalent to \$20

million helps to ensure the firm’s safety and soundness by allowing it to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to swap counterparties, other creditors, and market participants, without the firm becoming insolvent.

b. Minimum Capital Requirement Based on Risk-Weighted Assets

Prong (ii) of the CFTC Capital Rules’ minimum capital requirements described above requires each nonbank SD electing the Bank-Based Approach to maintain an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or greater than 8 percent of the nonbank SD’s total risk-weighted assets, with common equity tier 1 capital comprising at least 6.5 percent of the 8 percent.¹⁶⁴ Risk-weighted assets are a nonbank SD’s on-balance sheet and off-balance sheet market risk and credit risk exposures, including exposures associated with proprietary swap, security-based swap, equity, and futures positions, weighted according to risk. The requirements and capital ratios set forth in prong (ii) are based on the Federal Reserve Board’s capital requirements for bank holding companies and are consistent with the BCBS framework. The requirement for each nonbank SD to maintain regulatory capital in an amount that equals or exceeds 8 percent of the firm’s total risk-weighted assets is intended to help ensure that the nonbank SD’s level of capital is sufficient to absorb decreases in the value of the firm’s assets and increases in the value of the firm’s liabilities, and to cover unexpected losses resulting from the firm’s business activities, including losses resulting from uncollateralized defaults from swap counterparties, without the nonbank SD becoming insolvent.¹⁶⁵

The EU Capital Rules contain capital requirements for EU nonbank SDs that the Commission preliminarily found comparable in purpose and effect to the requirements in prong (ii) of the CFTC Capital Requirements.¹⁶⁶ Specifically, the EU Capital Rules require an EU nonbank SD to maintain: (i) common equity tier 1 capital equal to at least 4.5 percent of the EU nonbank SD’s total risk exposure amount; (ii) total tier 1 capital (*i.e.*, common equity tier 1 capital plus additional tier 1 capital) equal to at least 6 percent of the EU nonbank SD’s total risk exposure amount; and (iii) total capital (*i.e.*, an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and

tier 2 capital) equal to at least 8 percent of the EU nonbank SD’s total risk exposure amount. The EU Capital Rules further require each EU nonbank SD to maintain an additional capital conservation buffer equal to 2.5 percent of the EU nonbank SD’s total risk exposure amount, which must be met with common equity tier 1 capital. Thus, an EU nonbank SD is effectively required to maintain total qualifying regulatory capital in an amount equal to or in excess of 10.5 percent of the market risk, credit risk, CVA risk, settlement risk, and operational risk of the firm (*i.e.*, total capital requirement of 8 percent of risk-weighted assets and an additional 2.5 percent of risk-weighted assets as a capital conservation buffer), which is a higher capital ratio than the 8 percent required of nonbank SDs under prong (ii) of the CFTC Capital Rules.¹⁶⁷

The Commission also preliminarily found that the EU Capital Rules and the CFTC Capital Rules are comparable with respect to the approaches used in the calculation of risk-weighted amounts for market risk and credit risk in determining the nonbank SD’s risk-weighted assets.¹⁶⁸ In that regard, the Commission noted that both regimes require a nonbank SD to use standardized approaches to compute market risk and credit risk amounts, unless the firm is approved to use internal models.¹⁶⁹

As the Commission observed, the standardized approaches to calculating risk-weighted asset amounts for market risk and credit risk under both the EU Capital Rules and the CFTC Capital Rules follow the same structure that is now the common global standard: (i) allocating assets to categories according to risk and assigning each a risk weight; (ii) allocating counterparties according to risk assessments and assigning each a risk factor; (iii) calculating gross exposures based on valuation of assets; (iv) calculating a net exposure allowing offsets following well defined procedures and subject to clear limitations; (v) adjusting the net exposure by the market risk weights; and finally, (vi) for credit risk exposures, multiplying the sum of net exposures to each counterparty by their corresponding risk factor.¹⁷⁰

More specifically, with respect to the calculation of standardized risk-weighted asset amounts for market risk, the Commission explained that the

¹⁶¹ Better Markets Letter at p. 11.

¹⁶² *Id.*

¹⁶³ Guidance at 45343.

¹⁶⁴ 17 CFR 23.101(a)(1)(i)(B).

¹⁶⁵ See generally 85 FR 57462 at 57530.

¹⁶⁶ See 2023 Proposal at 41794–41795.

¹⁶⁷ *Id.* at 41782–41783. See, also, CRR Articles 26, 28, 50–52, 61–63 and 92, and CRD, Article 129.

¹⁶⁸ See 2023 Proposal at 41794.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

CFTC Capital Rules incorporate by reference the standardized market risk charges set forth in Commission Regulation 1.17 for FCMs and SEC Rule 18a–1 for nonbank security-based swap dealers (“SBSDs”).¹⁷¹ The standardized market risk charges under Commission Regulation 1.17 and SEC Rule 18a–1 are calculated as a standardized or table-based percentage of the market value or notional value of the nonbank SD’s marketable securities and derivatives positions, with the percentages applied to the market value or notional value increasing as the expected or anticipated risk of the positions increases.¹⁷² For example, CFTC Capital Rules require nonbank SDs to calculate standardized market risk-weighted asset amounts for uncleared swaps based on notional values of the swap positions multiplied by percentages set forth in the applicable rules.¹⁷³ In addition, market risk-weighted asset amounts for readily marketable equity securities are calculated by multiplying the fair market value of the securities by 15 percent.¹⁷⁴

Under the CFTC Capital Rules, the resulting total market risk-weighted asset amount is multiplied by a factor of 12.5 to cancel the effect of the 8 percent multiplication factor applied to all of the nonbank SD’s risk-weighted assets under prong (ii) of the rules’ minimum capital requirements described above. As a result, a nonbank SD is effectively required to hold qualifying regulatory capital equal to or greater than 100 percent of the amount of its market risk exposure amount.¹⁷⁵

¹⁷¹ *Id.* at 41789 and paragraph (3) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

¹⁷² See 2023 Proposal at 41789, 17 CFR 1.17(c)(5), and 17 CFR 240.18a–1(c)(1).

¹⁷³ 17 CFR 1.17(c)(5)(iii).

¹⁷⁴ 17 CFR 1.17(c)(5)(v), referencing SEC Rule 15c3–1(c)(2)(vi) (17 CFR 240.15c3–1(c)(2)(vi)).

¹⁷⁵ 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*). As noted, a nonbank SD is required to maintain qualifying capital (*i.e.*, an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) in an amount that equals or exceeds 8 percent of its risk-weighted assets. The regulations, however, require the nonbank SD to effectively maintain qualifying capital equal to or in excess of 100 percent of its market risk-weighted assets by requiring the nonbank SD to multiply its market-risk weighted assets by a factor of 12.5. For example, the market risk exposure amount for marketable equity securities with a current fair market value of \$250,000 is \$37,500 (market value of \$250,000 × .15 standardized market risk factor). The nonbank SD is required to maintain regulatory capital equal to or in excess of full market risk exposure amount of \$37,500 (risk exposure amount of \$37,500 × 8 percent regulatory capital requirement equals \$3,000; the regulatory capital requirement is then multiplied by a factor of 12.5, which effectively requires the nonbank SD to hold regulatory capital in an amount equal to at least 100 percent of the

Comparable to the CFTC Capital Rules, the EU Capital Rules require an EU nonbank SD to calculate its standardized risk-weighted asset amounts for market risk by multiplying the notional or carrying amount of net positions by risk-weighting factors, which are based on the underlying market risk of each asset or exposure and increase as the expected risk of the positions increases.¹⁷⁶ The Commission further explained that an EU nonbank SD is required to calculate market risk requirements for debt instruments and equity instruments separately, by computing each category as the sum of specific risk and general risk of the positions.¹⁷⁷ As further discussed in the 2023 Proposal, the EU Capital Rules also require EU nonbank SDs to include in their risk-weighted assets market risk exposures to certain foreign currency and gold positions. Specifically, an EU nonbank SD with net positions in foreign exchange and gold that exceed 2 percent of the firm’s total capital must calculate capital requirements for foreign exchange risk.¹⁷⁸ The capital requirement for foreign exchange risk under the standardized approach is 8 percent of the EU nonbank SD’s net positions in foreign exchange and gold.¹⁷⁹ The EU Capital Rules further require EU nonbank SDs to include exposures to commodity positions in calculating the firm’s risk-weighted assets. The standardized calculation of commodity risk exposures may follow one of three approaches depending on type of position or exposure. The first is the sum of a flat percentage rate for net positions, with netting allowed among tightly defined sets, plus another flat percentage rate for the gross position.¹⁸⁰ The other two standardized approaches are based on maturity-ladders, where unmatched portions of each maturity band (*i.e.*, portions that do not net out to zero) are charged at a step-up rate in comparison to the base charges for matched portions.¹⁸¹

With respect to standardized risk-weighted asset amounts for credit risk, the Commission explained that under the CFTC Capital Rules, a nonbank SD must compute its on-balance sheet and off-balance sheet exposures in

market risk exposure amount (\$3,000 × 12.5 factor equals \$37,500)).

¹⁷⁶ See 2023 Proposal at 41791.

¹⁷⁷ *Id.* and CRR, Article 326. As indicated in Article 326 of CRR, securitizations are treated as debt instruments for market risk requirements.

¹⁷⁸ See 2023 Proposal at 41791 and CRR, Article 351.

¹⁷⁹ *Id.*

¹⁸⁰ 2023 Proposal at 41791 and CRR, Article 360.

¹⁸¹ 2023 Proposal at 41791 and CRR, Article 359–361.

accordance with the standardized risk-weighting requirements adopted by the Federal Reserve Board and set forth in subpart D of 12 CFR 217 as if the SD itself were a bank holding company subject to subpart D.¹⁸² Standardized risk-weighted asset amounts for credit risk are computed by multiplying the amount of the exposure by defined counterparty credit risk factors that range from 0 percent to 150 percent.¹⁸³ A nonbank SD with off-balance sheet exposures is required to calculate a risk-weighted amount for credit risk by multiplying each exposure by a credit conversion factor that ranges from 0 percent to 100 percent, depending on the type of exposure.¹⁸⁴

In comparison, the Commission noted that the EU Capital Rules require an EU nonbank SD to calculate its standardized risk-weighted asset amounts for credit risk in a manner aligned with the Commission’s Bank-Based Approach and the BCBS framework by taking the carrying value or notional value of each of the EU nonbank SD’s on-balance sheet and off-balance sheet exposures, making certain additional credit risk adjustments, and then applying specific risk weights based on the type of counterparty and the asset’s credit quality.¹⁸⁵ For instance, high quality credit exposures, such as exposures to EU Member States’ central banks, carry a zero percent risk weight. Exposures to EU banks, other investment firms, or other businesses, however, may carry risk weights between 20 percent and 150 percent depending on the credit ratings available for the entity or, for exposures to banks and investment firms, for its central government.¹⁸⁶ If no credit rating is available, the EU nonbank SD must generally apply a 100 percent risk

¹⁸² 17 CFR 23.101(a)(1)(i)(B) and paragraph (1) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100. See also 2023 Proposal at 41789.

¹⁸³ 12 CFR 217.32. Lower credit risk factors are assigned to entities with lower credit risk and higher credit risk factors are assigned to entities with higher credit risk. For example, a credit risk factor of 0 percent is applied to exposures to the U.S. government, the Federal Reserve Bank, and U.S. government agencies (12 CFR 217.32(a)(1)), and a credit risk factor of 100 percent is assigned to an exposure to foreign sovereigns that are not members of the Organization of Economic Cooperation and Development (12 CFR 217.32(a)(2)). See also discussion in 2023 Proposal at 41789.

¹⁸⁴ 12 CFR 217.33. See also discussion in 2023 Proposal at 41789.

¹⁸⁵ See 2023 Proposal at 41791 and CRR, Articles 111 and 113(1).

¹⁸⁶ See 2023 Proposal at 41791 and CRR, Articles 114–122.

weight, meaning the total accounting value of the exposure is used.¹⁸⁷

With respect to counterparty credit risk for derivatives positions, the Commission explained that under the CFTC Capital Rules, a nonbank SD may compute standardized credit risk exposures, using either the current exposure method (“CEM”) or the standardized approach for measuring counterparty credit risk (“SA–CCR”).¹⁸⁸ Both CEM and SA–CCR are non-model, rules-based approaches to calculating counterparty credit risk exposures for derivatives positions. Credit risk exposure under CEM is the sum of: (i) the current exposure (*i.e.*, the positive mark-to-market) of the derivatives contract; and (ii) the potential future exposure, which is calculated as the product of the notional principal amount of the derivatives contract multiplied by a standard credit risk conversion factor set forth in the rules of the Federal Reserve Board.¹⁸⁹ Credit risk exposure under SA–CCR is defined as the exposure at default amount of a derivatives contract, which is computed by multiplying a factor of 1.4 by the sum of: (i) the replacement costs of the contract (*i.e.*, the positive mark-to-market); and (ii) the potential future exposure of the contract.¹⁹⁰ In comparison, the EU Capital Rules require an EU nonbank SD that is not approved to use credit risk models to calculate its exposure using the SA–CCR.¹⁹¹ The exposure amount under the SA–CCR is computed, under both the EU Capital Rules and the Commission’s Bank-Based Approach, as the sum of the replacement cost of the contract and the potential future exposure of the contract, multiplied by a factor of 1.4.¹⁹²

¹⁸⁷ See 2023 Proposal at 41791 and CRR, Articles 121(2) and 122(2).

¹⁸⁸ 17 CFR 217.34 and 17 CFR 23.100 (defining the term *BHC risk-weighted assets* and providing that a nonbank SD that does not have model approval may use either CEM or SA–CCR to compute its exposures for OTC derivative contracts without regard to the status of its affiliate with respect to the use of a calculation approach under the Federal Reserve Board’s capital rules). See also discussion in 2023 Proposal at 41789.

¹⁸⁹ 12 CFR 217.34.

¹⁹⁰ 12 CFR 217.132(c).

¹⁹¹ See 2023 Proposal at 41791 and CRR, Articles 92(3)(f) and 273–280e. As noted in the 2023 Proposal, EU nonbank SDs with smaller-sized derivatives business may also use a “simplified standardized approach to counterparty credit risk” (CRR, Article 281) or an “original exposure method” (CRR, Article 282) as simpler methods for calculating exposure values. To use either of these alternative methods, an entity’s on-and off-balance sheet derivatives business must be equal to or less than 10 percent of the entity’s total assets and EUR 300 million or 5 percent of the entity’s total assets and EUR 100 million, respectively. CRR, Article 273a.

¹⁹² CRR, Article 274(2) and 12 CFR 217.132(c). See also discussion in 2023 Proposal at 41791.

EU Capital Rules also require an EU nonbank SD to include its exposures to settlement risk in its calculation of its risk-weighted assets.¹⁹³ Consistent with the BCBS framework, the risk-weighted asset amount for settlement risk for transactions settled on a delivery-versus-payment basis is computed by multiplying the price difference to which an EU nonbank SD is exposed as a result of an unsettled transaction by a percentage factor that varies from 8 percent to 100 percent based on the number of working days after the settlement due date during which the transaction remains unsettled.¹⁹⁴ The CFTC’s Bank-Based Approach provides for a similar calculation methodology for risk-weighted asset amounts for unsettled transactions involving securities, foreign exchange instruments, and commodities.¹⁹⁵

Consistent with the BCBS framework, an EU nonbank SD is also required to calculate a CVA risk-weighted asset amount for OTC derivative instruments to reflect the current market value of the credit risk of the counterparty to the EU nonbank SD.¹⁹⁶ Risk-weighted asset amounts for CVA risk can be calculated following similar methodologies as those described in Subpart E of the Federal Reserve Board’s Part 217 regulations.¹⁹⁷

As discussed in the 2023 Proposal, both the CFTC Capital Rules and the EU Capital Rules also provide that, if approved by NFA or the relevant competent authority, respectively, nonbank SDs may also use internal models to calculate market and/or credit risk exposures.¹⁹⁸ The Commission

¹⁹³ 2023 Proposal at 41791 and CRR, Article 378 (indicating that if transactions in which debt instruments, equities, foreign currencies and commodities excluding repurchase transactions and securities or commodities lending and securities or commodities borrowing are unsettled after their delivery due dates, an EU nonbank SD must calculate the price difference to which it is exposed).

¹⁹⁴ *Id.* The price difference to which an EU nonbank SD is exposed is the difference between the agreed settlement price for an instrument (*i.e.*, a debt instrument, equity, foreign currency or commodity) and the instrument’s current market value, where the difference could involve a loss for the firm. CRR, Article 378.

¹⁹⁵ 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*), 12 CFR 217.38 and 12 CFR 217.136.

¹⁹⁶ 2023 Proposal at 41792 and CRR, Articles 381 and 382(1).

¹⁹⁷ CRR, Articles 383–384 and 12 CFR 217.132(e)(5) and (6). Under the CFTC’s Bank-Based Approach, nonbank SDs calculating their credit risk-weighted assets using the regulations in Subpart D of the Federal Reserve Board’s Part 217 regulations do not calculate CVA of OTC derivatives instruments.

¹⁹⁸ 2023 Proposal at 41789 and 41791, respectively, for discussions of NFA and competent authority model approvals. In discussing approval

noted that the internal market and credit risk models under the EU Capital Rules and the CFTC Capital Rules are based on the BCBS framework and preliminarily found that such models must meet comparable quantitative and qualitative requirements covering the same risks, though with slightly different categorization, and including comparable model risk management requirements.¹⁹⁹ In this regard, the Commission observed that both rule sets address the same types of risk, with similar allowed methodologies and under similar controls.²⁰⁰ The Commission also preliminarily determined that the EU Capital Rules and the CFTC Capital Rules are comparable with respect to the requirement that nonbank SDs account for operational risk in computing their minimum capital requirements.²⁰¹ In this connection, the Commission noted that the EU Capital Rules require an EU nonbank SD to calculate an operational risk exposure as a component of the firm’s total risk exposure amount.²⁰² EU nonbank SDs may use either a standardized approach or, if the EU nonbank has obtained regulatory permission, an internal approach based on the firm’s own measurement systems, to calculate their risk-weighted asset amounts for operational risk. The CFTC Capital Rules address operational risk both as a stand-alone, separate minimum capital requirement that a nonbank SD is required to meet under prong (iii) of the Bank-Based Approach and as a component of the calculation of risk-weighted assets for nonbank SDs that use subpart E of the Federal Reserve Board’s part 217 regulations to calculate their credit risk-weighted assets via internal models.²⁰³

The Commission did not receive comments specifically addressing the Commission’s comparative analysis of the minimum capital requirement based

requirements for credit risk models as part of the general overview of the EU Capital Rules, the Commission referred generally to counterparty credit risk exposures for “OTC derivatives transactions.” See 2023 Proposal at 41783 (n. 119). For clarity, the Commission notes that the Internal Model Methodology for counterparty credit risk set out in CRR, Articles 283–294, can be used for the derivatives listed in Annex II of CRR, securities financing transactions, and long settlement transactions. CRR, Article 273.

¹⁹⁹ 2023 Proposal at 41794–41795. For a discussion of the qualitative and quantitative requirements that models must meet under the CFTC Capital Rules and the EU Capital Rules, see 2023 Proposal at 41789–41790 and 41792–41793, respectively.

²⁰⁰ See 2023 Proposal at 41794.

²⁰¹ *Id.* at 41795.

²⁰² *Id.* and CRR, Article 92(3).

²⁰³ *Id.* and 17 CFR 23.101(a)(1)(i) and 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*).

on risk-weighted assets. In conclusion, the Commission finds that the EU Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the computation of minimum capital requirements based on a nonbank SD's risk-weighted assets. In this regard, the Commission finds that the EU Capital Rules and the CFTC Capital Rules have a comparable approach to the computation of market risk exposure amounts and credit risk exposure amounts for on-balance sheet and off-balance sheet exposures, which are intended to ensure that a nonbank SD maintains a sufficient level of regulatory capital to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to counterparties and creditors, without the firm becoming insolvent.

c. Minimum Capital Requirement Based on the Uncleared Swap Margin Amount

As noted above, prong (iii) of the CFTC Capital Rules' Bank-Based Approach requires a nonbank SD to maintain regulatory capital in an amount equal to or greater than 8 percent of the firm's total uncleared swap margin amount associated with its uncleared swap transactions to address potential operational, legal, and liquidity risks.²⁰⁴

The EU Capital Rules differ from the CFTC Capital Rules in that they do not impose a capital requirement on EU nonbank SDs based on a percentage of the margin for uncleared swap transactions.²⁰⁵ In the 2023 Proposal, the Commission described, however, how certain EU capital and liquidity requirements may compensate for the lack of direct analogue to the 8 percent uncleared swap margin amount requirement.²⁰⁶ Specifically, the Commission noted that under the EU Capital Rules the total risk exposure amount is computed as the sum of the EU nonbank SD's risk-weighted asset amounts for market risk, credit risk, settlement risk, CVA risk of OTC derivatives instruments, and operational risk.²⁰⁷ Notably, the EU Capital Rules require that EU nonbank SDs, including

firms that do not use internal models, calculate capital charges for operational risk as a separate component of the total risk exposure amount. The EU Capital Rules also impose separate liquidity requirements designed to ensure that the EU nonbank SDs can meet both short- and long-term obligations, in addition to the general requirement to maintain processes and systems for the identification of liquidity risk.²⁰⁸ In comparison, the Commission requires nonbank SDs to maintain a risk management program covering liquidity risk, among other risk categories, but does not have a distinct liquidity requirement.²⁰⁹

Addressing the Commission's request for comment on the comparability between the CFTC's capital requirement based on a percentage of the margin for uncleared swap transactions and the EU Capital Rules' requirements with respect to operational risk and liquidity risk, Better Markets asserted that the requirement for EU nonbank SDs to hold qualifying regulatory capital to cover operational risk is not comparable to the CFTC's requirement for nonbank SDs to hold qualifying capital in an amount equal to at least 8 percent of the nonbank SD's uncleared swap margin amount.²¹⁰ Better Markets further asserted that the Commission failed to provide an exhaustive analysis substantiating that the incorporation of an operational risk charge and the existence of separate liquidity requirements would genuinely yield an equivalent result.²¹¹ Furthermore, Better Markets argued that the Commission should have undertaken "an examination to ascertain whether the

EU nonbank SD's operational risk charge and liquidity requirements capital would adequately cover [its] cumulative amounts of uncleared swaps margin."²¹²

The Applicants offered a contrasting view, stating that, although the EU Capital Rules do not "have a direct analogue to the 8 percent uncleared swap margin requirement" under the CFTC Capital Rules, they have "various other measures that achieve the same regulatory objective of ensuring that a nonbank SD maintains an amount of capital that is sufficient to cover the full range of risks an EU nonbank SD may face."²¹³ In support of the statement, the Applicants discussed, among other measures, the various categories of risk charges that an EU nonbank SD is required to include in its total risk exposure amount, as well as the capital conservation buffer, leverage ratio floor, and liquidity requirements that the EU Capital Rules impose on EU nonbank SDs.²¹⁴

The Commission finds that the additional categories of risk-weighted asset amounts that EU nonbank SDs are required to include in the total risk-weighted assets amount, as well as the various regulatory measures seeking to ensure that EU nonbank SDs hold sufficient capital to cover the full range of risks that they may face, support the comparability of the EU Capital Rules and the CFTC Capital Rules even in the absence of a separate capital requirement in the EU Capital Rules requiring EU nonbank SDs to have qualified capital equal to or greater than 8 percent of the amount of uncleared swap margin. The Commission notes that the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin amount was conceived as a proxy, not an exact measure, for inherent risk in the SD's positions and operations, including operational risk, legal risk, and liquidity risk.²¹⁵ As the Commission noted in adopting the CFTC Capital Rules, although the amount of capital required of a nonbank SD under the uncleared swap margin calculation is directly

²⁰⁴ More specifically, in establishing the requirement that a nonbank SD must maintain a level of regulatory capital in excess of 8 percent of the uncleared swap margin amount associated with the firm's swap transactions, the Commission stated that the intent of the uncleared swap margin amount was to establish a method of developing a minimum amount of capital for a nonbank SD to meet all of its obligations as an SD to market participants, and to cover potential operational risk, legal risk and liquidity risk, and not just the risks of its trading portfolio. 85 FR 57462 at 57485.

²⁰⁵ See 2023 Proposal at 41795.

²⁰⁶ *Id.*

²⁰⁷ *Id.* and CRR, Article 92(3).

²⁰⁸ *Id.* More specifically, the EU Capital Rules impose separate liquidity buffers and "stable funding" requirements designed to ensure that EU nonbank SDs can cover both long-term obligations and short-term payment obligations under stressed conditions for 30 days. CRR, Article 412–413. In addition, EU nonbank SDs are required to maintain robust strategies, policies, processes, and systems for the identification of liquidity risk over an appropriate set of time horizons, including intraday. CRD, Article 86.

²⁰⁹ See 2023 Proposal at 41795. Specifically, Commission Regulation 23.600(b) requires each SD to establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks related to swaps, and any products used to hedge swaps, including futures, options, swaps, security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives. The elements of the SD's risk management program are required to include the identification of risks and risk tolerance limits with respect to applicable risks, including operational, liquidity, and legal risk, together with a description of the risk tolerance limits set by the SD and the underlying methodology in written policies and procedures. 17 CFR 23.600.

²¹⁰ Better Markets Letter at p. 10.

²¹¹ *Id.* at p. 11.

²¹² *Id.*

²¹³ Applicants' Letter at p. 3.

²¹⁴ *Id.* at pp. 2–3. As discussed in the 2023 Proposal, the EU Capital Rules impose a 3 percent leverage ratio floor on EU nonbank SDs as an additional element of the capital requirements. Specifically, each EU nonbank SD is required to maintain tier 1 capital (*i.e.*, an aggregate of common equity tier 1 capital and additional tier 1 capital) equal to or in excess of 3 percent of the firm's total on-balance sheet and off-balance sheet exposures, including exposures on uncleared swaps, without regard to any risk-weighting. See 2023 Proposal at 41783 and CRR, Articles 92(1) and 429.

²¹⁵ 85 FR 57462 at 57497.

related to the volume, size, complexity, and risk of the covered SD's positions, the minimum capital requirement is intended to cover a multitude of potential risks faced by the SD.²¹⁶ The Commission understands that other jurisdictions may adopt alternative measures to cover the same risks. As such, a strict comparison between the amounts that an EU nonbank SD holds to account for operational risk and liquidity risk pursuant to the EU Capital Rules and the amount of uncleared swap margin that an EU nonbank SD would have been required to hold pursuant to the CFTC Capital Rules is not warranted. As discussed in section I.E. above, consistent with the approach adopted by the Commission in Commission Regulation 23.106, the Commission's analysis in ascertaining the comparability of a foreign jurisdiction's capital rules to the CFTC Capital Rules is focused on determining whether the foreign jurisdiction's rules have comparable regulatory objectives and achieve comparable outcomes. Following this standard of review, the Commission concludes that the various measures that the EU Capital Rules have established to help ensure that EU nonbank SDs hold sufficient capital to cover the full range of risks that they face have comparable objectives and achieve comparable outcomes as the CFTC Capital Rules.

In conclusion, the Commission finds that the EU Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the requirement that a nonbank SD's minimum level of regulatory capital reflects potential operational risk exposures in addition to market risk and credit risk exposures. The Commission emphasizes that the intent of the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin is to establish a minimum capital requirement that would help ensure that the nonbank SD meets its obligations as an SD to market participants, and to cover potential operational risk, legal risk, and liquidity risk in addition to the risks associated with its trading portfolio.²¹⁷ The EU Capital Rules address comparable risks albeit not through a requirement based on a EU nonbank SD's uncleared swap margin amount. In this regard, EU nonbank SDs are required to maintain a minimum level of regulatory capital based on an aggregate of the firm's total risk-weighted asset amounts for market risk, credit risk, and operational risk.

Accordingly, the Commission has determined that, notwithstanding the differences in approaches, the EU Capital Rules and CFTC Capital Rules are comparable in purpose and effect in requiring nonbank SDs to maintain a minimum level of regulatory capital that addresses potential market risk, credit risk, and operational risk to help ensure the safety and soundness of the firm, and to ensure that the firm has sufficient capital to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to counterparties and creditors, without the firm becoming insolvent.

3. Final Determination

Based on its analysis of comments and its holistic assessment of the respective requirements discussed in sections II.C.2.a., b., and c. above, the Commission adopts the Comparability Determination and Comparability Order as proposed with respect to the minimum capital requirements and calculation of regulatory capital, subject to the condition that EU nonbank SDs must maintain a minimum level of regulatory capital in the form of common equity tier 1 capital denominated in EUR that equals or exceeds the equivalent of \$20 million U.S. dollars.²¹⁸

D. Nonbank Swap Dealer Financial Reporting Requirements

1. Proposed Determination

The Commission detailed the requirements of the CFTC Financial Reporting Rules in the 2023 Proposal.²¹⁹ Specifically, the 2023 Proposal noted that the CFTC Financial Reporting Rules require nonbank SDs to file with the Commission and NFA periodic unaudited and annual audited financial reports.²²⁰ The unaudited financial reports must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement demonstrating compliance with, and calculation of, the applicable regulatory minimum capital requirement; (iv) a statement of changes in ownership

equity; (v) a statement of changes in liabilities subordinated to claims of general creditors; and (vi) such further material information necessary to make the required statements not misleading.²²¹ The annual audited financial reports must include the same financial statements that are required to be included in the unaudited financial reports, and must further include: (i) a statement of cash flows; (ii) appropriate footnote disclosures; and (iii) a reconciliation of any material differences between the financial statements contained in the annual audited financial reports and the financial statements contained in the unaudited financial reports prepared as of the nonbank SD's year-end date.²²² In addition, a nonbank SD must attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct.²²³ The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.²²⁴

The CFTC Financial Reporting Rules also require a nonbank SD to file the following financial information with the Commission and NFA on a monthly basis: (i) a schedule listing the nonbank SD's financial positions reported at fair market value;²²⁵ (ii) schedules showing the nonbank SD's counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries;²²⁶ and (iii) for nonbank SDs approved to use internal capital models, certain model metrics, such as aggregate value-at-risk ("VaR"), a graph reflecting the daily intra-month

²²¹ *Id.* and 17 CFR 23.105(d)(2).

²²² *Id.* and 17 CFR 23.105(e)(4).

²²³ *Id.* and 17 CFR 23.105(f).

²²⁴ *Id.*

²²⁵ 2023 Proposal at 41800, Regulation 23.105(l), and Schedule 1 of appendix B to subpart E of part 23 ("Schedule 1"). 17 CFR 23.105(l) and 17 CFR appendix B to subpart E of part 23. Schedule 1 includes a nonbank SD's holding of U.S. Treasury securities, U.S. government agency debt securities, foreign debt and equity securities, money market instruments, corporate obligations, spot commodities, and cleared and uncleared swaps, security-based swaps, and mixed swaps in addition to other position information.

²²⁶ 2023 Proposal 41801 and schedules 2, 3 and 4, respectively, of appendix B to subpart E of part 23.

²¹⁶ 85 FR 57462 at 57485 and 57497.

²¹⁷ See 2023 Proposal at 41788 (referencing 85 FR 57462).

²¹⁸ The Commission also notes that, pursuant to Article 7 of CRR, the competent authority may exempt an entity subject to CRR from the applicable capital requirements, provided certain conditions are met. In such case, the relevant requirements would apply to the entity's parent entity, on a consolidated basis. As discussed in the 2023 Proposal, the Commission's assessment does not cover the application of Article 7 of CRR and therefore an entity that benefits from an exemption under Article 7 of CRR will not qualify for substituted compliance under the final Comparability Order. 2023 Proposal at 41793 (n. 257).

²¹⁹ 2023 Proposal at 41796–41797.

²²⁰ *Id.* and 17 CFR 23.105(d) and (e).

VaR for each business line, and counterparty credit risk information.²²⁷

The CFTC Financial Reporting Rules further require a nonbank SD to provide the Commission and NFA with information regarding the custodianship of margin for uncleared swap transactions (“Margin Report”).²²⁸ The Margin Report must contain: (i) the name and address of each custodian holding initial margin or variation margin on behalf of the nonbank SD or its swap counterparties; (ii) the amount of initial and variation margin required by the uncleared margin rules held by each custodian on behalf of the nonbank SD and on behalf its swap counterparties; and (iii) the aggregate amount of initial margin that the nonbank SD is required to collect from, or post with, swap counterparties for uncleared swap transactions subject to the uncleared margin rules.²²⁹

A nonbank SD electing the Bank-Based Capital Approach is required to file the unaudited financial report, Schedule 1, schedules of counterparty credit exposures, and the Margin Report with the Commission and NFA no later than 17 business days after the applicable month-end reporting date.²³⁰ A nonbank SD must file its annual report with the Commission and NFA no later than 60 calendar days after the end of its fiscal year.²³¹

The 2023 Proposal also detailed relevant financial reporting requirements of the EU Financial Reporting Rules.²³² The EU Financial Reporting Rules require an EU nonbank SD to report information to the relevant competent authorities concerning its capital and financial condition sufficient to provide a comprehensive view of the firm’s risk profile, including information on the firm’s capital requirements, leverage ratio, large exposures, and liquidity requirements.²³³ The relevant competent authorities are tasked with prescribing the specific individual financial statements that EU nonbank SDs are required to submit. To ensure a level of consistency, the European Banking Authority (“EBA”) ²³⁴ has

developed implementing technical standards to specify uniform reporting templates and to determine the frequency of reporting by EU nonbank SDs (“CRR Reporting ITS”).²³⁵

The implementing technical standards under the CRR Reporting ITS require an EU nonbank SD to prepare and deliver to its competent authorities common reporting (“COREP”) on a quarterly basis.²³⁶ COREP requires, among other things, calculations in relation to the EU nonbank SD’s capital and capital requirements,²³⁷ capital ratios and capital levels,²³⁸ and market risk (collectively, “COREP Reports”).²³⁹ CRR Reporting ITS also specify the contents of the required financial reports (“FINREP”) for certain EU nonbank SDs that report financial information on a consolidated basis. Additionally, the ECB has adopted a regulation setting forth a common minimum set of financial information that must be reported by credit institutions subject to CRR to their relevant competent authorities on the basis of the CRR Reporting ITS (“ECB FINREP Regulation”).²⁴⁰ Furthermore, each competent authority has discretion to require institutions subject to CRR to report additional supervisory information on the basis of the CRR and the CRR Reporting ITS, or pursuant to relevant national law.²⁴¹

Under CRR Reporting ITS as complemented by the ECB FINREP Regulation, an EU nonbank SD is required to provide, among other items, the following to its relevant competent authorities: (i) on a quarterly basis, a balance sheet statement (or statement of financial position) that reflects the EU

formats and templates, the instructions and methodology on how to use the templates, the frequency and dates of reporting, and the definitions.

²³⁵ See *Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014*. See also, 2023 Proposal at 41797.

²³⁶ *Id.*

²³⁷ CRR, Article 430; Annex I, Template Numbers 1 and 2, CRR Reporting ITS.

²³⁸ CRR, Article 430; Annex I, Template Number 3, CRR Reporting ITS.

²³⁹ CRR, Article 430; Annex I, Template Numbers 18–25 (as applicable) CRR Reporting ITS.

²⁴⁰ See *Regulation (EU) 2015/534 of the European Central Bank of March 17, 2015 on reporting of supervisory financial information*. The ECB FINREP Regulation complements the CRR Reporting ITS by imposing financial reporting requirements applying on an individual basis to entities subject to CRR, including EU nonbank SDs, whereas CRR, Article 430 and the CRR Reporting ITS impose financial reporting requirements on a consolidated basis. See 2023 Proposal at 41797.

²⁴¹ 2023 Proposal at 41797–41802.

nonbank SD’s financial condition;²⁴² (ii) on a quarterly basis, a statement of profit or loss;²⁴³ (iii) on a quarterly basis, a breakdown of financial liabilities by product and by counterparty sector;²⁴⁴ (iv) on a quarterly basis, a listing of subordinated financial liabilities;²⁴⁵ and, (v) on an annual basis, a statement of changes in equity.²⁴⁶ FINREP also requires an EU nonbank SD subject to the CRR Reporting ITS to provide its competent authorities with additional financial information, including a breakdown of its loans and advances by product and type of counterparty,²⁴⁷ as well as detailed information regarding its derivatives trading activities,²⁴⁸ collateral, and guarantees.²⁴⁹ Furthermore, with the exception of certain “small” entities, EU nonbank

²⁴² CRR, Article 430; Annex III, Template Numbers 1.1, 1.2, and 1.3 (for reporting according to International Financial Reporting Standards (“IFRS”)) and Annex IV, Template Numbers 1.1., 1.2, and 1.3 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

²⁴³ CRR, Article 430; Annex III, Template Number 2 (for reporting according to IFRS) and Annex IV, Template Number 2 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

²⁴⁴ CRR, Article 430; Annex III, Template Number 8.1 (for reporting according to IFRS) and Annex IV, Template Number 8.1 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

²⁴⁵ CRR, Article 430, Annex III, Template Number 8.2 (for reporting according to IFRS) and Annex IV, Template Number 8.3 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

²⁴⁶ CRR, Article 430; Annex III, Template Number 46 (for reporting according to IFRS) and Annex IV, Template Number 46 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

²⁴⁷ CRR, Article 430; Annex III, Template Numbers 5.1 and 6.1 (for reporting according to IFRS) and Annex IV, Template Numbers 5.1 and 6.1, CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

²⁴⁸ CRR, Article 430; Annex III, Template Number 10 (for reporting according to IFRS) and Annex IV, Template Number 10 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

²⁴⁹ CRR, Article 430; Annex III, Template Number 13 (for reporting according to IFRS) and Annex IV, Template Number 13 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

²²⁷ *Id.* and 17 CFR 23.105(k) and (l), and schedules 2, 3 and 4 of appendix B to subpart E of part 23.

²²⁸ *Id.* and 17 CFR 23.105(m).

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² 2023 Proposal at 41797–41798.

²³³ *Id.* and CRR Article 430(1).

²³⁴ *Id.* The EBA is a regulatory agency of the EU that is tasked with establishing a single regulatory and supervisory framework for the banking sector in EU Member States. CRR, Article 430(7) provides that the EBA shall develop draft implementing technical standards to specify the uniform reporting

SDs are required to prepare annual audited financial statements and a management report (together, “annual audited financial report”) pursuant to Article 430 of CRR and the Accounting Directive.²⁵⁰ The annual audited financial statements must comprise, at a minimum, a balance sheet, a profit and loss statement, and notes to the financial statements.²⁵¹ The auditor’s audit report must include: (i) a specification of the financial statements subject to the audit and the financial reporting framework that was applied in their preparation; (ii) a description of the scope of the audit, which must specify the auditing standards used to conduct the audit; (iii) an audit opinion stating whether the financial statements give a true and fair view in accordance with the relevant financial reporting framework; and (iv) a reference to any matters emphasized by the auditor that did not qualify the audit opinion.²⁵²

Furthermore, as noted in the 2023 Proposal, the SEC has issued orders permitting an SEC-registered nonbank security-based swap dealer domiciled in France or Germany (“EU nonbank SBSD”) to satisfy SEC Capital requirements via substituted compliance with applicable French and German capital and financial reporting.²⁵³ The French Order and

German Order conditioned substituted compliance for capital requirements on an EU nonbank SBSD complying with specified laws and regulations, including CRR, CRD, and BRRD, and also maintaining total liquid assets in an amount that exceeds the EU nonbank SBSD’s total liabilities by at least \$100 million and by at least \$20 million after applying certain deductions to the value of the liquid assets to reflect market, credit, and other potential risks to the value of the assets.²⁵⁴ The SEC’s French Order and German Order granting substituted compliance for financial reporting to EU nonbank SBSDs, as supplemented by the SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information, also require an EU nonbank SBSD to file an unaudited FOCUS Report with the SEC on a monthly basis.²⁵⁵ The FOCUS Report is required to include, among other statements and schedules: (i) a statement of financial condition; (ii) a statement of the EU nonbank SBSD’s capital computation in accordance with home country Basel-based requirements; (iii) a statement of income/loss; and (iv) a statement of capital withdrawals.²⁵⁶ An EU nonbank SBSD is required to file its FOCUS Report with the SEC within 35 calendar days of the month end.²⁵⁷

Based on its review of the EU Application and the relevant EU laws and regulations, the Commission preliminarily determined that, subject to the conditions specified in the 2023 Proposal and discussed below, the EU Financial Reporting Rules are comparable to CFTC Financial Reporting Rules in purpose and effect. The Commission noted that both sets of rules provide the relevant EU competent authorities, the Commission, and NFA with financial information to monitor a

nonbank SD’s compliance with capital requirements, and to assess a nonbank SD’s overall safety and soundness.²⁵⁸ Specifically, the Commission preliminarily found that the EU Financial Reporting Rules impose reporting requirements that are comparable with respect to overall form and content to the CFTC Financial Reporting Rules.²⁵⁹ In this regard, both the CFTC Financial Reporting Rules and the EU Financial Reporting Rules require a nonbank SD to file statements of financial condition, statements of profit and loss, and statements of regulatory capital that, collectively, provide information for the relevant EU competent authorities, Commission, and NFA to assess a nonbank SD’s overall ability to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, and cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.²⁶⁰

The proposed conditions would ensure that the Commission and NFA receive appropriate and timely financial information from EU nonbank SDs to monitor the firms’ compliance with EU capital requirements and to assess the firms’ overall safety and soundness. The proposed conditions would require an EU nonbank SD to provide the Commission and NFA with copies of the relevant templates of the FINREP reports and COREP reports that correspond to the EU nonbank SD’s statement of financial condition, statement of income/loss, and statement of regulatory capital, total risk exposure, and capital ratios. These templates consist of FINREP templates 1.1 (Balance Sheet Statement: assets), 1.2 (Balance Sheet Statement: liabilities), 1.3 (Balance Sheet Statement: equity), 2 (Statement of profit or loss), and 10 (Derivatives—Trading and economic hedges), and COREP templates 1 (Own Funds), 2 (Own Funds Requirements), and 3 (Capital Ratios). In addition, the Commission proposed to require EU nonbank SDs to submit to the Commission and NFA copies of the EU nonbank SD’s annual audited financial report.²⁶¹

The proposed conditions would also require the FINREP reports, COREP reports, and annual audited financial report to be translated into the English language.²⁶² The FINREP and COREP reports also must have balances

²⁵⁰ Accounting Directive, Articles 4, 19 and 34; French MFC, Articles L.511–35 to L.511–38; German Commercial Code (Handelsgesetzbuch, “HGB”), section 316 *et seq.* The Accounting Directive provides that the audit requirement is not applicable to “small” entities defined as firms meeting the following requirements: (1) the firm’s balance sheet is not more than EUR 4 million; (2) the firm’s net turnover does not exceed more than EUR 8 million; or (3) the firm did not employ more than 50 employees during the financial year. See Article 3(2) and Article 34 of the Accounting Directive. The Applicants represented that the four EU nonbank SDs currently registered with the Commission do not meet the criteria to be classified as “small” entities and, therefore, are required to prepare audited annual financial reports. EU Application, p. 5.

²⁵¹ Accounting Directive, Article 4(1). The audit of the financial statements and management report is required to be performed by one or more statutory auditors or auditors approved by EU Member States to conduct audits of EU nonbank SDs. *Id.*, Article 34(1). The annual audited financial report, together with the opinion and statements of the auditor, must be published. *Id.*, Article 30.

²⁵² *Id.* Article 35.

²⁵³ See *Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin*, 86 FR 59797 (Oct. 28, 2021) (“German Order”); *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-*

Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the French Republic, 86 FR 41612 (Aug. 8, 2021) (“French Order”); and *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7*, 86 FR 59208 (Oct. 26, 2021) (“SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information”).

²⁵⁴ The conditioning of the German Order and French Order on EU nonbank SBSDs maintaining a defined amount of liquid assets in an amount that exceeds the EU nonbank SBSD’s total liabilities reflects that the SEC’s capital rule for nonbank SBSDs is a liquidity-based requirement and not based on the Basel standards. 17 CFR 240.18a–1(a)(1).

²⁵⁵ See, French Order and German Order. See also, SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

²⁵⁶ See, SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

²⁵⁷ *Id.*

²⁵⁸ 2023 Proposal at 41798.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.* at 41799.

²⁶² *Id.*

converted from euro to U.S. dollars.²⁶³ The Commission further recognized that the requirement to translate balances denominated in euro to U.S. dollars on the annual audited financial report may have an unintended impact on the opinion expressed by the statutory auditor. The Commission, therefore, proposed to accept the annual audited financial report denominated in euro, but required the report to be translated into the English language.²⁶⁴

The proposed conditions also would require an EU nonbank SD to file with the Commission and NFA its: (i) FINREP reports and COREP reports within 35 calendar days of the end of each month; and (ii) annual audited financial report on the earliest of the date the report is filed with the competent authority, the date the report is published, or the date the report is required to be filed with the competent authority or the date the report is required to be published pursuant to the EU Financial Reporting Rules.²⁶⁵

The Commission also proposed a condition to require EU nonbank SDs to file with the Commission and NFA, on a monthly basis, Schedule 1 showing the aggregate securities, commodities, and swap positions of the firm at fair market value as of the reporting date.²⁶⁶ The Commission explained that Schedule 1 provides the Commission and NFA with detailed information regarding the financial positions that a nonbank SD holds as of the end of each month, including the firm's swaps

positions, which allows the Commission and NFA to monitor the types of investments and other activities that the firm engages in and would assist the Commission and NFA in monitoring the safety and soundness of the firm.²⁶⁷ The Commission proposed to require that Schedule 1 be filed by an EU nonbank SD along with the firm's monthly submission of selected FINREP and COREP templates.²⁶⁸ The Commission also proposed to require that Schedule 1 be prepared in the English language with balances reported in U.S. dollars.

The Commission further proposed that, in lieu of filing FINREP and COREP reports, EU nonbank SDs that are registered with the SEC as EU nonbank SBSBs could satisfy this condition by filing with the CFTC and NFA, on a monthly basis, copies of the unaudited FOCUS Reports that the EU nonbank SDs are required to file with the SEC pursuant to the SEC French Order or SEC German Order, as supplemented by the SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information. The filing of a FOCUS Report was proposed as an elective option for the EU nonbank SD, as an alternative to the filing of unaudited FINREP templates, COREP templates, and Schedule 1 that such firms would otherwise be required to file with the Commission and NFA pursuant to the proposed Comparability Order. In this connection, the Commission noted that three of the EU nonbank SDs registered with the SEC as EU nonbank SBSBs would be eligible to file copies of their monthly FOCUS Report with the Commission and NFA in lieu of the FINREP and COREP templates and Schedule 1. An EU nonbank SD electing to file copies of its monthly FOCUS Report would be required to submit the reports to the Commission and NFA within 35 calendar days of the end of each month.

Proposing that EU nonbank SDs that are registered with the SEC as EU nonbank SBSBs file the FOCUS Report in lieu of the FINREP and COREP templates and Schedule 1 as an elective option was consistent with Commission Regulation 23.105(d)(3), which at the time the 2023 Proposal was issued, provided that a nonbank SD or nonbank MSP that is also registered with the SEC as a broker or dealer, an SBSB, or a major security-based swap participant might elect to file a FOCUS Report in lieu of the financial reports required by the Commission. On April 30, 2024, the Commission amended Commission Regulation 23.105(d)(3) to mandate the

filing of a FOCUS Report by such dually-registered entities, including dually-registered non-U.S. nonbank SDs, in lieu of the Commission's financial reports.²⁶⁹ As such, the Commission is also adopting as final a revised Condition 11 to require that EU nonbank SDs registered as EU nonbank SBSBs comply with the requirement to file periodic financial statements by filing a copy of the FOCUS Report that the EU nonbank SDs are required to file with the SEC.

The Commission also proposed a condition to require an EU nonbank SD to submit with each set of selected FINREP and COREP templates, annual audited financial report, and the applicable Schedule 1, a statement by an authorized representative or representatives of the EU nonbank SD that, to the best knowledge and belief of the person(s), the information contained within each FINREP and COREP template, annual audited financial report, and Schedule 1, is true and correct, including as it relates to the translation of the report into the English language and the conversion of balances in the reports to U.S. dollars.²⁷⁰ The statement by an authorized representative or representatives of the EU nonbank SD was intended to be a substitute of the oath or affirmation required of nonbank SDs under Commission Regulation 23.105(f),²⁷¹ to ensure that reports filed with the Commission and NFA are prepared and submitted by firm personnel with knowledge of the financial reporting of the firm who can attest to the accuracy of the reporting, translation, and balances conversion.²⁷²

The Commission further proposed a condition that would require an EU nonbank SD to file a Margin Report with the Commission and NFA.²⁷³ The Commission noted that a Margin Report would assist the Commission and NFA in their assessment of the safety and soundness of the EU nonbank SDs by providing information regarding the firm's swap book and the extent to which it has uncollateralized exposures

²⁶³ *Id.* In the 2023 Proposal, the Commission proposed that the translation of the annual audited financial report into the English language would not be required to be subject to the audit of the independent auditor. An EU nonbank SD would be required to report the exchange rate that it used to convert balances from euro to U.S. dollars to the Commission and NFA as part of the financial reporting.

²⁶⁴ *Id.* at 41800.

²⁶⁵ *Id.* at 41799. The Commission noted that the EU Financial Reporting Rules require EU nonbank SDs to submit the unaudited FINREP and COREP templates to their competent authorities on a quarterly basis, whereas the CFTC Financial Reporting Rules contain a more frequent reporting requirement by requiring nonbank SDs that elect the Bank-Based Approach to file unaudited financial information with the Commission and NFA on a monthly basis. In emphasizing the importance of financial statement reporting requirements for the Commission's and NFA's oversight and the Commission's experience in monitoring the financial conditions of registrants through the receipt of monthly financial statements, the Commission proposed to condition the Comparability Order on a more frequent reporting submission. *See id.*

²⁶⁶ *Id.* Schedule 1 includes a nonbank SD's holding of U.S. Treasury securities, U.S. government agency debt securities, foreign debt and equity securities, money market instruments, corporate obligations, spot commodities, and cleared and uncleared swaps, security-based swaps, and mixed swaps in addition to other position information.

²⁶⁷ *Id.* at 41800.

²⁶⁸ *Id.*

²⁶⁹ *See Capital and Financial Reporting Requirements of Swap Dealers and Major Swap Participants*, 89 FR 45569 (May 23, 2024).

²⁷⁰ 2023 Proposal at 41800.

²⁷¹ 17 CFR 23.105(f). Commission Regulation 23.105(f) requires a nonbank SD to attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct. The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.

²⁷² *See* 2023 Proposal at 41800.

²⁷³ *Id.*

to counterparties or has not met its financial obligations to counterparties. The Commission explained that this information, along with the list of custodians holding both the firms' and counterparties' collateral for swap transactions, would assist with identifying potential financial impacts to the nonbank SD resulting from defaults on its swap transactions. The Commission further proposed to require an EU nonbank SD to file the Margin Report with the Commission and NFA within 35 calendar days of the end of each month, which corresponds with the proposed timeframe for the EU nonbank SD to file the selected FINREP and COREP templates or FOCUS Report, as applicable. The Commission also proposed to require the Margin Report to be prepared in the English language with balances reported in U.S. dollars.

The Commission's preliminary determination did not require an EU nonbank SD to file the model metrics and counterparty credit exposure information required by Commission Regulations 23.105(k) and (l),²⁷⁴ in recognition that NFA's current SD risk monitoring program requires all SDs, including EU nonbank SDs, to file with NFA on a monthly basis certain risk metrics that are comparable with the risk metrics contained in Commission Regulation 23.105(k) and (l) and address the market risk and credit risk of the SD's positions.²⁷⁵ Specifically, the Commission noted that NFA's monthly risk metric information includes: (i) VaR for interest rates, credit, foreign exchange, equities, commodities, and total VaR; (ii) total stressed VaR; (iii) interest rate, credit spread, foreign exchange market, and commodity sensitivities; (iv) total swaps current exposure both before and after offsetting against collateral held by the firm; and

(v) a list of the 15 largest swaps counterparty current exposures before collateral and net of collateral.²⁷⁶

Furthermore, the Commission recognized that although the EU Financial Reporting Rules do not contain an analogue to the CFTC's requirements for nonbank SDs to file monthly model metric information and counterparty exposures information, the competent authorities have access to comparable information. More specifically, the Commission noted that, under the EU Financial Reporting Rules, the competent authorities have broad powers to request any information necessary for the exercise of their functions.²⁷⁷ As such, the competent authorities would have access to information allowing them to assess the ongoing performance of risk models and to monitor the EU nonbank SD's credit exposures, which may be comprised of credit exposures to primarily other EU counterparties. In addition, the COREP reports, which EU nonbank SDs are required to file with the competent authority on a quarterly basis, include information regarding the EU nonbank SD's risk exposure amounts, including risk-weighted exposure amounts for credit risk.²⁷⁸

2. Comment Analysis and Final Determination

The Commission received comments regarding the comparability of financial reporting and specific comments addressing several of the financial reporting issues on which the Commission solicited feedback. Better Markets expressed a general disagreement with the Commission's preliminary finding of comparability, arguing that the number and variety of conditions regarding financial reporting are the most compelling evidence that the requirements are not comparable.²⁷⁹ More generally, Better Markets asserted that the 2023 Proposal did not provide a sufficient analysis supporting the Commission's preliminary conclusion that the EU and the U.S. financial

reporting frameworks would produce comparable outcomes.²⁸⁰

Better Markets also noted that the proposed comparability determination was conditioned on an EU nonbank SD submitting a statement by an authorized representative that to the best knowledge and belief of the person the information contained in reports submitted to the Commission is true and correct, in lieu of the oath or affirmation required by Commission Regulation 23.105(f).²⁸¹ Better Markets stated that there are material legal differences between a statement and the oath or affirmation required by the CFTC Financial Reporting Rules and argued that the Commission failed "to address, explain, or explore this explicit and significant difference."²⁸²

Better Markets also disagreed with the 2023 Proposal to the extent that the Commission proposed not to require EU nonbank SDs that have been approved by the relevant competent authority to use capital models to file the monthly model metric information required by Commission Regulation 23.105(k) with the Commission or NFA.²⁸³ Commission Regulation 23.105(k) requires nonbank SDs that have been approved by the Commission or NFA to use models to compute market risk or credit risk for computing capital requirements to file certain information with the Commission and NFA on a monthly basis.²⁸⁴ As noted above, the information required to be filed includes: (i) for nonbank SDs approved to use market risk models, a listing of any products that the nonbank SD excludes from the approved market risk model and the amount of the standardized market risk charge taken on such products; (ii) a graph reflecting, for each business line of the nonbank SD, the daily intra-month VaR; (iii) the aggregate VaR for the nonbank SD; (iv) certain credit risk information for swaps, mixed swaps and security-based swaps, including: (a) overall current exposure, (b) current exposure listed by counterparty for the 15 largest exposures, (c) the 10 largest commitments listed by counterparty, (d) maximum potential exposure listed by counterparty for the 15 largest exposures, (e) aggregate maximum potential exposure, (f) a summary report reflecting the SD's current and maximum potential exposures by credit rating category, and (g) a summary report reflecting current exposure for

²⁷⁴ Commission Regulation 23.105(k) requires a nonbank SD that has obtained approval from the Commission or NFA to use internal capital models to submit to the Commission and NFA each month information regarding its risk exposures, including VaR, and requires certain credit risk exposure information from model and non-model approved firms. 17 CFR 23.105(k). Commission Regulation 23.105(l) requires each nonbank SD to provide information to the Commission and NFA regarding its counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries in Schedules 2, 3, and 4, respectively. 17 CFR 23.105(l).

²⁷⁵ 2023 Proposal at 41801. As previously noted, however, the current three EU nonbank SDs will be required to include credit risk information set forth in Schedules 2–4 of appendix B to Subpart E in the monthly FOCUS Report that the firms will be required to file with the Commission under Condition 11 of the final Comparability Order. In addition, as previously noted, each EU nonbank SD will be required to file Schedule 1 under Condition 13 of the final Comparability Determination.

²⁷⁶ See 2023 Proposal at 41801 and *NFA Financial Requirements, section 17—Swap Dealer and Major Swap Participant Reporting Requirements* ("NFA section 17 Rule"), available here: <https://www.nfa.futures.org/rulebooksq/rule.aspx?RuleID=SECTION%2017&Section=7>, and Notice to Members—*Monthly Risk Data Reporting for Swap Dealers* (May 30, 2017) ("NFA Notice 1–17–10"), available here: <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4817>.

²⁷⁷ See 2023 Proposal at 41801 and CRD, Article 65(3), French MFC, Article L.612–24, and SSM Regulation, Article 10 (indicating that competent authorities have broad information gathering powers).

²⁷⁸ See 2023 Proposal at 41801 and CRR Reporting ITS, Annex I.

²⁷⁹ Better Markets Letter at p. 12.

²⁸⁰ *Id.* at p. 9.

²⁸¹ *Id.* at p. 12.

²⁸² *Id.*

²⁸³ *Id.* at p. 12.

²⁸⁴ 17 CFR 23.105(k).

each of the top ten countries to which the nonbank SD is exposed.²⁸⁵ Better Markets stated that by not requiring the information contained in Commission Regulation 23.105(k), the Commission was proposing to “take a back seat to the EU and blindly accept the assessments resulting from [the EU nonbank SDs’] use of internal models to calculate risk.”²⁸⁶

With respect to Better Markets’ statement that the number and variety of conditions regarding financial reporting are the most compelling evidence that the requirements are not comparable, the Commission disagrees that the inclusion of conditions in the Comparability Order demonstrates that the EU Financial Reporting Requirement are not comparable to CFTC Financial Reporting Requirements in achieving the overall objective of ensuring the safety and soundness of nonbank SDs. As discussed in section I.E. above, the conditions impose obligations on EU nonbank SDs to provide information to the Commission and NFA necessary for the effective oversight of the EU nonbank SDs on an ongoing basis. As also discussed in section I.E. above, Commission staff engaged in a thorough analysis of the EU Capital Rules and EU Financial Reporting Rules, which supports the Commission’s conclusion that the respective regulatory frameworks would produce comparable outcomes.

The Commission also does not agree that its approach is effectively deferring model oversight to the EU authorities or that it is otherwise “blindly accept[ing]” the internal model-based assessments of the EU nonbank SDs. As noted above, pursuant to NFA rules, all registered SDs, including EU nonbank SDs, are required to submit to NFA, on a monthly basis, a list of specified risk metrics related to the SD’s market risk and credit risk exposures.²⁸⁷ Specifically, as discussed in section II.D.1. above, the risk metrics include: (i) VaR for interest rates, credit, foreign exchange, equities, commodities, and total VaR; (ii) total stressed VaR; (iii) interest rate, credit spread, foreign exchange market, and commodity sensitivities; (iv) total swaps current exposure both before and after offsetting against collateral held by the firm; and (v) a list of the 15 largest swaps

counterparty current exposures.²⁸⁸ As part of its regulatory oversight program, NFA uses the risk metrics information to identify firms that may pose heightened risk and to allocate appropriate oversight resources. NFA also may request additional information from a nonbank SD to the extent it determines that information in the risk metrics or other financial filings warrants a need for additional follow-up. Furthermore, Commission staff has access to the collected risks metrics information and participates in NFA’s risk monitoring function by regularly exchanging information and discussing potential risks with NFA staff.

As the list of specified risk metrics discussed above indicates, although the information collected by NFA is not identical to the information required under Commission Regulation 23.105(k), there is a significant overlap in the data items. The Commission also notes that NFA, in its role of primary supervisor of nonbank SDs’ risk management practices, has identified the risk data items listed in NFA Notice I-17-10 as the most relevant risk metrics to be collected for oversight purposes. As such, the Commission finds that the information required pursuant to NFA Notice I-17-10 would provide the Commission and NFA with key data allowing them to monitor nonbank SDs’ risk exposures. In addition, the Commission has the ability to request additional information from its registrants, including EU nonbank SDs, at any time. Finally, the Commission notes that the relevant competent authorities, which will be conducting the initial approval and ongoing assessment of the performance of the EU nonbank SDs’ internal models, under a regulatory framework that the Commission finds comparable to the CFTC Capital Rules, will have access to additional information that the competent authorities deem relevant in the conduct of such approval and assessment. The Commission, therefore, concludes that it is not necessary to require EU nonbank SDs relying on the final Comparability Order to submit the model metric information and credit risk information mandated by Commission Regulations 23.105(k) and (l).

The Commission also disagrees with Better Markets’ assertion that there is a significant difference between the proposed condition that an EU nonbank SD provides a “statement” from an authorized representative and the CFTC’s requirement for nonbank SDs to

provide an “oath or affirmation” from an authorized representative with regard to the accuracy of the financial reporting’s content. For completeness, the Commission notes that the proposed condition requires that an authorized representative of the EU nonbank SD provide a statement that, to the best of the knowledge and belief of the representative, the information contained in the financial reports filed with the Commission and NFA is true and correct, including the applicable translation of the reports to the English language and the conversion of balances to U.S. dollars. The proposed condition was based on current Commission Regulation 23.105(f), which provides that a nonbank SD must attach to each unaudited and annual audited financial report filed with the Commission and NFA an oath or affirmation that to the best knowledge and belief of the individual making the oath or affirmation the information in the financial reports is true and correct. Similar to the intent of Commission Regulation 23.105(f), the purpose of the proposed condition is to obtain a formal attestation from a representative with the appropriate knowledge and authority that the information provided in the requisite financial reports is accurate and properly translated. The Commission’s choice of language in using the term “statement” was not intended to make a legal distinction between this term and the terms “oath” or “affirmation,” but rather, to select a generic term that is universally understood across jurisdictions to reflect the above-referenced purpose. In practice, the Commission does not believe that there is a material legal difference between the language of the proposed condition and the required oath or affirmation required under Commission Regulation 23.105(f). Instead, the Commission is of the view that the proposed condition would have the same legal effect as Commission Regulation 23.105(f) of providing the Commission with a stronger basis to take legal action if an EU nonbank SD files erroneous information.

Finally, the Applicants addressed the Commission’s request for comment on the compliance dates for the reporting conditions that the proposed Comparability Order would impose on EU nonbank SDs.²⁸⁹ The Applicants requested that the Commission set the compliance date at least six months following the issue date of the final Comparability Order to allow EU nonbank SDs to adequately prepare for compliance with the reporting

²⁸⁵ 17 CFR 23.105(k)(1).

²⁸⁶ Better Markets Letter at pp. 12–13.

²⁸⁷ NFA section 17 Rule, available here: <https://www.nfa.futures.org/rulebooksql/rules.aspx?RuleID=SECTION%2017&Section=7>, and NFA Notice I-17-10, available here: <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4817>.

²⁸⁸ See 2023 Proposal at 41801, NFA section 17 Rule, and NFA Notice I-17-10.

²⁸⁹ Applicants’ Letter at p. 6.

conditions imposed by the Comparability Order.²⁹⁰

The Commission believes that granting an additional period of time to allow EU nonbank SDs to develop and implement the necessary systems and processes for compliance with the Comparability Order is appropriate with respect to the new reporting obligations imposed on EU nonbank SDs under the final Order. For other reporting obligations, for which a process already exists, such as the reports that EU nonbank SDs currently submit to the Commission and NFA pursuant to CFTC Staff Letter 22–10,²⁹¹ prepare pursuant to the EU Financial Reporting Rules, and/or submit to the SEC (*i.e.*, FOCUS Reports), additional time for compliance does not appear necessary. Accordingly, the Commission is setting a compliance date of 180 calendar days from the date of publication of the final Comparability Order in the **Federal Register** for EU nonbank SDs to comply with final Condition 15, which requires the firms to file monthly Margin Reports with the Commission and NFA.

For purposes of clarity, the Commission also notes that EU nonbank SDs may present the financial information required to be provided to the Commission and NFA under the final Comparability Order in accordance with generally accepted accounting principles that the EU nonbank SD uses to prepare general purpose financial statements in its EU Member State. This clarification is consistent with proposed Condition 10, which the Commission adopts subject to a minor modification in the final Comparability Order, requiring an EU nonbank SD to prepare and keep current ledgers and other similar records “in accordance with accounting principles permitted by the relevant competent authority.”²⁹² In

taking the position that EU nonbank SDs may provide financial reporting prepared in accordance with the accounting standards applicable in their home jurisdiction, the Commission considered the nature of the financial reporting information required from nonbank SDs for purposes of monitoring their overall financial condition and compliance with capital requirements. Specifically, the Commission notes that the requirements for how nonbank SDs calculate their risk-weighted assets and capital ratio, in both the EU and the U.S., follow a rules-based approach consistent with the Basel standards, and, consequently, the Commission does not anticipate that a variation in the applicable accounting standards would materially impact this calculation.²⁹³ In this regard, the Commission notes that EU nonbank SDs currently submit financial reports, including a statement of financial condition and a statement of regulatory capital, pursuant to CFTC Staff Letter 22–10.²⁹⁴ The reports provide the Commission with appropriate information to assess the financial and operational condition of EU nonbank

consistency across the Comparability Determinations the Commission is adopting with respect to several other jurisdictions and to reflect the fact that certain jurisdictions may not issue a formal approval of the accounting standards used by nonbank SDs, the Commission is replacing the adjective “required” with the adjective “permitted” in the reference to the accounting standards to be used by EU nonbank SDs.

²⁹³ Furthermore, the Commission’s approach to permitting EU nonbank SDs to maintain financial books and records, and to file financial reports and other financial information, prepared in accordance with local accounting standards is consistent with the SEC’s final comparability determinations for non-U.S. SBSs. German Order at 59812 and SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information at 59219. Specifically, the SEC stated that the use of local reporting requirements will avoid non-U.S. SBSs “having to perform and present two Basel capital calculations (one pursuant to local requirements and one pursuant to U.S. requirements).” SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information at 59219. The SEC noted, in this regard, that the Basel standards are international standards that have been adopted in the U.S. and in jurisdictions where substituted compliance is available for capital under the SEC comparability determinations and that, therefore, requirements for how firms calculate capital pursuant to the Basel standards generally should be similar. *Id.* The Commission’s approach to permitting EU nonbank SDs to maintain financial books and records, and file financial information, prepared in accordance with local accounting standards will also facilitate financial reporting by dually-registered EU nonbank SDs-EU nonbank SBSs. In such case, dually-registered entities would not have to perform multiple calculations under different accounting standards or submit two different FOCUS Reports.

²⁹⁴ CFTC Staff Letter No. 22–10, *Extension of Time-Limited No-Action Position for Foreign Based Nonbank Swap Dealers domiciled in Japan, Mexico, the United Kingdom, and the European Union*, August 17, 2022.

SDs, as well as the firms’ compliance with the capital ratios imposed on EU nonbank SDs under the EU Capital Rules.

In summary, the Commission adopts the final Comparability Order and conditions substantially as proposed with respect to the comparability of the CFTC Financial Reporting Rules and EU Financial Reporting Requirements, subject to the amendment in Condition 10 to use the word “permitted” in reference to the applicable accounting standards and the amendment in Condition 11 to mandate the filing by EU nonbank SDs registered as EU nonbank SBSs of a copy of the FOCUS Report that such dually-registered EU nonbank SDs are required to file with the SEC. The Commission also specifies, in final Conditions 11, 13, and 15, that the conversion of balances to U.S. dollars must be done using a commercially reasonable and observable euro/U.S. dollar spot rate as of the date of the respective report. Finally, the Commission also grants an additional compliance period for the new reporting obligations imposed on EU nonbank SDs under the final Order set forth below.

E. Notice Requirements

1. Proposed Determination

The Commission noted in the 2023 Proposal that the CFTC Financial Reporting Rules require nonbank SDs to provide the Commission and NFA with written notice of certain defined events.²⁹⁵ Commission Regulation 23.105(c) requires a nonbank SD to file written notice with the Commission and NFA of the following events: (i) the nonbank SD’s regulatory capital is less than the minimum amount required; (ii) the nonbank SD’s regulatory capital is less than 120 percent of the minimum amount required; (iii) the nonbank SD fails to make or to keep current required financial books and records; (iv) the nonbank SD experiences a reduction in the level of its excess regulatory capital of 30 percent or more from the amount last reported in a financial report filed with the Commission; (v) the nonbank SD plans to distribute capital to equity holders in an amount in excess of 30 percent of the firm’s excess regulatory capital; (vi) the nonbank SD fails to post to, or collect from, a counterparty (or group of counterparties under common ownership or control) required initial and variation margin, and the aggregate amount of such margin equals or exceeds 25 percent of the nonbank SD’s minimum capital requirement; (vii) the

²⁹⁰ *Id.*

²⁹¹ CFTC Staff Letter No. 22–10, *Extension of Time-Limited No-Action Position for Foreign Based Nonbank Swap Dealers domiciled in Japan, Mexico, the United Kingdom, and the European Union*, issued by MPD on August 17, 2022. CFTC Staff Letter No. 22–10, which extended the expiration of CFTC Letter 21–20, provides that MPD would not recommend an enforcement action to the Commission if a non-U.S. nonbank SD covered by the letter, subject to certain conditions, complied with their respective home-country capital and financial reporting requirements in lieu of the Commission’s capital and financial reporting requirements set forth in Commission Regulations 23.100 through 23.106, pending the Commission’s determination of whether the capital and financial reporting requirements of certain foreign jurisdictions are comparable to the Commission’s corresponding requirements.

²⁹² 2023 Proposal at 48808. Proposed Condition 10 stated that EU nonbank SDs must prepare and keep current ledgers and other similar records “in accordance with accounting principles required by the relevant competent authority”. To promote

²⁹⁵ 2023 Proposal at 41802 and 17 CFR 23.105(c).

nonbank SD fails to post to, or collect from, swap counterparties required initial and variation margin, and the aggregate amount of such margin equals or exceeds 50 percent of the nonbank SD's minimum capital requirement; and (viii) the nonbank SD is registered with the SEC as an SBSB and files a notice with the SEC under applicable SEC Rules.²⁹⁶

The notices are part of the Commission's overall program of helping to ensure the safety and soundness of nonbank SDs and the swaps markets in general.²⁹⁷ Notices provide the Commission and NFA with an opportunity to assess whether the occurrence of a notice event indicates the existence of actual or potential financial and/or operational issues at a nonbank SD, and, when necessary, allows the Commission and NFA to engage with the nonbank SD in an effort to minimize potential adverse impacts on swap counterparties and the larger swaps market.²⁹⁸

The EU capital and resolution framework, in turn, requires EU nonbank SDs to provide certain notices to their respective competent authorities concerning the firm's compliance with relevant laws and regulations.²⁹⁹ Specifically, the Commission noted that the EU Financial Reporting Rules require an EU nonbank SD to provide notice within five business days to its relevant competent authority³⁰⁰ if the firm fails to meet its combined capital buffer requirement, which at a minimum consists of a capital conservation buffer of 2.5 percent of the EU nonbank SD's total risk exposure amount.³⁰¹ To meet its capital buffer requirements, an EU nonbank SDs must hold common equity tier 1 capital in

addition to the minimum common equity tier 1 ratio requirement of 4.5 percent of the firm's core capital requirement of 8 percent of the firm's total risk exposure amount.³⁰² The notice to the competent authority must be accompanied by a capital conservation plan that sets out how the EU nonbank SD will restore its capital levels.³⁰³ The capital conservation plan is required to include: (i) estimates of income and expenditures and a forecast balance sheet; (ii) measures to increase the capital ratios of the EU nonbank SD; (iii) a plan and timeframe for the increase in the capital of the EU nonbank SD with the objective of meeting fully the combined buffer requirement; and (iv) any other information that the competent authority considers to be necessary to assess the capital conservation plan.³⁰⁴ The relevant competent authority is required to assess the capital conservation plan, and may approve the plan only if it considers that the plan would be reasonably likely to conserve or raise sufficient capital to enable the EU nonbank SD to meet its combined capital buffer requirement within a timeframe that the competent authority considers to be appropriate.³⁰⁵ If the relevant competent authority does not approve the capital conservation plan, the competent authority may impose requirements for the EU nonbank SD to increase its capital to specified levels within a specified time or the competent authority may impose more restrictions on distributions.³⁰⁶ In addition, an EU nonbank SD must immediately notify its relevant resolution authority in situations where the firm meets the combined capital buffer requirement, but fails to meet the combined buffer

requirement when considered in addition to the applicable MREL requirements.³⁰⁷ The EU nonbank SD must also notify the relevant resolution authority if it considers the firm to be failing or likely to fail.³⁰⁸

Furthermore, if an EU nonbank SD breaches its liquidity or MREL requirements, the EU authorities possess wide-ranging tools to deal with the firm's financial deterioration. Specifically, the competent authority may impose administrative penalties or other administrative measures, including prudential capital charges, if an EU nonbank SD's liquidity position repeatedly or persistently falls below the liquidity and stable funding requirements established at the national or EU level.

Emphasizing that the requirement for a nonbank SD to file notice with the Commission and NFA if the firm becomes undercapitalized or if the firm experiences a decrease of excess regulatory capital below defined levels is a central component of the Commission's and NFA's oversight program for nonbank SDs, the Commission proposed a condition to require EU nonbank SDs to file with the Commission and NFA copies of notices filed under Article 142 of CRD by EU nonbank SDs alerting competent authorities of a breach of the EU nonbank SD's combined capital buffer.³⁰⁹ The Commission proposed to require that the notice be filed by the EU nonbank SD within 24 hours of the filing of the notice with the relevant competent authority.

The Commission, however, preliminarily determined that the requirement for an EU nonbank SD to provide notice of a breach of its capital buffer requirements to its competent authority is not sufficiently comparable in purpose and effect to the CFTC notice provisions contained in Commission Regulation 23.105(c)(1) and (2),³¹⁰ which require a nonbank SD to provide notice to the Commission and to NFA if the firm fails to meet its minimum capital requirement or if the firm's regulatory capital falls below 120 percent of its minimum capital requirement ("Early Warning Level").³¹¹ The Commission noted that, in its

²⁹⁶ 17 CFR 23.105(c).

²⁹⁷ *Id.*

²⁹⁸ See 2023 Proposal at 41802.

²⁹⁹ *Id.*

³⁰⁰ See 2023 Proposal at 41802. As further discussed in section II.F.1. below, the relevant prudential competent authority may either be the national competent authority with jurisdiction to oversee compliance with the EU Capital Rules and the EU Financial Reporting Rules or, for EU nonbank SDs that are authorized as credit institutions and qualify as "significant supervised entities," the ECB. See generally SSM Regulation and SSM Framework Regulation.

³⁰¹ 2023 Proposal at 41802 and CRD, Article 142; French MFC, Article L.511–41–1–A; French Ministerial Order on Capital Buffers, Articles 61 to 64; and German KWG, sections 10i(2) to (9). The combined capital buffer requirement is the total common equity tier 1 capital required to meet the requirement for the capital conservation buffer required by Article 129 of CRD, extended to include, as applicable, an institution-specific countercyclical buffer required by Article 130 of CRD, a G–SII buffer required by Article 131(4) of CRD, an O–SII buffer required by Article 131(5) of CRD, and a systemic risk buffer required by Article 133 of CRD. CRD, Article 128.

³⁰² *Id.* The EU Financial Reporting Rules effectively require an EU nonbank SD to provide notice if the firm's capital ratio of common equity tier 1 capital to risk-weighted assets falls below 7 percent (assuming that the only capital buffer the EU nonbank SD is subject to is the capital conservation buffer of 2.5 percent).

³⁰³ 2023 Proposal at 41802 and CRD, Article 142(1); French Ministerial Order on Capital Buffers, Article 61; German KWG, section 10i(6). The competent authority may extend the filing deadline, and require the EU nonbank SD to file the capital conservation plan within 10 days of the firm identifying that it failed to meet the applicable capital buffer requirements.

³⁰⁴ 2023 Proposal at 41802 and CRD, Article 142(2); French Ministerial Order on Capital Buffers, Article 62; German KWG, section 10i(6).

³⁰⁵ 2023 Proposal at 41802 and CRD, Article 142(3); French MFC, Article L.511–41–1–1; French Ministerial Order on Capital Buffers, Article 63; German KWG, section 10i(7).

³⁰⁶ 2023 Proposal at 41802 and CRD, Article 142(4); French MFC, Article L.511–41–1–A; French Ministerial Order on Capital Buffers, Article 64 and French Ministerial Order on Distribution Restrictions, Articles 2 to 9; German KWG, section 10i(8).

³⁰⁷ 2023 Proposal at 41802–41803 and BRRD, Article 16a; French MFC, Article L.613–56 III and French Ministerial Order on Distribution Restrictions, Articles 7 and 8; German SAG, Article 58a.

³⁰⁸ 2023 Proposal at 41803 and BRRD, Article 81(1); French MFC, Article L.613–49; German SAG, section 138(1).

³⁰⁹ See 2023 Proposal at 41803.

³¹⁰ 17 CFR 23.105(c)(1) and (2).

³¹¹ See 2023 Proposal at 41803.

preliminary view, the requirement for an EU nonbank SD to provide notice of a breach of its capital buffer requirements does not achieve a comparable outcome to the CFTC's Early Warning Level requirement due to the difference in the thresholds triggering a notice requirement in the respective rule sets.³¹² Therefore, the Commission proposed a condition to require an EU nonbank SD to file a notice with the Commission and NFA if the firm's capital ratio does not equal or exceed 12.6 percent.³¹³ The proposed condition would further require the EU nonbank SD to file the notice with the Commission and NFA within 24 hours of when the firm knows or should have known that its regulatory capital was below 120 percent of its minimum capital requirement.³¹⁴

The Commission also noted that the EU Financial Reporting Rules also do not contain an explicit requirement for an EU nonbank SD to notify its competent authority if the firm fails to maintain current books and records, experiences a decrease in regulatory capital over levels previously reported, or fails to collect or post initial margin with uncleared swap counterparties that exceed certain threshold levels.³¹⁵ The EU Financial Reporting Rules also do not require an EU nonbank SD to provide the competent authority with advance notice of capital withdrawals initiated by equity holders that exceed defined amounts or percentages of the firm's excess regulatory capital.³¹⁶

To ensure that the Commission and NFA receive prompt information concerning potential operational or financial issues that may adversely impact the safety and soundness of an EU nonbank SD, the Commission proposed to condition the Comparability Order to require EU nonbank SDs to file certain notices mandated by Commission Regulation 23.105(c) with the Commission and NFA as discussed below. Pursuant to the proposed conditions, an EU nonbank SD would be required to file a notice with the Commission and NFA if the firm fails to maintain current books and records with respect to its financial condition and financial reporting requirements.³¹⁷ The Commission stated that, in this context, books and records would include current ledgers or other similar records which show or summarize, with appropriate references

to supporting documents, each transaction affecting the EU nonbank SD's asset, liability, income, expense, and capital accounts in accordance with the accounting principles accepted by the relevant competent authorities.³¹⁸ The Commission further stated that it preliminarily believed that the maintenance of current books and records is a fundamental and essential component of operating as a registered nonbank SD and that the failure to comply with such a requirement may indicate an inability of the firm to promptly and accurately record transactions and to ensure compliance with regulatory requirements, including regulatory capital requirements. As such, the Commission proposed to condition the proposed Order on an EU nonbank SD providing the Commission and NFA with a written notice within 24 hours if the firm fails to maintain books and records on a current basis.³¹⁹

The Commission further proposed to condition the Comparability Order on an EU nonbank SD filing a notice with the Commission and NFA if: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin on uncleared swap and security-based swap positions that, in the aggregate, exceeds 25 percent of the EU nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the EU nonbank SD for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the EU nonbank SD's minimum capital requirement; (iii) an EU nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and security-based swap positions to a single counterparty, or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the EU nonbank SD's minimum capital requirement; and (iv) an EU nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the EU nonbank SD's minimum capital requirement. The Commission proposed to require this notice so that, in the event that such a notice is filed, the Commission and NFA may commence communication with the EU nonbank SD and the relevant competent authority to obtain an understanding of the facts that have

led to the failure to exchange material amounts of initial margin and variation margin in accordance with the applicable margin rules, and to assess whether there is a concern regarding the financial condition of the firm that may impair its ability to meet its financial obligations to customers, counterparties, creditors, and general market participants, or otherwise adversely impact the firm's safety and soundness.³²⁰

The Commission also proposed to require that an EU nonbank SD file any notices required under the Order with the Commission and NFA in English and, where applicable, with any balances reported in U.S. dollars. The Commission stated that each notice required by the proposed Comparability Order had to be filed in accordance with instructions issued by the Commission or NFA.³²¹

The Commission did not propose to require an EU nonbank SD to file notices with the Commission concerning withdrawals of capital or changes in capital levels as such information would be reflected in the financial statement reporting filed with the Commission and NFA as conditions of the order, and because the EU nonbank SD's capital levels are monitored by the relevant competent authority. As such, the Commission preliminarily considered that the separate reporting of the information to the Commission would be superfluous.³²²

2. Comments and Final Determination

With respect to the proposed requirements in Condition 21 that an EU nonbank SD file a notice with the Commission and NFA within 24 hours of when the firm knew or should have known that its regulatory capital fell below 120 percent of its minimum capital requirement, the Applicants asserted that the wording of the proposed condition raises practical challenges as it would require notification prior to the discovery of the relevant event.³²³ The Applicants recommended that the Commission amend the proposed condition to require notice within 24 hours of when the firm "knew" that its regulatory capital fell below 120 percent of the minimum capital requirement.³²⁴ Similarly, with respect to proposed Condition 22, which would require an EU nonbank SD to file a notice with the

³¹² *Id.*

³¹³ *Id.* at 41803–41804.

³¹⁴ *Id.* at 41804.

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.* at 41804–41805.

³²¹ *Id.*

³²² *Id.* at 41805.

³²³ Applicants' Letter at p. 5.

³²⁴ *Id.*

Commission and NFA within 24 hours if the firm fails to make or keep current the financial books and records, the Applicants recommended that the Commission amend the condition to require that an EU nonbank SD file a notice within 24 hours “of when it knows it has failed to make or keep current the financial books and records.”³²⁵ In addition, with respect to proposed Condition 21, the Applicants asserted that, pursuant to the condition, an EU nonbank SD would calculate the Early Warning Level by applying a buffer of 20 percent in excess capital, in the form of common equity tier 1 capital, on top of the firm’s capital conservation buffer, which, at a minimum, equals 2.5 percent of the firm’s total risk exposure amount and must be met in the form of common equity tier 1 capital. In the Applicants’ view, an aggregate notification trigger of 12.6 percent of total risk exposure amount would be too high. The Applicants recommended that the Commission set the notification trigger at 120 percent of the minimum total capital requirement.³²⁶

The Early Warning Level notice requirement is a central component of the Commission’s and NFA’s oversight programs. The Commission, however, recognizes that by requiring an EU nonbank SD to provide notice if its capital ratio falls below 120 percent of the firm’s minimum capital requirement, as defined to comprise the applicable capital buffers, the Commission would be imposing a higher threshold level for the notice trigger than is currently applicable to nonbank SDs under the CFTC Capital Rules. To achieve the condition’s goal of providing the Commission and NFA with information on decreases in capital that may indicate financial or operational challenges at the firm, the Commission is revising proposed Condition 21 to require instead that an EU nonbank SD provide notice to the Commission if it experiences a 30 percent or more decrease in its excess regulatory capital as compared to the last reported.³²⁷ The condition is consistent with the requirement applicable to nonbank SDs under Commission Regulation 23.105(c)(4).³²⁸

The Commission believes that this condition, combined with the condition requiring an EU nonbank SD to file with the Commission and NFA copies of notices filed with relevant competent authorities of a breach of the EU nonbank SD’s combined capital buffer, will provide a timely opportunity to the Commission and NFA to initiate conversations and fact finding with an EU nonbank SD that may be experiencing operational or financial issues that may adversely impact the firm’s ability to meet its obligations to market participants, including customers or swap counterparties.

In connection with the Applicants’ general request that the Commission set the compliance date of the Comparability Order at least six months following the issuance of the final Order, the Commission believes, as stated above, that granting an additional period of time to allow EU nonbank SDs to establish and implement the necessary processes to comply with the notice reporting obligations imposed by the Comparability Order is appropriate with respect to certain notice obligations. Specifically, the Commission understands that establishing a system and process for monitoring material decreases in excess regulatory capital as required by final Condition 21 or for monitoring failures to collect or post initial margin or variation margin for uncleared swap transactions that exceed specified thresholds for purposes of complying with final Condition 23 may take time.³²⁹ Conversely, the Commission does not believe that additional time is necessary for implementing a system and process of providing a notice to the Commission and NFA in connection with the occurrence of events that EU nonbank SDs currently monitor and/or report to the relevant competent authority. The Commission is also of the view that, given the nature of the notice obligation, EU nonbank SDs should be in a position to comply with all other notice obligations, including those

³²⁹ With regard to Condition 23, the Commission also notes, for clarity that, in proposing a notice condition based on thresholds of “required” margin, the Commission’s intent was to set the notice trigger by reference to margin amounts that are legally required to be exchanged under the applicable margin requirements. To determine the applicable margin requirements, the Commission will consider the framework set forth in Commission Regulation 23.160. To the extent EU nonbank SDs intending to rely on the Comparability Order have inquiries regarding the scope of uncleared swap margin transactions to be monitored for purposes of complying with final Condition 23, MPD will discuss such inquiries with the EU nonbank SD during the confirmation process referenced in final Condition 9 of the Comparability Order.

requiring EU nonbanks SDs to provide notice to the Commission and NFA if they fail to make or keep current financial books and records or if they fail to maintain regulatory capital in the form of common equity tier 1 equal or in excess of the U.S. dollar equivalent of \$20 million, immediately upon effectiveness of the Comparability Order. Specifically, with respect to the requirement in Condition 22 that an EU nonbank SD notify the Commission and NFA if the firm fails to make or keep current the financial books and records, the Commission notes that maintaining current books and records of all financial transactions is a fundamental recordkeeping requirement for a registered nonbank SD, and is essential to provide management with the information necessary to ensure that transactions are timely and accurately reported and that the firm complies with capital and other regulatory requirements. The Commission finds that it is necessary for a nonbank SD to maintain internal controls and procedures to affirmatively monitor that financial books and records are being maintained on a current basis. The Commission also notes that the language of Condition 22 is consistent with the timing standard of Commission Regulation 23.105(c)(3), while also granting additional time for the notice to be translated into English.³³⁰ As such, the Commission is adopting Condition 22 as proposed. The Commission, however, is setting a compliance date of 180 calendar days after the publication of the final Comparability Order in the **Federal Register** with respect to the notice reporting obligations under final Conditions 21 and 23 of the Comparability Order.

With respect to the notice requirement in final Condition 23, the Applicants also recommended that the Commission clarify the term “minimum capital requirement,” used in connection with the thresholds triggering a notice requirement.³³¹ In response, the Commission will amend the condition to indicate that, in the context of final Condition 23, the EU nonbank SD’s “minimum capital requirement” is the core capital requirement under the EU Capital Rules, excluding capital buffers.

Finally, the Applicants recommended that the Commission amend proposed Condition 25 to require that an EU

³³⁰ 17 CFR 23.105(c)(3).

³³¹ Applicants’ Supplemental Letter at p. 2. The Applicants indicated that, in the context of proposed Condition 23, they understand the term “minimum capital requirement” to mean an amount equal to 8 percent of the EU nonbank SD’s total risk exposure amount.

³²⁵ *Id.*

³²⁶ Applicants’ Supplemental Letter at p. 2.

³²⁷ For clarity, by “excess regulatory capital,” the Commission refers to the capital ratio by which the firm’s capital exceeds the core capital ratio requirement of 8 percent of the firm’s risk-weighted assets. For instance, if a firm maintains a capital ratio of 20 percent, its excess regulatory capital would be 12 percent. In this example, 30 percent of the excess regulatory capital would equal 3.6 percent.

³²⁸ 17 CFR 23.105(c)(4).

nonbank SDs, or an entity acting on its behalf, notify the Commission and NFA of “material changes” to the EU Capital Rules or EU Financial Reporting Rules instead of “proposed or final material changes” to the EU Capital Rules or EU Financial Reporting Rules.³³² Separately, the Applicants noted that the language of proposed Condition 25 is confusing in that it differentiates between rules that are “imposed on” and those that “apply to” EU nonbank SDs.³³³ The Commission did not intend to distinguish between rules that are “imposed on” and rules that “apply to” EU nonbank SDs and will use instead the defined terms “EU Capital Rules” and “EU Financial Reporting Rules” to address the potential for confusion. The Commission, however, believes that it is necessary that the Commission and NFA receive an advance notice of potential material changes to the foreign jurisdiction’s rules to allow the Commission a sufficient time to assess the potential impact of the proposed amendments and to address potential changes to the Comparability Determination and Comparability Order. As such, the Commission is adopting Condition 25 as proposed with regard to the required notice of “proposed and final material changes” to the EU Capital Rules and EU Financial Reporting Rules.

The Commission did not receive any comments with respect to the following proposed notice conditions: (i) the EU nonbank SD files notice with the Commission and NFA within 24 hours of being informed by the competent authority that the firm is not in compliance with any component of the EU Capital Rules or EU Financial Reporting Rules (proposed Condition 16); (ii) the EU nonbank SD files notice with the Commission and NFA within 24 hours if the firm fails to maintain regulatory capital in the form of common equity tier 1 capital, as defined in Article 26 of CRR, equal to or in excess of the U.S. dollar equivalent of \$20 million (proposed Condition 17); (iii) the EU nonbank SD provides the Commission and NFA with notice within 24 hours of filing a capital conservation plan (proposed Condition 18); (iv) the EU nonbank SD files notice with the Commission and NFA within 24 hours of being required by its competent authority to maintain additional capital or additional liquidity requirements, or to restrict its business operations, or to comply with certain other additional requirements that the competent authority may impose

pursuant to the EU Capital Rules and the EU Financial Reporting Rules (proposed Condition 19); (v) the EU nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to maintain its MREL (proposed Condition 20); or (vi) the EU nonbank SD files notice of the competent authority approving a change in the firm’s fiscal year-end date, which must be filed with the Commission and NFA at least 15 business days prior to the effective date of the change (proposed Condition 24).

With regard to the proposed condition requiring that the EU nonbank SD file a notice with the Commission and NFA within 24 hours of filing a capital conservation plan, the Commission will revise the condition to require that the notice be filed within 24 hours of when the EU nonbank SD breaches its combined capital buffer requirement and is required to file a capital conservation plan. Thus, the Commission will help ensure that the EU nonbank SD provides a timely notice within 24 hours of breaching its combined capital buffer requirement instead of 24 hours of filing the capital conservation plan, which may occur up to five business days after the breach of the combined buffer requirement.³³⁴

In conclusion, the Commission finds that the regulatory notice provisions of the EU Financial Reporting Rules and the CFTC Financial Reporting Rules, after consideration of the conditions imposed in the final Comparability Order, are comparable in purpose and effect, and achieve comparable outcomes, by providing timely notice to the relevant competent authority, and to the Commission and NFA, of specified events at a nonbank SD that may potentially indicate an ongoing issue with the safety and soundness of the firm and/or its ability to meet its obligations to swap counterparties, creditors, or other market participants without the firm becoming insolvent. As such, the Commission adopts the final Comparability Order and conditions as proposed with respect to the Commission’s analysis of comparability of the EU and Commission’s nonbank SD notice reporting requirements, subject to the revisions in final Conditions 18 and 21, and the clarifying changes to final Condition 25 discussed above. The Commission is also adopting

a compliance date for certain notice reporting requirements as discussed above in the final Comparability Order.

F. Supervision and Enforcement

1. Preliminary Determination

In the 2023 Proposal, the Commission discussed the oversight of nonbank SDs, noting that the Commission and NFA conduct ongoing supervision of nonbank SDs to assess their compliance with the CEA, Commission regulations, and NFA rules by reviewing financial reports, notices, risk exposure reports, and other filings that nonbank SDs are required to file with the Commission and NFA.³³⁵ The 2023 Proposal also noted that the Commission and NFA also conduct periodic examinations as part of the supervision of nonbank SDs, including routine onsite examinations of nonbank SDs’ books, records, and operations to ensure compliance with CFTC and NFA requirements.³³⁶ In this regard, as noted in section I.E. above, section 17(p) of the CEA requires NFA, as a registered futures association, to establish minimum capital and financial requirements for nonbank SDs and to implement a program to audit and enforce compliance with such requirements.³³⁷

The Commission also discussed the financial reports and notices required under the CFTC Financial Reporting Rules, noting that the reports and notices provide the Commission and NFA with information necessary to: ensure the nonbank SD’s compliance with minimum capital requirements; assess the firm’s overall safety and soundness by being able to meet its financial obligations to customers, counterparties, creditors, and general market participants; and identify potential issues at a nonbank SD that may impact the firm’s ability to maintain compliance with the CEA and Commission regulations.³³⁸ As discussed in the 2023 Proposal, the Commission and NFA also have the authority to require a nonbank SD to provide any additional financial and/or operational information as the Commission or NFA may specify to monitor the safety and soundness of the firm.³³⁹

The Commission further noted that it has authority to take disciplinary actions against a nonbank SD for failing to comply with the CEA and Commission regulations. In this regard,

³³⁴ The competent authority may also extend the filing deadline, and require the EU nonbank SD to file the capital conservation plan within 10 days of the firm identifying that it failed to meet the applicable capital buffer requirements. 2023 Proposal at 41802 and CRD, Article 142(1); French Ministerial Order on Capital Buffers, Article 61; German KWG, section 10i(6).

³³⁵ 2023 Proposal at 41805.

³³⁶ *Id.*

³³⁷ 7 U.S.C. 21(p).

³³⁸ *Id.*

³³⁹ Commission Regulation 23.105(h) (17 CFR 23.105(h)). *See also*, 2023 Proposal at 41805.

³³² Applicants’ Letter at p. 5.

³³³ Applicants’ Supplemental Letter at p. 3.

section 4b–1(a) of the CEA provides the Commission with exclusive authority to enforce the capital requirements imposed on nonbank SDs adopted under section 4s(e) of the CEA.³⁴⁰

With respect to EU nonbank SDs, the Commission noted in the 2023 Proposal that oversight of the firm's compliance with the EU Capital Rules and the EU Financial Reporting Rules is conducted by the ECB and the relevant national competent authorities in EU Member States.³⁴¹ EU nonbank SDs that are registered as credit institutions and that qualify as "significant supervised entities" fall under the direct authority of the ECB and are supervised within the Single Supervisory Mechanism, or SSM.³⁴² Within the SSM, the ECB supervises firms for compliance with the EU Capital Rules and the EU Financial Reporting Rules through joint supervisory teams ("JSTs"), comprised of ECB staff and staff of the relevant national competent authorities.³⁴³ EU nonbank SDs that are registered as credit institutions and that qualify as "less significant supervised entities,"³⁴⁴ or EU nonbank SDs registered as investment firms that remain subject to the CRR/CRD framework regime, fall under the direct authority of the applicable national competent authorities. The ECB and the French Autorité de Contrôle Prudentiel et de Résolution ("ACPR") have supervision, audit, and investigation powers with respect to four EU nonbank SDs currently registered with the Commission.³⁴⁵ The ECB's and ACPR's

authorities include the power to require EU nonbank SDs to: (i) provide necessary information for the authorities to carry out their supervisory tasks;³⁴⁶ (ii) examine the books and records of EU nonbank SDs; (iii) obtain written and oral explanations from the EU nonbank SD's management, staff, and other persons;³⁴⁷ and (iv) conduct necessary inspections at the business premises of EU nonbank SDs and other group entities.³⁴⁸ The competent authorities also monitor the capital adequacy of EU nonbank SDs through supervisory measures on an ongoing basis. The monitoring includes assessing the notices and the capital conservation plan discussed in section II.E.1. above.

In addition to the tools described in section II.E.1., the relevant competent authorities are also empowered with a variety of measures to address an EU nonbank SD's financial deterioration. Specifically, if an EU nonbank SD fails to meet its capital or liquidity thresholds, or if the competent authority has evidence that the EU nonbank SD is likely to breach its capital or liquidity thresholds in the next 12 months, the competent authority may order an EU nonbank SD to comply with additional requirements, including: (i) maintaining

Paris) is registered as an investment firm and subject to direct supervision by the French ACPR. Anticipating that Goldman Sachs Paris would continue to apply the CRR/CRD capital and financial reporting framework regime but become categorized as a "less significant supervised entity" that would remain under ACPR oversight, Commission staff reviewed the French law provisions granting supervisory and enforcement powers to the ACPR. As noted above, on March 31, 2024, Goldman Sachs Paris became subject to a different capital and financial reporting framework. Although the analysis included in this Comparability Determination no longer applies to Goldman Sachs Paris, the Commission is retaining the description of the ACPR's supervisory regime and powers in the final Comparability Determination to facilitate the analysis of potential future applications for substituted compliance that may involve entities subject to direct supervision by the ACPR. Accordingly, this section describes the supervisory powers of the ECB and the French ACPR and refers to provisions establishing those powers. For the avoidance of doubt, if a future EU nonbank SD applicant that is subject to supervision by a national competent authority in an EU Member State other than France, seeks substituted compliance for some or all of the CFTC Capital Rules and CFTC Financial Reporting Rules, the EU nonbank SD applicant must submit an application to the Commission in accordance with Commission Regulation 23.106 (17 CFR 23.106) and provide, among other information, a description of the ability of the relevant EU Member State regulatory authority to supervise and enforce compliance with the relevant EU Member State's capital adequacy and financial reporting requirements.

³⁴⁶ CRD, Article 65(3)(a); French MFC, Article L.612–24; and SSM Regulation, Article 10.

³⁴⁷ CRD, Article 65(3)(b); French MFC, Article L.612–24; and SSM Regulation, Article 11.

³⁴⁸ CRD, Article 65(3)(c); French MFC, Articles L.612–23 and L.612–26; and SSM Regulation, Article 12.

additional capital in excess of the minimum requirements, if certain conditions are met; (ii) requiring that the EU nonbank SD submit a plan to restore compliance with applicable capital or liquidity thresholds; (iii) imposing restrictions on the business or operations of the EU nonbank SD; (iv) imposing restrictions or prohibitions on distributions or interest payments to shareholders or holders of additional tier 1 capital instruments; (v) requiring additional or more frequent reporting requirements; and (vi) imposing additional specific liquidity requirements.³⁴⁹ The competent authority may also withdraw an EU nonbank SD's authorization if the firm no longer meets its minimum capital requirements.³⁵⁰ Although the relevant competent authorities generally have broad discretion as to what powers they may exercise, the EU Capital Rules and the EU Financial Reporting Rules specifically mandate that the competent authorities require EU nonbank SDs to hold increased capital when: (i) risks or elements of risks are not covered by the capital requirements imposed by the EU Capital Rules; (ii) the EU nonbank SD lacks robust governance arrangements, appropriate resolution and recovery plans, processes to manage large exposures or effective processes to maintain on an ongoing basis the amounts, types, and distribution of capital needed to cover the nature and level of risks to which it might be exposed and it is unlikely that other supervisory measures would be sufficient to ensure that those requirements can be met within an appropriate timeframe; (iii) the EU nonbank SD repeatedly fails to establish or maintain an adequate level of additional capital to cover the guidance communicated by the relevant competent authorities; or (iv) other entity-specific situations deemed by the relevant competent authority to raise material supervisory concerns.³⁵¹

³⁴⁹ CRD, Articles 102(1) and 104(1); French MFC, Articles L.511–41–3 and L.612–31 to L.612–33; SSM Regulation, Article 16.

³⁵⁰ CRD Article 18; MiFID, Article 8c; French MFC, Articles L.532–6 and L.612–40; SSM Regulation, Article 14.

³⁵¹ CRD, Article 104 and 104a; French MFC, Article L.511–41–3; German KWG, section 6c(1); and SSM Regulation, Articles 9 (indicating that the ECB shall have all the powers and obligations that national authorities have under EU law, unless otherwise provided in the SSM Regulation, and that the ECB may require, by way of instructions, that national competent authorities make use of their powers, where the SSM Regulation does not confer such powers to the ECB) and 16 (describing ECB's supervisory powers, including the power to require entities subject to its authority to hold capital in excess of the capital requirements imposed by relevant EU law).

³⁴⁰ 7 U.S.C. 6s(e).

³⁴¹ 2023 Proposal at 41805–41807.

³⁴² See generally SSM Regulation and SSM Framework Regulation. The criteria for determining whether credit institutions are considered "significant supervised entities" include size, economic importance for the specific EU Member State or the EU economy, significance of cross-border activities, and request for or receipt of direct public financial assistance. SSM Regulation, Article 6 and SSM Framework Regulation, Articles 39–44 and 50–62, and discussion of the SSM in section II.C. above.

³⁴³ SSM Framework Regulation, Article 3.

³⁴⁴ SSM Regulation, Article 6. Entities that qualify as "less significant supervised entities" are supervised by their national competent authorities in close cooperation with the ECB. With respect to the prudential supervision of these entities, the ECB has the power to issue regulations, guidelines or general instructions to the national competent authorities. SSM Regulation, Article 6(5)(a). At any time, the ECB can also decide to directly supervise any one of these less significant supervised entities to ensure that high supervisory standards are applied consistently. SSM Regulation, Article 6(5)(b).

³⁴⁵ Three of the four EU nonbank SDs currently registered with the Commission (BoFA Securities Europe S.A.; Citigroup Global Markets Europe AG; and Morgan Stanley Europe SE) are registered as credit institutions and qualify as "significant supervised entities" subject to the direct supervision of the ECB. One entity (Goldman Sachs

The national competent authorities can also issue administrative penalties and other administrative measures if an EU nonbank SD (or its management) does not fully comply with its reporting requirements.³⁵² These penalties and measures include: (i) public statements identifying a firm or one or more of its managers as responsible for the breach; (ii) cease-and-desist orders; (iii) temporary bans against a member of the firm's management body or other manager; (iv) administrative monetary penalties against the firm of up to 10 percent of the total annual net turnover of the preceding year; (v) administrative monetary penalties of up to twice the amount of the profits gained or losses avoided because of the breach; or (vi) withdrawal of the firm's authorization.³⁵³

The ECB has the same powers to impose administrative monetary penalties for breaches of directly applicable EU laws and regulations.³⁵⁴ In addition, the ECB can instruct the national competent authorities to open proceedings that may lead to the imposition of non-monetary penalties for breaches of directly applicable EU law and regulations, monetary and non-monetary penalties for breaches of EU Member State laws implementing relevant directives, and monetary and non-monetary penalties against natural persons for breaches of relevant EU laws and regulations.³⁵⁵

Based on its review of the Application and its analysis of the relevant laws and regulations, the Commission preliminarily found that the competent authorities have the necessary powers to supervise, investigate, and discipline EU nonbank SDs for compliance with the applicable capital and financial reporting requirements, and to detect and deter violations of, and ensure compliance with, the applicable capital and financial reporting requirements in the EU.³⁵⁶ Furthermore, the Commission noted that it retains supervision, examination, and enforcement authority over EU nonbank SDs that are covered by the Comparability Order.³⁵⁷ Specifically, the Commission noted that a non-U.S. nonbank SD that operates under substituted compliance remains subject to the Commission's examination authority and may be subject to a Commission enforcement action if the

firm fails to comply with a foreign jurisdiction's capital adequacy or financial reporting requirements.³⁵⁸ The ability of the Commission to exercise its enforcement authority over an EU nonbank SD is not conditioned upon a finding by the competent authority of a violation of the EU Capital Rules or EU Financial Reporting Rules. In addition, as each EU nonbank SD is a member of NFA, the firm is subject to NFA membership rules, examination authority, and disciplinary process.³⁵⁹

2. Comment Analysis and Final Determination

The Commission did not receive comments directly related to its analysis set forth in the proposed Comparability Determination and Comparability Order, or on its preliminary determination that the EU competent authorities have the necessary powers to supervise, investigate, and discipline EU nonbank SDs for non-compliance with the applicable EU capital and financial reporting requirements. The Commission has reviewed its preliminary Comparability Determination and finds that the EU nonbank SDs are subject to a supervisory and enforcement framework that is comparable to the Commission's supervisory and enforcement framework for nonbank SDs. Specifically, the supervisory program of the EU is comparable in purpose and effect to Commission's supervisory program in that both programs are designed to monitor the safety and soundness of nonbank SDs through a combination of periodic financial reporting, notice reporting, and examination.

As detailed in section II.F.1. above, EU nonbank SDs are subject to direct supervision by a prudential regulator.³⁶⁰ For EU nonbank SDs subject to ECB supervision as "significant supervised

entities," the examination is conducted by JSTs comprised of staff of the ECB and staff of the relevant national competent authority. For EU nonbank SDs that are "less significant supervised entities," the examination is conducted by the relevant national competent authority.

The Commission's assessment of the competent authorities' supervisory programs included an evaluation of the authorities' ability to supervise EU nonbank SDs based on applicable EU laws and regulations, as discussed in section II.F.1. above. This evaluation included an assessment of the financial reporting that EU nonbank SDs are required to provide to the competent authority, the competent authority's ability to conduct examinations, including onsite inspections of EU nonbank SDs, and the competent authority's ability to impose sanctions or take other action to address noncompliance with applicable laws and regulations. Based upon its evaluation, the Commission preliminarily determined that the relevant EU laws and regulations are comparable in purpose and effect to the CEA and Commission regulations, and that the competent authorities have appropriate power to supervise EU nonbank SDs for compliance with applicable EU Capital Rules and EU Financial Reporting Rules.

The Commission further determined, based on applicable EU laws and regulations, that the competent authorities have the ability to sanction EU nonbank SDs for failing to comply with regulatory requirements. Specifically, as discussed in section II.F.1. above, the competent authorities have the power to impose penalties and other administrative measures,³⁶¹ and may order EU nonbank SD to hold increased capital in situations that raise supervisory concerns.³⁶² The competent authority may also withdraw an EU nonbank SD's authorization to operate if

³⁵² CRD, Articles 65, 67(1)(e) to (i) and 67(2); French MFC, Article L.612–39 and L.612–40; German KWG, sections 56(6) and (7), 60b(1) and (3).

³⁵³ *Id.*

³⁵⁴ SSM Regulation, Article 18.

³⁵⁵ SSM Regulation, Article 9.

³⁵⁶ 2023 Proposal at 41807.

³⁵⁷ 2023 Proposal at 41777.

³⁵⁸ *Id.* See also, 17 CFR 23.106(a)(4)(ii), which provides that all nonbank SDs, regardless of whether they rely on a Comparability Order or Comparability Determination, remain subject to the Commission's examination and enforcement authority.

³⁵⁹ 7 U.S.C. 21(p).

³⁶⁰ As noted above, the three current EU nonbank SDs qualify as "significant supervised entities" subject to the direct supervision of the ECB. The 2023 Proposal included an analysis of the supervisory regime and powers of the ACPR, in its capacity as a national competent authority with jurisdiction over Goldman Sachs Paris. Although, the final Comparability Determination and Comparability Order do not cover Goldman Sachs Paris, given the change in regulatory regime applicable to the firm, the Commission is retaining the description of the ACPR's supervisory regime and powers in the final Comparability Determination to facilitate the analysis of potential future applications for substituted compliance that may involve entities subject to direct supervision by the ACPR. See *supra* note 347.

³⁶¹ CRD, Articles 65, 67(1)(e) to (i) and 67(2); French MFC, Article L.612–39 and L.612–40; German KWG, sections 56(6) and (7), 60b(1) and (3); SSM Regulation, Articles 9 and 18.

³⁶² CRD, Article 104 and 104a; French MFC, Article L.511–41–3; German KWG, section 6c(1); and SSM Regulation, Articles 9 (indicating that the ECB shall have all the powers and obligations that national authorities have under EU law, unless otherwise provided in the SSM Regulation, and that the ECB may require, by way of instructions, that national competent authorities make use of their powers, where the SSM Regulation does not confer such powers to the ECB) and 16 (describing ECB's supervisory powers, including the power to require entities subject to its authority to hold capital in excess of the capital requirements imposed by relevant EU law).

the firm no longer meets its minimum capital requirements.³⁶³

Furthermore, as discussed in this Comparability Determination, by issuing a Comparability Order, the Commission is not ceding its supervisory and enforcement authorities. EU nonbank SDs that are subject to a Comparability Order are registered with the Commission as SDs and are members of NFA, and, as such, are subject to the CEA, Commission regulations, and NFA membership rules and requirements. In this regard, EU nonbank SDs covered by a Comparability Order are required to directly provide the Commission with additional information upon the Commission's request to facilitate the ongoing supervision of such firms.³⁶⁴ Further, section 17 of NFA's SD Financial Requirements rule provides that each SD member of NFA must file the financial, operational, risk management and other information required by NFA in the form and manner prescribed by NFA.³⁶⁵ The ability to obtain information directly from EU nonbank SDs ensures that the Commission and NFA have access to the information necessary to monitor the financial condition of such firms and to assess the firms' compliance with applicable capital and financial reporting requirements. EU nonbank SDs covered by a Comparability Order remain subject to the Commission's examination and enforcement authority with respect to all elements of the CEA and Commission regulations, including capital and financial reporting.³⁶⁶

In addition, as detailed in section I.E. above, the conditions set forth in the Comparability Order reflect the fact that the Commission and NFA have a continuing obligation to conduct ongoing oversight, including potential examination, of EU nonbank SDs to ensure compliance with the Comparability Order and with relevant CEA requirements and Commission regulations. Specifically, the conditions require EU nonbank SDs to file directly with the Commission and NFA financial reports and notices that are comparable to the financial reports and notices filed by nonbank SDs domiciled in the U.S. In addition to requiring EU nonbank SDs to maintain current books and records reflecting all transactions,³⁶⁷ the conditions further require each EU

nonbank SD covered by the Comparability Order to file directly with the Commission and NFA: (i) monthly and annual financial reports;³⁶⁸ (ii) notice that the firm was informed by the competent authority that it is not in compliance with the EU Capital Rules and/or EU Financial Reporting Rules;³⁶⁹ (iii) notice that the firm has experienced a decrease of 30 percent or more in its excess regulatory capital as compared to the last excess regulatory capital reported in filings with the Commission and NFA;³⁷⁰ (iv) notice that the firm has breached its combined capital buffer requirement and is required to file a capital conservation plan with the relevant competent authority, indicating that the firm has breached its combined capital buffer requirement;³⁷¹ (v) notice that the firm has failed to maintain regulatory capital in the form of common equity tier 1 capital equal to or in excess of the U.S. dollar equivalent of \$20 million;³⁷² and (vi) notice that the firm has failed to maintain current financial books and records.³⁷³ The Comparability Order further requires the Applicants to provide notice to the Commission of any material changes to the information submitted in the application, including, but not limited to, proposed and final material changes to the EU Capital Rules or EU Financial Reporting Rules and proposed and final material changes to the competent authority's supervisory authority or supervisory regime over EU nonbank SDs.³⁷⁴ The financial information and notices required to be filed directly with the Commission and NFA under the Comparability Order, and through the Commission's and NFA's direct authority to obtain additional information from EU nonbank SDs, will allow the Commission and NFA to conduct ongoing oversight of such firms to assess their overall safety and soundness.

Although Commission Regulation 23.106 does not condition the issuance of a Comparability Order on the Commission and the authority or authorities in the relevant foreign jurisdiction having entered into a formal MOU or similar arrangement, the Commission recognizes the benefit that such an arrangement may provide.³⁷⁵

Specifically, although Commission staff may engage directly with EU nonbank SDs to obtain information regarding their financial and operational condition, it may not be able to exchange and discuss such firm-specific information³⁷⁶ with the relevant competent authority or reach shared expectations on procedures for conducting on-site examinations in France or Germany.³⁷⁷ Therefore, Commission staff will continue its engagement with ECB staff to negotiate and finalize an MOU or similar arrangement to facilitate the joint supervision of EU nonbank SDs.

III. Final Capital Comparability Determination and Comparability Order

A. Commission's Final Comparability Determination

Based on the EU Application and the Commission's review of applicable EU laws and regulations, as well as the review of comments submitted in response to the Commission's request for comment on the EU Application and the proposed Comparability Determination and Comparability Order, the Commission finds that the EU Capital Rules and the EU Financial Reporting Rules, subject to the conditions set forth in the Comparability Order, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules. In reaching this conclusion, the Commission recognizes that there are certain differences between the EU Capital Rules and CFTC Capital Rules and certain differences between the EU Financial Reporting Rules and the CFTC Financial Reporting

Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ("MMOU", revised May 2012). The French Autorité des Marchés Financiers ("AMF") (the French market conduct regulatory authority with which the ACPR shares supervision authority over French financial firms, including EU nonbank SDs domiciled in France, as it regards business conduct matters), and the German Bundesanstalt für Finanzdienstleistungsaufsicht (the German financial sector regulatory authority whose staff participates in the SSM's JSTs that conduct prudential supervision of the two EU nonbank SDs domiciled in Germany) are signatories to the MMOU.

³⁷⁶ The sharing of non-public information by CFTC staff would require assurances related to the use and treatment of such information in a manner consistent with section 8(e) of the CEA, 7 U.S.C. 12(e).

³⁷⁷ For French SDs, the Commission and the French AMF are signatories to a supervisory MOU that covers information sharing and examinations. *Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Covered Firms* (October 26, 2023).

³⁶³ CRD Article 18; MiFID, Article 8c; French MFC, Articles L.532-6 and L.612-40; SSM Regulation, Article 14.

³⁶⁴ 17 CFR 23.105(h).

³⁶⁵ NFA section 17 Rule, available at NFA's website: <https://www.nfa.futures.org/rulebooksql/index.aspx>.

³⁶⁶ 17 CFR 23.106(a)(4)(ii).

³⁶⁷ Condition 10 of the final Comparability Order.

³⁶⁸ Conditions 11 and 12 of the final Comparability Order.

³⁶⁹ Condition 16 of the final Comparability Order.

³⁷⁰ Condition 21 of the final Comparability Order.

³⁷¹ Condition 18 of the final Comparability Order.

³⁷² Condition 17 of the final Comparability Order.

³⁷³ Condition 22 of the final Comparability Order.

³⁷⁴ Condition 25 of the final Comparability Order.

³⁷⁵ In an enforcement-related context, the Commission is a signatory to the International Organization of Securities Commission's

Rules. The Comparability Order below is subject to conditions that are necessary to promote consistency in regulatory outcomes, or to reflect the scope of substituted compliance that would be available notwithstanding certain differences. In the Commission's view, the differences between the two rules sets are not inconsistent with providing a substituted compliance framework for certain EU nonbank SDs subject to the conditions specified in the Order below.

Furthermore, the Comparability Determination and Comparability Order are limited to the comparison of the EU Capital Rules to the Bank-Based Approach contained within the CFTC Capital Rules. As noted previously, the Applicants have not requested, and the Commission has not performed, a comparison of the EU Capital Rules to the Commission's NLA Approach or TNW Approach.

B. Order Providing Conditional Capital Comparability Determination for Certain EU Nonbank Swap Dealers

It is hereby determined and ordered, pursuant to Commodity Futures Trading Commission ("CFTC" or "Commission") Regulation 23.106 (17 CFR 23.106) under the Commodity Exchange Act ("CEA") (7 U.S.C. 1 *et seq.*) that a swap dealer ("SD") organized and domiciled in the French Republic ("France") or the Federal Republic of Germany ("Germany" and collectively with France the "EU Member States") and subject to the Commission's capital and financial reporting requirements under sections 4s(e) and (f) of the CEA (7 U.S.C. 6s(e) and (f)) may satisfy the capital requirements under section 4s(e) of the CEA and Commission Regulation 23.101(a)(1)(i) (17 CFR 23.101(a)(1)(i)) ("CFTC Capital Rules"), and the financial reporting rules under section 4s(f) of the CEA and Commission Regulation 23.105 (17 CFR 23.105) ("CFTC Financial Reporting Rules"), by complying with certain specified requirements of the European Union ("EU") laws and regulations cited below and otherwise complying with the following conditions, as amended or superseded from time to time:

(1) The SD is not subject to regulation by a prudential regulator defined in section 1a(39) of the CEA (7 U.S.C. 1a(39));

(2) The SD is organized under the laws of France or Germany ("EU Member State") and is domiciled in France or Germany, respectively ("EU nonbank SD");

(3) The EU nonbank SD is licensed as a "credit institution" or "investment firm" in an EU Member State;

(4) The EU nonbank SD is subject to and complies with: *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012* ("Capital Requirements Regulation" or "CRR") and *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC* ("Capital Requirements Directive" or "CRD") as implemented in the national laws of France and Germany (collectively, "EU Capital Rules");

(5) The EU nonbank SD satisfies at all times applicable capital ratio and leverage ratio requirements set forth in Article 92 of CRR, the capital conservation buffer requirements set forth in Article 129 of CRD, and applicable liquidity requirements set forth in Articles 412 and 413 of CRR, and otherwise complies with the requirements to maintain a liquidity risk management program as required under Article 86 of CRD;

(6) The EU nonbank SD is subject to and complies with: *Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014* ("CRR Reporting ITS"); *Regulation (EU) 2015/534 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information* ("ECB FINREP Regulation"); and *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC* ("Accounting Directive") as implemented in the national laws of France and Germany (collectively and together with CRR and CRD as implemented in the national laws of France and Germany, "EU Financial Reporting Rules");

(7) The EU nonbank SD is subject to prudential supervision by an EU Member State supervisory authority

with jurisdiction to enforce the requirements set forth by the EU Capital Rules and the EU Financial Reporting Rules or the European Central Bank ("ECB"), as applicable ("competent authority");

(8) The EU nonbank SD maintains at all times an amount of regulatory capital in the form of common equity tier 1 capital as defined in Article 26 of CRR, equal to or in excess of the equivalent of \$20 million in United States dollars ("U.S. dollars"). The EU nonbank SD shall use a commercially reasonable and observable euro/U.S. dollar exchange rate to convert the value of the euro-denominated common equity tier 1 capital to U.S. dollars;

(9) The EU nonbank SD has filed with the Commission a notice stating its intention to comply with the EU Capital Rules and the EU Financial Reporting Rules in lieu of the CFTC Capital Rules and the CFTC Financial Reporting Rules. The notice of intent must include the EU nonbank SD's representation that the firm is organized and domiciled in an EU Member State, is a licensed investment firm or a credit institution in an EU Member State, and is subject to, and complies with, the EU Capital Rules and EU Financial Reporting Rules. An EU nonbank SD may not rely on this Comparability Order until it receives confirmation from Commission staff, acting pursuant to authority delegated by the Commission under Commission Regulation 140.91(a)(11) (17 CFR 140.91(a)(11)), that the EU nonbank SD may comply with the applicable EU Capital Rules and EU Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Reporting Rules. Each notice filed pursuant to this condition must be prepared in the English language and submitted to the Commission via email to the following address: MPDFinancialRequirements@cftc.gov;

(10) The EU nonbank SD prepares and keeps current ledgers and other similar records in accordance with accounting principles permitted by the relevant competent authority;

(11) The EU nonbank SD files with the Commission and with the National Futures Association ("NFA") a copy of templates 1.1 (Balance Sheet Statement: assets), 1.2 (Balance Sheet Statement: liabilities), 1.3 (Balance Sheet Statement: equity), 2 (Statement of profit or loss), and 10 (Derivatives—Trading and economic hedges) of the financial reports ("FINREP") that EU nonbank SDs are required to submit pursuant to CRR Reporting ITS, Annex III or IV, or the ECB FINREP Regulation, as applicable, and templates 1 (Own Funds), 2 (Own Funds Requirements)

and 3 (Capital Ratios) of the common reports (“COREP”) that EU nonbank SDs are required to submit pursuant to CRR Reporting ITS, Annex I. The FINREP and COREP templates must be translated into the English language and balances must be converted to U.S. dollars, using a commercially reasonable and observable euro/U.S. dollar spot rate as of the date of the report. The FINREP and COREP templates must be filed with the Commission and NFA within 35 calendar days of the end of each month. EU nonbank SDs that are registered as security-based swap dealers (“SBSDs”) with the U.S. Securities and Exchange Commission (“SEC”) must comply with this condition by filing with the Commission and NFA a copy of Form X-17A-5 (“FOCUS Report”) that the EU nonbank SD is required to file with the SEC, or its designee, pursuant to an order granting conditional substituted compliance with respect to Securities Exchange Act of 1934 Rule 18a–7. The copy of the FOCUS Report must be filed with the Commission and NFA within 35 calendar days after the end of each month in the manner, format and conditions specified by the SEC in *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7*, 86 FR 59208 (Oct. 26, 2021);

(12) The EU nonbank SD files with the Commission and with NFA a copy of its annual audited financial statements and management report (together, “annual audited financial report”) that are required to be prepared and published pursuant to Articles 4, 19, 30 and 34 of the Accounting Directive as implemented in the national laws of France and Germany. The annual audited financial report must be translated into the English language and balances may be reported in euro. The annual audited financial report must be filed with the Commission and NFA on the earliest of the date the report is filed with the competent authority, the date the report is published, or the date the report is required to be filed with the competent authority or the date the report is required to be published pursuant to the EU Financial Reporting Rules.

(13) The EU nonbank SD files Schedule 1 of appendix B to subpart E of part 23 of the Commission’s regulations (17 CFR 23 subpart E—appendix B) with the Commission and NFA on a monthly basis. Schedule 1 must be prepared in the English

language with balances reported in U.S. dollars, using a commercially reasonable and observable euro/U.S. dollar spot rate as of the date of the report, and must be filed with the Commission and NFA within 35 calendar days of the end of each month. EU nonbank SDs that are registered as SBSDs must comply with this condition by filing with the Commission and NFA a copy of the FOCUS Report that they file with the SEC or its designee as set forth in Condition 11;

(14) The EU nonbank SD submits with each set of FINREP and COREP templates, annual audited financial report, and Schedule 1 of appendix B to subpart E of part 23 of the Commission’s regulations a statement by an authorized representative or representatives of the EU nonbank SD that to the best knowledge and belief of the representative or representatives the information contained in the reports, including the translation of the reports into English and conversion of balances in the reports to U.S. dollars, is true and correct. The statement must be prepared in the English language;

(15) The EU nonbank SD files a margin report containing the information specified in Commission Regulation 23.105(m) (17 CFR 23.105(m)) (“Margin Report”) with the Commission and with NFA within 35 calendar days of the end of each month. The Margin Report must be in the English language with balances reported in U.S. dollars, using a commercially reasonable and observable euro/U.S. dollar spot rate as of the date of the report;

(16) The EU nonbank SD files a notice with the Commission and NFA within 24 hours of being informed by the competent authority that the firm is not in compliance with any component of the EU Capital Rules or EU Financial Reporting Rules. The notice must be prepared in the English language;

(17) The EU nonbank SD files a notice within 24 hours with the Commission and NFA if it fails to maintain regulatory capital in the form of common equity tier 1 capital as defined in Article 26 of CRR, equal to or in excess of the U.S. dollar equivalent of \$20 million using a commercially reasonable and observable euro/U.S. dollar exchange rate. The notice must be prepared in the English language;

(18) The EU nonbank SD provides the Commission and NFA with notice within 24 hours of breaching its combined capital buffer requirement and being required to file a capital conservation plan with the relevant competent authority pursuant to the relevant EU Member State’s provisions

implementing Article 143 of CRD. The notice filed with the Commission and NFA must be prepared in the English language;

(19) The EU nonbank SD provides the Commission and NFA with notice within 24 hours if it is required by its competent authority to maintain additional capital or additional liquidity requirements, or to restrict its business operations, or to comply with other requirements pursuant to Articles 102(1) and 104(1) of CRD as implemented in the national laws of France or to Article 16 of *Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions*. The notice filed with the Commission and NFA must be prepared in the English language;

(20) The EU nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to maintain its minimum requirement for own funds and eligible liabilities (“MREL”), if such requirement is applicable to the EU nonbank SD pursuant to *Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council as implemented in the national laws of France and Germany*. The notice filed with the Commission and NFA must be prepared in the English language;

(21) The EU nonbank SD files a notice with the Commission and NFA if it experiences a 30 percent or more decrease in its excess regulatory capital as compared to that last reported in the financial information filed pursuant to Condition 11. The notice must be prepared in the English language and filed within two business days of the firm experiencing the 30 percent or more decrease in excess regulatory capital;

(22) The EU nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to make or keep current the financial books and records. The notice must be prepared in the English language;

(23) The EU nonbank SD files a notice with the Commission and NFA within 24 hours of the occurrence of any of the following: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post

required initial margin or pay required variation margin to the EU nonbank SD on uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 25 percent of the EU nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the EU nonbank SD for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the EU nonbank SD's minimum capital requirement; (iii) the EU nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and non-cleared security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the EU nonbank SD's minimum capital requirement; or (iv) the EU nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the EU nonbank SD's minimum capital requirement. For purposes of the calculation, the EU nonbank SD's minimum capital requirement is the core capital requirement under the EU Capital Rules, excluding capital buffers. The notice must be prepared in the English language;

(24) The EU nonbank SD files a notice with the Commission and NFA of a change in its fiscal year-end approved or permitted to go into effect by the relevant competent authority. The notice required by this paragraph will satisfy the requirement for a nonbank SD to obtain the approval of NFA for a change in fiscal year-end under Commission Regulation 23.105(g) (17 CFR 23.105(g)). The notice of change in fiscal year-end must be prepared in the English language and filed with the Commission and NFA at least 15 business days prior to the effective date of the EU nonbank SD's change in fiscal year-end;

(25) The EU nonbank SD or an entity acting on its behalf notifies the Commission of any material changes to the information submitted in the application for Comparability Determination, including, but not limited to, proposed and final material changes to the EU Capital Rules or EU Financial Reporting Rules and proposed and final material changes to the ECB or the relevant EU Member State authority's supervisory authority or supervisory regime over EU nonbank

SDs. The notice must be prepared in the English language; and

(26) Unless otherwise noted in the conditions above, the reports, notices, and other statements required to be filed by the EU nonbank SD with the Commission and NFA pursuant to the conditions of this Comparability Order must be submitted electronically to the Commission and NFA in accordance with instructions provided by the Commission or NFA.

It is also hereby determined and ordered that this Comparability Order becomes effective upon its publication in the **Federal Register**, with the exception of Conditions 15, 21, and 23, which will become effective 180 calendar days after publication of the Comparability Order in the **Federal Register**.

Issued in Washington, DC, on July 3, 2024, by the Commission.

Christopher Kirkpatrick,
Secretary of the Commission.

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

Appendices to Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Regulation in the European Union—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

I support the Commission's approval of four comparability determinations and related orders finding that the capital and financial reporting requirements in Japan, Mexico, the European Union (France and Germany), and the United Kingdom (for swap dealers (SDs) designated for prudential supervision by the UK Prudential Regulation Authority (PRA)) are comparable to the Commission's capital and financial reporting requirements applicable to nonbank SDs. These are the first comparability determinations that the Commission has finalized for applications filed following the July 2020 adoption of its regulatory framework for substituted compliance for non-U.S. domiciled nonbank SDs.¹ There are

currently 15 non-U.S. nonbank SDs that are eligible to comply with these conditional orders: three in Japan; three in Mexico; two in Germany and one in France for the EU; and six in the UK that are PRA-designated.

As part of the process leading to the Commission's final comparability determinations and orders, Commission staff engaged in a thorough analysis of each foreign jurisdictions' capital and financial reporting frameworks and considered the public comments received on the proposed determinations and orders. Based on those reviews, the Commission has determined that the respective foreign jurisdictions' rules are comparable in purpose and effect, and achieve comparable outcomes, to the CFTC's capital and financial reporting rules. Specifically, the Commission considered the scope and objectives of the foreign regulators' capital adequacy and financial reporting requirements; the ability of those regulators to supervise and enforce compliance with their respective capital and financial reporting requirements; and other facts or circumstances the Commission deemed relevant for each of the applications.

In certain instances, the Commission found that a foreign jurisdiction's rules impose stricter standards. In limited circumstances, where the Commission concluded that a foreign jurisdiction lacks comparable and comprehensive requirements on a specific issue, the Commission included a targeted condition designed to impose an equally stringent standard. The Commission has issued the final orders consistent with its authority to issue a comparability determination with the conditions it deems appropriate. These conditions aim to ensure that the orders only apply to nonbank SDs that are eligible for substituted compliance in these respective jurisdictions and that those non-U.S. nonbank SDs comply with the foreign country's capital and financial reporting requirements as well as certain additional capital, financial reporting, recordkeeping, and regulatory notice requirements. This approach acknowledges that jurisdictions may adopt unique approaches to achieving comparable outcomes. As a result, the Commission has focused on whether the applicable foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the corresponding Commission requirements for nonbank SDs, not whether they are comparable in every aspect or contain identical elements.

With these comparability determinations, the Commission fully retains its enforcement and examination authority as well as its ability to obtain financial and event specific reporting to maintain direct oversight of nonbank SDs located in these four jurisdictions. The avoidance of duplicative requirements without a commensurate benefit to the Commission's oversight function reflects the Commission's approach to recognizing the global nature of the swap markets with dually-registered SDs that operate in multiple jurisdictions, which mandate prudent capital and financial

¹ *Capital Requirements of Swap Dealers and Major Swap Participants*, 85 FR 57462 (Sept. 15,

2020). The Commission issued the final rule on July 24, 2020.

reporting requirements. This is, however, an added benefit and not the Commission's sole justification for issuing these comparability determinations.

The comparability orders will become effective upon their publication in the **Federal Register**. For several order conditions, the Commission is granting an additional compliance period of 180 calendar days. To rely on a comparability order, an eligible non-U.S. nonbank SD must notify the Commission of its intention to satisfy the Commission's capital and financial requirements by substituted compliance and receive a Commission confirmation before relying on a determination.

I appreciate the hard work and dedication of the staff in the Market Participants Division over the past several years to propose and finalize these four determinations. I also thank the staff in the Office of the General Counsel and the Office of International Affairs for their support on these matters.

Appendix 3—Statement of Commissioner Kristin N. Johnson

I support the Commodity Futures Trading Commission's (Commission or CFTC) issuance of four final capital and financial reporting comparability determinations and related orders (together, Final Comparability Determinations) for non-U.S. nonbank swap dealers (foreign nonbank SDs) and non-U.S. nonbank major swap participants (foreign nonbank MSPs) organized and domiciled in the United Kingdom (UK), the European Union (specifically, France and Germany), Mexico, and Japan.¹

The Final Comparability Determinations allow eligible foreign nonbank SDs to satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (CEA) and Commission regulations if they: (1) are subject to, and comply with, comparable capital and financial reporting requirements under the laws and regulations applicable in their home countries and (2) comply with the conditions enumerated in the applicable Final Comparability Determination. Under this conditional substituted compliance framework, foreign nonbank SDs in the relevant jurisdictions that comply with these conditions are deemed to be in compliance with the Commission's capital and financial reporting requirements.

Well-calibrated capital requirements create a cushion to absorb unexpected losses in times of market stress, and well-calibrated financial reporting requirements provide the Commission with information to monitor the business operations and financial condition of registered SDs. These tools are critical to managing systemic risk and fostering the stability of U.S. derivatives markets and the U.S. financial system. The Commission's substituted compliance framework addresses the need to promote sound global derivatives regulation while mitigating potentially

duplicative cross-border regulatory requirements for non-U.S. market participants operating in our markets. Where the Commission permits substituted compliance, it must retain sufficient oversight, examination, and enforcement authority to ensure compliance with the foreign jurisdiction's laws and the conditions to substituted compliance.

Crucially, while these Final Comparability Determinations permit foreign nonbank SDs to comply with home country regulations in lieu of compliance with Commission regulations, the Commission is also imposing important guardrails to ensure continuous supervision of the operations and financial condition of the foreign SD.

Background

For an example of the detrimental consequences of failing to adequately capitalize nonbank swap market participants, one need look no further than the 2008 global financial crisis. According to the U.S. Government Accountability Office, the crisis, which threatened the stability of the U.S. financial system and the health of the U.S. economy, may have led to \$10 trillion in losses, including large declines in employment and household wealth, reduced tax revenues from lower economic activity, and lost economic output.² In response to the crisis, in 2010, the U.S. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which amended the CEA to create a new regulatory framework for swaps.

As amended, section 4s(e) of the CEA directs the Commission and prudential regulators to impose minimum capital requirements on SDs registered with the Commission. Section 4s(e) adopts separate approaches for the imposition of minimum capital requirements on bank and nonbank SDs. For bank SDs, prudential regulators are authorized to set the minimum capital requirements. For nonbank SDs, the Commission is authorized to set those requirements. The amended CEA also sets out financial reporting requirements for SDs. Under section 4s(f) of the CEA, registered SDs are required to make financial condition reports and other reports regarding transactions and positions as mandated by Commission regulations.

In 2020, the Commission adopted regulations implementing both the capital and financial reporting requirements for SDs, which were amended in 2024 (the Capital and Financial Reporting Rules).³ The Capital and Financial Reporting Rules set minimum capital levels that nonbank SDs must maintain and financial reporting requirements that nonbank SDs must comply with, including filing periodic unaudited

financial statements and an annual audited financial report.⁴

Like the U.S., many other nations adopted their own regulatory regimes to govern swaps markets in the aftermath of the financial crisis. Since then, regulators from around the world have endeavored to improve the resilience of swaps markets and establish a global set of standards on critical risk management issues, such as capital and financial reporting requirements. These efforts led to the development of the Principles for Financial Market Infrastructures, to which many jurisdictions, including our own, look for guidance.⁵

The Dodd-Frank Act amendments specifically address the cross-border application of the CFTC's swaps regime. Section 2(i) of the CEA establishes that the CEA's swaps provisions apply to foreign swaps activities that have a "direct and significant" connection to, or effect on, U.S. markets. In line with section 2(i) of the CEA, the Capital and Financial Reporting Rules set out a substituted compliance framework in Commission Regulation 23.106 for foreign nonbank SDs seeking to comply with the Commission's capital and financial reporting requirements.

The substituted compliance framework consists of comparability determinations that afford "due consideration [to] international comity principles" while being "consistent with . . . the Commission's interest in focusing its authority on potential significant risks to the U.S. financial system."⁶ The determinations involve an assessment of the home-country requirements that is a principles-based, holistic approach, focusing on whether the applicable home-country requirements have comparable objectives and achieve comparable outcomes to the Commission's Capital and Financial Reporting Rules.

Today's Final Comparability Determinations

The Final Comparability Determinations will apply to 15 foreign nonbank SDs currently registered with the Commission and subject to oversight by the UK Prudential Regulation Authority, the European Central Bank, the Mexican Comisión Nacional Bancaria y de Valores, and the Financial Services Agency of Japan. I commend staff for their hard work on the Final Comparability Determinations, including their work to thoroughly and thoughtfully analyze and address comments.

⁴ The reporting requirements imposed on bank SD and bank MSPs were "more limited" "as the financial condition of these entities will be predominantly supervised by the applicable prudential regulator and subject to its capital and financial reporting requirements." *Id.* at 57513. In May 2024, the Commission adopted amendments to the Capital and Financial Reporting Rules that codified two previously-issued staff letters providing interpretive guidance and no-action relief and made other technical amendments. 89 FR 45569 (May 23, 2024).

⁵ Principles for Financial Market Infrastructures, Bank for International Settlements and International Organization of Securities Commissions (Apr. 2012), <https://www.bis.org/cpmi/publ/d101a.pdf>.

⁶ Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 FR 56924, 56924 (Sept. 14, 2020).

¹ Though the Final Comparability Determinations will apply to foreign nonbank MSPs in the relevant jurisdictions, there are no such MSPs currently registered with the Commission at this time. I will refer only to SDs herein.

² United States Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act (Jan. 2013), <https://fraser.stlouisfed.org/title/gao-reports-testimonies-6136/financial-regulatory-reform-622249>.

³ Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

Importantly, while the Final Comparability Determinations permit foreign nonbank SDs in the relevant jurisdictions to comply with home country regulations in lieu of compliance with Commission regulations, there are numerous protections in place to ensure the Commission's ability to supervise on an ongoing basis the adequacy of the foreign nonbank SDs' compliance. The Final Comparability Determinations all include key conditions with which the foreign nonbank SDs must comply. For example, each of the Final Comparability Determinations requires that the foreign nonbank SDs provide monthly and annual financial reports to the Commission—and the Commission can request additional information as required to facilitate ongoing supervision. Each Final Comparability Determination also requires the foreign nonbank SDs to notify the Commission if adverse events occur, such as a significant decrease in excess regulatory capital, a significant failure of a counterparty to post required margin, or non-compliance with certain capital or financial reporting requirements. Finally, in recognition of the fact that a country's capital standards and financial reporting requirements may change over time, the Final Comparability Determinations require the foreign nonbank SDs to provide notice of material changes to the home country capital or financial reporting frameworks.

Moreover, the foreign nonbank SDs subject to these determinations are registered with the Commission and are members of the National Futures Association (NFA). Therefore, these entities are subject to the CEA, Commission regulations, and NFA membership rules, and each entity remains subject to Commission supervisory, examination and enforcement authority. As noted in the Final Comparability Determinations, if a foreign SD fails to comply with its home country's capital and

financial reporting requirements, the Commission may initiate an action for a violation of the Commission's Capital and Financial Reporting Rules.

As I have previously noted,⁷ it is important to recognize foreign market participants' compliance with the laws and regulations of their regulators when the requirements lead to an outcome that is comparable to the outcome of complying with the CFTC's corresponding requirements. Respect for partner regulators in foreign jurisdictions advances the Commission as a global standard setter for sound derivatives regulation and enhances market stability.

I thank the staff in the Market Participants Division for their hard work on these matters, particularly Amanda Olear, Tom Smith, and Lily Bozhanova.

Appendix 4—Statement of Commissioner Caroline D. Pham

I am pleased to support the order granting conditional substituted compliance in connection with certain capital and financial

⁷ Kristin N. Johnson, Commissioner, CFTC, *Combating Systemic Risk and Fostering Integrity of the Global Financial System Through Rigorous Standards and International Comity* (Jan. 24, 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement012424>; Kristin N. Johnson, Commissioner, CFTC, *Statement in Support of Notice and Order on EU Capital Comparability Determination* (June 7, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement060723c>; Kristin N. Johnson, Commissioner, CFTC, *Statement in Support of Proposed Order and Request for Comment on Mexican Capital Comparability Determination* (Nov. 10, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement111022c>; Kristin N. Johnson, Commissioner, CFTC, *Statement in Support of Proposed Order on Japanese Capital Comparability Determination* (July 27, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072722c>.

reporting requirements applicable to nonbank swap dealers domiciled in the French Republic and Federal Republic of Germany and subject to regulation in the European Union (EU) (EU Final Order). The EU Final Order, on balance, reflects an appropriate approach by the CFTC to collaboration with non-U.S. regulators that is consistent with IOSCO's 2020 report on *Good Practices on Processes for Deference*.¹

I would like to thank Amanda Olear, Thomas Smith, Rafael Martinez, Liliya Bozhanova, Joo Hong, and Justin McPhee from the CFTC's Market Participants Division for their truly hard work on the EU Final Order and for addressing my concerns regarding the conditions for notice requirements.² I also thank the European Central Bank (ECB) and Autorité de contrôle prudentiel et de résolution (ACPR) for their assistance and support.

The CFTC's capital comparability determinations are the result of tireless efforts spanning over a decade since the global financial crisis. I commend the staff for working together with our regulatory counterparts around the world to promote regulatory cohesion and financial stability, and mitigate market fragmentation and systemic risk.

[FR Doc. 2024–15095 Filed 7–17–24; 8:45 am]

BILLING CODE 6351–01–P

¹ IOSCO Report, “Good Practices on Processes for Deference” (June 2020), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD659.pdf>.

² Statement of Commissioner Caroline D. Pham in Support of Proposed Order and Request for Comment on Comparability Determination for EU Nonbank Swap Dealer Capital and Financial Reporting Requirements (June 7, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement060723b>.



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Part III

The President

Notice of July 16, 2024—Continuation of the National Emergency With Respect to Hostage-Taking and the Wrongful Detention of United States Nationals Abroad

Notice of July 16, 2024—Continuation of the National Emergency With Respect to Mali

Notice of July 16, 2024—Continuation of the National Emergency With Respect to Transnational Criminal Organizations

Presidential Documents

Title 3—

Notice of July 16, 2024

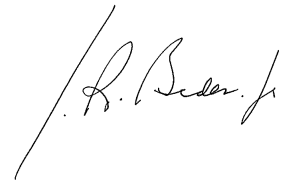
The President

Continuation of the National Emergency With Respect to Hostage-Taking and the Wrongful Detention of United States Nationals Abroad

On July 19, 2022, by Executive Order 14078, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by hostage-taking and the wrongful detention of United States nationals abroad.

Hostage-taking and the wrongful detention of United States nationals are heinous acts that undermine the rule of law. Terrorist organizations, criminal groups, and other malicious actors who take hostages for financial, political, or other gain—as well as foreign states that engage in the practice of wrongful detention, including for political leverage or to seek concessions from the United States—threaten the integrity of the international political system and the safety of United States nationals and other persons abroad. Hostage-taking and the wrongful detention of United States nationals abroad continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 14078 of July 19, 2022, must continue in effect beyond July 19, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 14078 with respect to hostage-taking and the wrongful detention of United States nationals abroad.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 16, 2024.

Presidential Documents

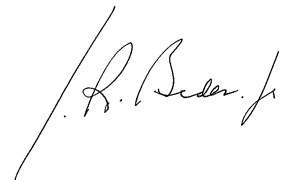
Notice of July 16, 2024

Continuation of the National Emergency With Respect to Mali

On July 26, 2019, by Executive Order 13882, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in Mali.

The situation in Mali, including repeated violations of ceasefire arrangements made pursuant to the 2015 Agreement on Peace and Reconciliation in Mali; a coup d'état resulting in the termination of that agreement; the expansion of terrorist activities into southern and central Mali; the intensification of drug trafficking and trafficking in persons, human rights abuses, and hostage-taking; the presence of foreign mercenaries threatening peace, security, and stability; and the intensification of attacks against civilians, the Malian defense and security forces, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), and international security presences, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13882 on July 26, 2019, must continue in effect beyond July 26, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13882 with respect to the situation in Mali.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 16, 2024.

Presidential Documents

Notice of July 16, 2024

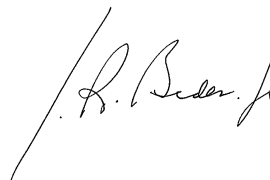
Continuation of the National Emergency With Respect to Transnational Criminal Organizations

On July 24, 2011, by Executive Order 13581, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the activities of significant transnational criminal organizations.

On March 15, 2019, by Executive Order 13863, the President took additional steps to deal with the national emergency with respect to significant transnational criminal organizations in view of the evolution of these organizations as well as the increasing sophistication of their activities, which threaten international political and economic systems and pose a direct threat to the safety and welfare of the United States and its citizens, and given the ability of these organizations to derive revenue through widespread illegal conduct, including acts of violence and abuse that exhibit a wanton disregard for human life as well as many other crimes enriching and empowering these organizations.

Significant transnational criminal organizations continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For these reasons, the national emergency declared in Executive Order 13581 on July 24, 2011, under which additional steps were taken in Executive Order 13863 on March 15, 2019, must continue in effect beyond July 24, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant transnational criminal organizations declared in Executive Order 13581.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

A handwritten signature in black ink, appearing to read "R. B. Biden", is written over a diagonal line that extends from the top right towards the center of the page.

THE WHITE HOUSE,
July 16, 2024.

[FR Doc. 2024-16023
Filed 7-17-24; 11:15 am]
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